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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



Doc# 1910222088 Fee \$134.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 04/12/2019 01:56 PM PG: 1 OF 49

The property identified as: **PIN:** 08-16-200-101-0000

Address:

Street: 75 W. Algonquin Rd.

Street line 2:

City: Arlington Heights

State: IL

ZIP Code: 60005

Lender: American National Life Insurance Company of New York

Borrower: Arlington Heights L.L.C.

Loan / Mortgage Amount: \$14,900,000.00

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.

11902998 1 of 3

Certificate number: E1A44490-8B7E-48F8-B38C-5975B521734F

Execution date: 4/11/2019

49

A handwritten signature or mark in the bottom right corner of the page.

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THIS DOCUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:

Holland & Knight, LLP
131 South Dearborn Street
Suite 3000
Chicago, Illinois 60603
Attention: Francis L. Keldermans
11190 2998 1 of 3
Permanent Tax Index Number(s):

08-116-200-101-0000

Property Address(es):

75 W. Algonquin Rd.
Arlington Heights, IL 60005

This space reserved for Recorder's use only.

**MORTGAGE, SECURITY AGREEMENT,
AND FINANCING STATEMENT
(AND FIXTURE FILING)**
Near North National Title
222 N LaSalle
Chicago, IL 60601

by

**ARLINGTON HEIGHTS L.L.C.,
an Illinois limited liability company, as Mortgagor**

to and for the benefit of

**AMERICAN NATIONAL LIFE INSURANCE COMPANY OF NEW YORK,
a New York insurance company, as Mortgagee**

**This document serves as a Fixture Filing under the Illinois Uniform Commercial Code,
Chapter 810 ILCS 5/9-502(b) et seq.**

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MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (AND FIXTURE FILING)

This Mortgage, Security Agreement and Financing Statement (and Fixture Filing) (hereinafter termed "**Agreement**" or "**Mortgage**") is entered into the ___ day of April, 2019 by ARLINGTON HEIGHTS L.L.C., an Illinois limited liability company (hereinafter termed "**Mortgagor**") whose mailing address is 5005 West Touhy Avenue, Suite 200, Skokie, Illinois 60077, to and for the benefit of AMERICAN NATIONAL LIFE INSURANCE COMPANY OF NEW YORK, a New York insurance company, whose mailing address is Attn: Mortgage and Real Estate Investments Department, 2525 South Shore Boulevard, Suite 207, League City, Texas 77573 (hereinafter termed "**Mortgagee**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as "**Mortgaged Premises**"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

A. THE REAL ESTATE located in the State of Illinois commonly known as 75 West Algonquin Road, Arlington Heights, Illinois 60005 and legally described on **Exhibit "A"** attached hereto and made a part hereof ("**Real Estate**"); and

B. TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf ("**Improvements**").

TO HAVE AND TO HOLD the Mortgaged Premises, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Mortgaged Premises after the occurrence of any event of default; Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

I. DEFINITIONS

A. The terms "**attorneys' fees**", "**attorneys' fees and expenses**", "**costs and expenses of enforcement**" and other terms of similar import shall mean and include support staff costs as an

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element of reasonable attorneys' fees, and the amounts expended in litigation preparation and computerized research, telephone and telefax expenses, mileage, depositions, postage, photocopies, process service, video tapes and the like as part of the reasonable costs of collection and enforcement, and any and all costs associated with environmental testing, audits, reviews, inspections, remediation and clean-up and any other costs associated with preparing the Mortgaged Property for sale as part of the costs of foreclosure and/or enforcement.

B. The term "**Collateral**" shall mean and include: (1) all of the goods, articles of personal property, accounts, general intangibles, instruments, documents, furniture, furnishings, equipment and/or fixtures of every kind and nature whatever (including, without limitation, the items described in subsection (2) - (8) below) now or hereafter owned by Mortgagor, in or hereafter placed in, or used or which may become hereafter used, in connection with or in the use, enjoyment, ownership or operation of the Mortgaged Premises (hereinafter defined) including without limitation, the hotel operation being conducted therein (the "**Hotel**"), together with all additions thereto, replacements thereof, substitutions therefor and all proceeds thereof; (2) all rents, rentals, payments, compensations, revenues, profits, incomes, leases, licenses, Gross Hotel Revenues (as hereinafter defined), concession agreements, parking agreements, insurance policies, plans and specifications, contract rights (including all franchise agreements, accounts (including, without limitation, the advance reservations and bookings for the Hotel, as the same may be amended, canceled and renewed by Mortgagor or any hotel operator in accordance with its rights under any hotel management agreement and advance deposits made in respect thereof; and all accounts receivable arising from the operation of the Hotel, including, without limitation, any and all accounts receivable owing from any guests of the Hotel incurred during that guest's stay); all escrowed funds (including, without limitation, the Capital Improvement Reserve, as defined below) accounts, escrowed funds, and general intangibles in any way relating to the Mortgaged Property or used or useful in the use, enjoyment, ownership or operation of the Mortgaged Property to the extent Mortgagor has a right to grant a security interest therein; (3) all names, trade names, signs, marks, and trademarks under or by which the Mortgaged Property may at any time be operated or known, all rights to carry on business under any such names, trade names, signs, marks and trade marks, or any variant thereof, any goodwill in any way relating to which the Mortgaged Property, or any part thereof, is known or operated and all of Mortgagor's rights to carry on the business of Mortgagor or the Hotel under all such names, trade names, signs, marks and trade marks, or any variant thereof; (4) all telephones, televisions, bedding, bed linens, towels, window treatments, safety equipment and tangible articles of personal property owned or leased by Mortgagor used or useful in the use, enjoyment, ownership or operation of the Mortgaged Property; all inventories of supplies used in connection with the operation of the business of the Hotel including, without limitation, paper goods, brochures, office supplies, food and beverage inventory (to the extent the transfer of same is permissible under applicable law), chinaware, glassware, flatware, table linens, soap and other operational and guest supplies located at the Hotel; all of the books, records, files, budgets, projects, strategic plans, business plans and specifications, drawings, test reports, inspections and engineering reports, guest registers, employment records (to the extent permitted by applicable law), maintenance records, rental and reservation records, and any customer or frequent guest lists of Mortgagor in connection with the use, enjoyment, ownership or operation of the Mortgaged Property; (5) all governmental

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permits relating to construction on the Mortgaged Property, and all other consents, authorizations, variances or waivers, licenses, permits and approvals from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality in respect to the Hotel, held or used by Mortgagor relating to the Hotel under all such name or names and any variant or variance thereof; (6) any and all deposits, awards, damages, payments, escrowed monies, insurance proceeds, condemnation awards or other compensation, and interests, fees, charges or payments accruing on or received from or to be received on any of the foregoing in any way relating to the Mortgaged Premises, or the ownership, enjoyment or operation of the Mortgaged Premises together with all proceeds of all of the foregoing described in this Section I(B); (7) any and all cash, securities, unaffiliated securities, investment property, securities accounts, financial assets, deposit accounts, securities entitlements and other personal property now or hereafter in or coming into or being credited to, or represented by any account, including, without limitation, all interest, dividends, rights, options, powers, splits and income thereon; and (8) any and all products, proceeds, substitutions, renumberings and replacements of any of the collateral described in this Section I(B).

C. The term “**Gross Hotel Revenues**” means the gross revenues of every kind and character attributable to operations on the Mortgaged Property from cash, barter and credit computed on an accrual basis (before commissions, discounts for credit cards and prompt or cash payments) from all sources.

D. The term “**Indebtedness**” shall mean and include:

(a) any and all sums becoming due and payable pursuant to the Note, as hereinafter defined, specifically including amounts representing future advances by Mortgagee to Mortgagor, any and all interest thereon, and any expenses relating thereto;

(b) any and all other sums becoming due and payable by Mortgagor to Mortgagee including, but not limited to, such sums as may hereafter be borrowed by Mortgagor from Mortgagee (it being contemplated that such future indebtedness may be incurred), including, but not limited to advancements or expenditures made by Mortgagee pursuant to the terms and conditions of this Agreement or any other document evidencing, securing or relating to the Note;

(c) any and all advances made by Mortgagee for the payment of taxes, assessments, insurance premiums or costs incurred for the protection and preservation of the Mortgaged Property (as hereinafter defined) and all other sums due and payable by Mortgagor to Mortgagee including, but not limited to advancements or expenditures made by Mortgagee pursuant to the terms and conditions of this Agreement or any other document evidencing, securing or relating to the Note (collectively with the Note, sometimes the “**Loan Documents**” and individually a “**Loan Document**”);

(d) any and all obligations, covenants, agreements and duties of any kind or character of Mortgagor now or hereafter existing, known or unknown, arising out of or in connection

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with the Note or any other Loan Document, whether direct, indirect, primary or secondary, arising by operation of law or otherwise; and

(e) any and all renewals, extensions, modifications, increases, consolidations and rearrangements of any or all of the obligations of Mortgagor defined herein under the term Indebtedness, whether or not Mortgagor executes any renewal, extension or other such agreement.

E. The term "**Members' Certificate**" shall mean that certain Members' Certificate of even date herewith executed by the members of Mortgagor relating to the approval of the Loan (as defined herein), transaction.

F. The term "**Mortgaged Premises**" shall mean and include: (1) the real property situated in the County of Cook, State of Illinois, described in **Exhibit "A"** which is attached hereto and incorporated herein for all purposes; together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials now or hereafter placed thereon intended for construction, reconstruction, alteration and repairs of such buildings and improvements, all of which materials shall be deemed to be included as a part of said real property immediately upon the delivery thereof to said real property; and (2) all fixtures now or hereafter owned by Mortgagor and attached to, contained in or used in connection with said real property, and all renewals and replacements thereof, including but not limited to (a) all equipment, apparatus, machinery, motors, elevators, fittings and radiators, (b) all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment, (c) all awnings, storm windows and doors, mantels, cabinets, computer flooring, rugs, carpeting, linoleum, stoves, shades, draperies, blinds and water heaters, (d) such other goods and chattels and personal property as are usually furnished by landlords in letting an unfurnished building, or which shall be attached to said buildings and improvements by nails, screws, bolts, pipe connections, masonry or in any other manner and (e) all built-in equipment as may be shown by plans and specifications.

G. The term "**Mortgaged Property**" shall mean the Mortgaged Premises and Collateral.

H. The term "**Mortgagor's Principal**" shall mean David M. Friedman, an individual.

I. The term "**Note**" shall mean that certain Promissory Note of even date herewith in the principal sum of \$14,900,000.00 executed by ARLINGTON HEIGHTS L.L.C. and payable to the order of Mortgagee, payable with interest in installments as stipulated therein and providing for the right to declare the unpaid principal balance due and payable upon the occurrence of an Event of Default and otherwise as provided therein and providing for the reasonable attorneys' fees, and all notes given in renewal, extension, modification, increase, consolidation or rearrangement of said Promissory Note or any portion thereof.

II. **SECURITY**

As security for the Indebtedness, Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, and grants a security interest

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in, all of Mortgagor's right title and interest in the Mortgaged Premises, all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate and not secondarily.

III. ADDITIONAL SECURITY

As security for the Indebtedness, Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, and grants a security interest in, all of Mortgagor's right title and interest in the Mortgaged Premises, all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate and not secondarily.

A. Security Interest.

(1) Mortgagor hereby grants and conveys to Mortgagee a security interest in and lien on all of the Collateral. This Agreement shall serve as a Security Agreement created pursuant to the Uniform Commercial Code in effect in the State of Illinois ("UCC"), and Mortgagee shall have and may exercise all rights, remedies and powers of a secured party under the UCC. Mortgagor hereby represents, warrants and covenants that: (a) Mortgagor is the owner and holder of the Collateral free and clear of any adverse claim, security interest or encumbrance, except those created herein; (b) it will defend the Collateral and the priority of the security interest created herein as a valid first security interest against all claims and demands of any person at any time claiming the same or any interest therein; (c) there are no financing statements executed by Mortgagor, as Debtor, now on file in any public office except those financing statements which are being released contemporaneously with the delivery of this transaction or which have been authorized by Mortgagee; (d) authorizes Mortgagee to file or record such other and further agreements, financing statements and assignments in such offices and at such times as it is deemed by Mortgagee to be necessary or desirable; and (e) it will execute and deliver to Mortgagee such other and further agreements, financing statements and assignments as Mortgagee may request.

(2) This Agreement is intended to constitute a fixture filing in accordance with the applicable provisions of the UCC. The "Debtor" is Mortgagor and the "Secured party" is Mortgagee and their addresses are those set forth at the beginning of this Agreement. Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the UCC), and this Agreement, upon being filed for record in the real estate records of the county wherein the Mortgaged Premises are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of the UCC upon such Mortgaged Property that is or may become fixtures.

(3) Mortgagor covenants and agrees that Mortgagor will furnish Mortgagee with notice of any change in name, identity, organizational structure, mailing address, residence, state of formation or organization, principal place of business or location (as that term is defined in the UCC) thirty (30) days prior to the effective date of any such change. Mortgagor hereby authorizes the filing of any financing statements or other instruments deemed necessary by Mortgagee to prevent any filed financing statement from becoming misleading or losing its perfected status or to reinstate any lapsed financing statement.

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(4) Mortgagor agrees that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as real property irrespective of whether: (a) any such item is physically attached to the real property or improvements thereon; (b) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee; or (c) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (x) rights in or to the proceeds of any fire and/or hazard insurance policy, (y) any award in eminent domain proceedings for a taking or for loss of value or (z) Mortgagor's interest as lessor in any present or future leases or subleases or rights to rents growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of this Mortgage or any other Loan Document, but such mention in the financing statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to (x), (y), or (z) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government, must be filed in the UCC records or otherwise perfected in the manner required by the UCC.

B. Assignment of Condemnation Awards. To the extent of the full amount of the Indebtedness secured hereby and of the cost and expenses (including reasonable attorneys' fees) incurred by Mortgagee in the collection of any award or payment, Mortgagor hereby assigns to Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, which may be made with respect to the Mortgaged Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street, or (c) any other injury to or decreased value in the Mortgaged Property, as well as the right, but not the obligation, to, at Mortgagor's expense, participate in and make decisions concerning the progress of any proceeding involving any such award or payment. Mortgagor shall give Mortgagee written notice of any such action or proceeding immediately upon Mortgagor's becoming aware of same. All such damages, condemnation proceeds and consideration shall be paid directly and solely to Mortgagee whether or not an Event of Default has at such time occurred, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by Mortgagee in obtaining such sums, Mortgagee may, at its option, apply the balance on the Indebtedness, in any order and whether or not then due, without prepayment or penalty, or to the restoration of the Mortgaged Property, or release the balance to Mortgagor. Said application or release shall not cure or waive any default.

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IV. ABSOLUTE ASSIGNMENT OF RENTS

A. Generally. In further consideration for the indebtedness evidenced by the Note, Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all rents, revenues, profits and incomes from the Mortgaged Property or any portion thereof, including, but not limited to hotel room rentals, deposits and revenues, whether presently due or hereafter coming due; provided, however, that so long as no Event of Default has occurred, Mortgagor is hereby granted a license to collect and retain the currently accruing rents, income and profits from the Mortgaged Property, but in no event may Mortgagor collect same for more than one (1) month in advance of the date upon such rents become due except for hotel room deposits in the ordinary course of business. If an Event of Default shall occur, however, thereupon, and at any time thereafter such default is continuing, Mortgagee may terminate such license and may, without any liability to Mortgagor, take possession and control of the Mortgaged Property and/or receive and collect all rents, revenues, profits and income, accrued or accruing thereafter so long as any of the Indebtedness remains unpaid, applying so much thereof as may be collected first to the expenses incident to taking possession and/or the collection thereof, and second to the payment of the Indebtedness other than the Note and then to the amount of the Note then remaining unpaid, at Mortgagee's discretion, either principal or interest, in any order, and whether then matured or not, paying the balance, if any, to Mortgagor. It is intended by Mortgagor and Mortgagee that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only and that Mortgagee shall be entitled to exercise its rights hereunder whether or not Mortgagee is in possession of the Mortgaged Premises at such time. Mortgagor agrees to fulfill or perform each and every covenant of any and all leases and guaranties of leases of the Mortgaged Property so as to keep them at all times in full force and effect. Mortgagor agrees not to enter into any new lease and not to make any modification, consent to any modification of, or cancel, terminate (except for agreements with hotel guests occupying the Mortgaged Property on a transient basis) or consent to the surrender of any lease of all or any part of the Mortgaged Property or any guaranty of such lease after such lease or guaranty has been executed by Mortgagor and the lessee or guarantor, as applicable, without the prior written consent of Mortgagee, such consent not to be unreasonably withheld or delayed; the failure to fulfill or perform any such covenant or the making of or consent to any such modification or cancellation, termination (except for agreements with hotel guests occupying the Mortgaged Property on a transient basis) or surrender shall be an Event of Default. Nothing contained in this Agreement or in any other document securing, evidencing or relating to the Indebtedness shall preclude Mortgagee from taking any action to cure or remedy any default of the Landlord under any lease of all or any portion of the Mortgaged Property or any guaranty of lease, or any act, omission or occurrence which but for the passage of time, the giving of notice, or both, would be a default under any such lease or guaranty of lease or take any other action in connection therewith and any amounts expended by Mortgagee in connection with such cure or remediation including, without limitation, reasonable attorneys fees and expenses, shall be an advance under and secured by this Agreement and shall be included in the Indebtedness and shall be paid by Mortgagor to Mortgagee on demand. The preceding sentence shall not be construed to obligate Mortgagee to cure any such actual or potential lease defaults or any guaranty of lease defaults. Without limiting the generality of the other provisions of this Section IV, Mortgagor agrees to provide Mortgagee with a subordination, non-disturbance and attornment

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agreement in accordance with Mortgagee's then-current standard form, executed by any tenant (other than hotel guests occupying the Mortgaged Property on a transient basis) in recordable form, within thirty (30) days after written request from time to time. In the event of any inconsistency between Article V of this Agreement and that certain Absolute Assignment of Leases and Rents ("Assignment of Rents") of even date executed by Mortgagor in favor of Mortgagee, the Assignment of Rents will control.

B. No Limitation. Nothing contained in this Mortgage or any of the other Loan Documents shall preclude Mortgagee from taking any action to cure or remedy any default under any lease of all or any portion of the Mortgaged Property or any guaranty of lease, or any act, omission or occurrence which but for the passage of time, the giving of notice, or both, would be a default under any such lease or guaranty of lease or take any other action in connection therewith and any amounts expended by Mortgagee in connection with such cure or remediation including, without limitation, reasonable attorneys' fees and expenses, shall be an advance under and secured by this Mortgage and shall be included in the Indebtedness and shall be paid by Mortgagor to Mortgagee on demand. The preceding sentence shall not be construed to obligate Mortgagee to cure any such actual or potential lease defaults or any guaranty of lease defaults.

V. MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

In order to induce Mortgagee to lend the funds evidenced by the Note, Mortgagor represents and warrants that:

A. Accurate Loan Information. All information and financial statements furnished or to be furnished to Mortgagee by or on behalf of Mortgagor in connection with the Indebtedness secured by this Agreement is or at the time of delivery will be complete and accurate in all material respects.

B. Valid Title. Mortgagor is the lawful owner of the Mortgaged Property and has good right and lawful authority to mortgage and pledge the same.

C. Freedom from Encumbrances. The Mortgaged Property is free from any and all liens and encumbrances save and except only the Permitted Exceptions, and Mortgagor does warrant and will defend title to the Mortgaged Property against all claims or demand by third parties whatsoever save and except only the Permitted Exceptions.

D. Maintenance of Lien Priority. Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on the Mortgaged Property created hereby. Mortgagor shall execute, acknowledge and deliver such additional documents as Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens and security interests created hereby as first liens on the Mortgaged Property. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the security interest and the liens herein created as valid first and subsisting liens shall be paid by Mortgagor.

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E. Value of the Mortgaged Property. Mortgagor acknowledges that the value of the Mortgaged Property, as established by an appraisal submitted to Mortgagee, is substantially in excess of the Indebtedness secured hereby. Mortgagor acknowledges but for the Mortgaged Property having a value in excess of the amount of the Indebtedness, Mortgagee would not make the loan evidenced by the Note (the "**Loan**") and advance the funds hereunder. Mortgagor agrees that Mortgagee shall at all times have the benefit of the Mortgaged Property as the security for the Indebtedness even though the value thereof may now or in the future exceed the amount of the Indebtedness secured hereby.

F. Representations, Warranties and Covenants of a Limited Liability Company Mortgagor. Mortgagor hereby represents, warrants and covenants that:

(1) Mortgagor is an Illinois limited liability company created under that certain Articles of Organization dated April 27, 2004 and there are no amendments thereto.

(2) The only Manager or Managing Member of Mortgagor is David M. Friedman, an individual (the "**Manager**"), and the only members of Mortgagor are those persons or entities set forth in the Members' Certificate (being sometimes referred to individually as a "**Member**" and collectively as the "**Constituent Members**").

(3) The Manager is authorized to execute and deliver the Note, this Agreement, and all other documents which Mortgagee may now or from time to time hereafter require to be executed on behalf of Mortgagor in connection with the Note, this Agreement or the Indebtedness, including but not limited to renewals, extensions, modifications, increases, consolidations and rearrangements of the Note and this Agreement, and no signature or any other action of any other person or entity shall be required to bind Mortgagor.

(4) Except for Permitted Transfers, Mortgagor will not permit any interest of a Member to be sold, transferred, conveyed, encumbered or diluted or make any modification of the Articles of Organization or the Regulations which adversely affects Mortgagee.

(5) Mortgagor is, and shall continue to be, (a) duly organized and existing under the laws of the State in which it is formed, and (b) duly qualified to transact business in each State where the conduct of its business requires it to be qualified.

G. Construction and Materials. Mortgagor hereby warrants, represents and covenants that all persons and entities who have provided labor or materials to or for the benefit of the Mortgaged Property by, through or under Mortgagor or otherwise at Mortgagor's direction or request at any time prior to the date of this Agreement have been paid in full.

H. Hazardous Waste. Mortgagor hereby represents and warrants that, after due and diligent inquiry and review of that certain Phase I Environmental Site Assessment prepared by _____ for Mortgagee dated _____ (the "**Environmental Report**"), Mortgagor is not aware of any facts or circumstances which may give rise to any litigation,

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proceedings, investigations, citations or notices of violations resulting from the use, presence, generation, manufacture, storage, discovery or disposition of, on, under or about the Mortgaged Property or the transport to or from the Mortgaged Property of any Hazardous Materials, defined below. Mortgagor hereby represents and warrants that the Mortgaged Property is not in violation of and Mortgagor covenants and agrees not to use or permit the use of the Mortgaged Property for any purpose which would be in violation of, any federal, state or local health or environmental statute, regulation, ordinance or publication which is presently in effect or that may be promulgated in the future, as such statutes, regulations, ordinances and publications may be amended from time to time relating to Hazardous Materials, including, without limitation, with respect to industrial hygiene or to health or environmental conditions on, under, or about the Mortgaged Property (including, but not limited to, soil and ground water conditions) or with respect to the owner's or occupant's thereof. The foregoing representations and warranties shall survive foreclosure under this Agreement and shall constitute continuing representations and warranties to Mortgagee, its successors and assigns, as to conditions existing prior to foreclosure or in deed in lieu of foreclosure only. The term "**Hazardous Materials**", as used in this Agreement, shall include but not be limited to:

- (1) petroleum, petroleum based products and oil;
- (2) asbestos of any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls (sometimes known as a "pcb");
- (3) tanks, whether empty, filled or partially filled with any substance, material, chemical or other waste;
- (4) any substance, material, chemical or other waste including, without limitation any explosive, flammable substances, explosives or radioactive materials, hazardous or toxic waste, hazardous or toxic materials, hazardous, toxic or radioactive substances, contaminants or pollutants and any of the preceding which are defined as or included in the definition of "Hazardous Substance," "Hazardous Waste," "Hazardous Material" or "Toxic Substance" or other similar or related terms under any applicable local, state or federal statute, regulation, ordinance or publication including but not limited to (collectively referred to as the "**Environmental Laws**"):
 - (a) Resource Conservation and Recovery Act of 1976 (commonly referred to as the Solid Waste Disposal Act), 42 U.S.C. sec. 6901 et seq.;
 - (b) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. sec. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613;
 - (c) Clean Air Act, 42 U.S.C. sec. 7401 et seq.;
 - (d) the Water Pollution and Prevention and Control Act (commonly referred to as the Clean Water Act) 33 U.S.C. sec. 1251-et seq.;

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- (e) Hazardous Materials Transportation Act, 49 U.S.C. sec. 5101 et seq.;
- (f) Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. sec. 136 et seq.;
- (g) Toxic Substances Control Act, 15 U.S.C. sec. 2601 et seq.;
- (h) Safe Drinking Water Act, 42 U.S.C. sec. 300(f) et seq.;
- (i) any and all applicable statute, rule, regulation or order now in effect or enacted in the future in the State of Illinois,

as such statutes, regulations, ordinances and publications may be amended from time to time; and

(5) any other material, substance, chemical or other waste, exposure to which is prohibited, limited or regulated from time to time by any federal, state or local statute, regulation, ordinance or publication or may pose a hazard to the health and/or safety of the occupants of the Mortgaged Property or any other adjacent or nearby property.

The present use and occupancy of the Mortgaged Premises do not violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind, including, without limitation, Environmental Laws, zoning, building, land use, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not and if a third-party is required under any covenants, conditions and restrictions of record or any other agreement to consent to the use and/or operation of the Mortgaged Premises, Mortgagor has obtained such approval from such party.

The Mortgaged Premises has never been used, and the Mortgaged Premises will not be used, for any activities which, directly or indirectly, involve the use, generation, treatment, storage, transportation or disposal of any Hazardous Materials. No Hazardous Materials exist now, and no Hazardous Materials will hereafter exist, on or under the Mortgaged Premises or in any surface waters or groundwaters on or under the Project. The Mortgaged Premises and its existing and prior uses have at all times complied with and will comply with all Environmental Laws, and Mortgagor has not violated, and will not violate, any Environmental Laws;

There are no facilities on the Mortgaged Premises which are subject to reporting under any State laws or Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. sec. 11022), and federal regulations promulgated thereunder. The Mortgaged Premises does not contain any underground storage tanks;

NOTWITHSTANDING ANY NON-RECOURSE LANGUAGE OF THE NOTE OR THIS AGREEMENT, Mortgagor hereby agrees to INDEMNIFY AND HOLD HARMLESS Mortgagee, its directors, officers, employees, attorneys, contractors and agents, and any successors and assigns, their

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directors, officers, employees, and agents (individually and collectively the "**Indemnitees**"), from and against any and all loss, damage, expense or liability (including reasonable attorneys fees and investigatory expenses) incurred arising out of the use, occurrence, generation, storage, transportation or disposal of Hazardous Materials on or about the Mortgaged Property by Mortgagor, its present tenants or any future tenants, any prior owner, operator or tenant of the Mortgaged Property, or any third party, including, without limitation, (i) all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, occurrence, generation, storage, transportation or disposal of Hazardous Materials by Mortgagor, past, present or future tenants, owners or operators of the Mortgaged Property, or any third party, and (ii) the cost of any required or necessary repair, cleanup or detoxification, claimed, threatened or asserted against any such Indemnitee; SUCH INDEMNITY AND HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE, OF AN INDEMNITEE AND FOR ANY ACTION OR OCCURRENCE FOR WHICH THE INDEMNITEE MAY INCUR STRICT LIABILITY, but such indemnity and hold harmless shall not apply with respect to any Hazardous Substances which first occurred on the Mortgaged Property after any foreclosure of this Agreement or conveyance in lieu thereof or to the extent that such loss, damage, expense or liability is caused by or attributable to such Indemnitee's gross negligence or willful misconduct. Mortgagor's obligations pursuant to the foregoing indemnity and hold harmless shall survive any termination of the estate created by this Agreement whether as a result of the exercise by Mortgagee of any default remedies available to it at law or in equity or otherwise. Mortgagor acknowledges and agrees that as a condition precedent to making the Loan to Mortgagor evidenced by the Note secured by this Agreement, Mortgagee has required that Mortgagor provide to the Indemnitees the indemnity set forth herein and that Mortgagee would not consummate the Loan without this indemnity and hold harmless and that the indemnity and harmless contained herein is a material inducement for Mortgagee's agreement to make the Loan. Further, Mortgagor agrees that the foregoing indemnification is separate, independent of and in addition to its undertakings as Maker under the Note, as Mortgagor under this Agreement, as Maker under the Absolute Assignment of Leases and Rents and any and all other documents, agreements and undertakings executed by Mortgagor in favor of Mortgagee pursuant to the Note. Mortgagor agrees that a separate action may be brought to enforce the provisions of this indemnification and hold harmless, which shall in no way be deemed to be an action on the Note or under this Agreement, whether or not Mortgagee would be entitled to a deficiency judgment following a foreclosure sale of the Mortgaged Property.

I. Patriot Act.

(1) As of the date of this Agreement, Mortgagor is and, during the term of this Agreement shall remain, in full compliance with all the applicable laws and regulations of the United States of America that prohibit, regulate or restrict financial transactions, including but not limited to, conducting any activity or failing to conduct any activity, if such action or inaction constitutes a money laundering crime, including any money laundering crime prohibited under the Money

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Laundering Control Act, 18 U.S.C. 1956, 1957, or the Bank Secrecy Act, 31 U.S.C. sec. 5311 et seq. and any amendments or successors thereto and any applicable regulations promulgated thereunder.

(2) Mortgagor represents and warrants that: (a) neither it, nor any of its Constituent Owners (as defined below), or any officer, director, member, manager, partner or employee, is or will become named as a "Specially Designated National and Blocked Person" as designated by the United States Department of the Treasury's Office of Foreign Assets Control or as a person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; (b) it is not owned or controlled, directly or indirectly, by the government of any country that is subject to a United States Embargo; (c) it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a "Specially Designated National and Blocked Person," or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that it is not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation; (d) no funds will be used to make any payments due hereunder or pursuant to the Note which were obtained directly or indirectly from a Specially Designated National and Blocked Person or otherwise derived from a country that is subject to a United States Embargo; and (e) no current or future tenant of any portion of the Mortgaged Property, nor any officer, director, member, manager, partner or Constituent Owner of such tenant, is or will become named a Specially Designated National and Blocked Person; provided that, in the event that a tenant of any portion of the Mortgaged Property is a publicly-traded company whose shares are listed on a national stock exchange, such representation and warranty shall not apply to shareholders of such tenant.

(3) Mortgagor acknowledges that it understands and has been advised by legal counsel on the requirements of the applicable laws referred to above, including the Money Laundering Control Act, 18 U.S.C. sec. 1956, 1957, the Bank Secrecy Act, 31 U.S.C. 5311 et seq., the applicable regulations promulgated thereunder, and the Foreign Assets Control Regulations, 31 C.F.R. sec. 500 et seq.

(4) Mortgagor shall notify Mortgagee immediately upon receipt of any information indicating a breach of this Section V(I) or if Mortgagor or any officer, director, member, manager, member, employee or Constituent Owner of Mortgagor is custodially detained or charges relating to money laundering, whereupon Mortgagee shall be entitled to take all actions necessary so that Mortgagee is in compliance with all Anti-Money Laundering Regulations. Any and all loss, damage, liability, penalty, fine or expense (including reasonable attorney's fees and investigatory expenses) incurred by Mortgagee in connection therewith, including but not limited to attorney's fees, shall be included in the Indebtedness secured hereunder and shall immediately be due and payable by Mortgagor to Mortgagee.

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VI. ADDITIONAL COVENANTS OF MORTGAGOR

As long as any of the Indebtedness remains unpaid, Mortgagor covenants and agrees that:

A. Payment of Indebtedness. Mortgagor will pay the Indebtedness promptly when due and payable.

B. Payment of Taxes and Other Assessments.

(1) Mortgagor will pay all taxes, assessments and other governmental, municipal or other public dues, charges, fines, or impositions imposed or levied upon the Mortgaged Property or on the interest created by this Agreement, or any tax or excise on rents or other tax, however described (such amounts, collectively, the "Taxes and Assessments"), assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Mortgaged Property or on the interest created by this Agreement, and at least ten (10) days before said taxes, assessments and other governmental charges are due will exhibit receipts therefor to Mortgagee. If any Taxes and Assessments (other than income tax) are levied, assessed or imposed on Mortgagee as a legal holder of the Note or any interest in the Loan Documents by any governmental authority, then unless all such taxes are paid by Mortgagor as they become due and payable and in the opinion of counsel of Mortgagee, such payment by Mortgagor is lawful and does not place Mortgagee in violation of any law, Mortgagee may, at its option, declare the Indebtedness immediately due and payable.

(2) Mortgagor may in good faith contest, by proper legal proceedings, the validity or amount of any Taxes and Assessments which Mortgagor has agreed to pay pursuant to the provisions of this Agreement and may delay payment, performance or discharge thereof during the period in which the same is being contested; provided, however, that if payment, performance or compliance is delayed: (a) such proceedings shall suspend the collection thereof from Mortgagor and/or Mortgagee, and the Mortgaged Property; (b) in any such event Mortgagor shall deposit with Mortgagee, as security for the payment or discharge of such contested item, an amount equal thereto plus interest, penalties, and costs; (c) such contested item and all costs and penalties, if any, shall have been paid at least thirty (30) days before the date on which the Mortgage Property, or any portion thereof, may be sold in order to satisfy any such contested items; and (d) in the case of any matter described in for which criminal or civil liability might accrue to Mortgagor or Mortgagee, neither Mortgagor nor Mortgagee would be in any danger of any criminal or civil liability for failure to comply therewith.

C. Insurance. Mortgagor shall keep the Mortgaged Property insured against loss or damage by fire, windstorm, special form causes of loss, coverage perils, flood (in the event any of the Mortgaged Premises is within a one hundred (100) year flood plain and flood insurance is available pursuant to the United States Flood Disaster Protection Act of 1973 or any similar or successor statute or successor governmental authority, as the same may be amended from time to time), vandalism, malicious mischief and such other hazards, casualties or other contingencies and in such amounts (but in no event less than the greater of the amount of the Indebtedness from time to

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time secured hereby or the full replacement value of the Mortgaged Property) as from time to time may be required by Mortgagee, and maintain rents or rental value insurance coverage, in an amount at least adequate to cover twelve (12) months' principal and interest installments on the Note and together with twelve (12) months' property taxes and insurance premiums, with respect to the Mortgaged Property covering the risk of loss due to the occurrence of any of the foregoing hazards, in each case and in such amounts, in such manner and in such companies as Mortgagee may approve, and all such policies shall contain a waiver of subrogation and provide that any losses payable thereunder shall (pursuant to standard mortgagee clauses without contribution, including one providing that such insurance as to the interest of Mortgagee shall not be invalidated by any act or omission or neglect of Mortgagor, to be attached to each policy) be payable to Mortgagee. Mortgagor shall cause duplicate originals or certified copies of any and all such insurance policies to be deposited with Mortgagee. Mortgagor will also carry public liability insurance, in such form, amounts and with such companies as Mortgagee may from time to time reasonably require, with Mortgagee included thereon as a named insured. Each insurance policy or endorsement required herein shall be written by an insurer having a rating of "A-X" or better Best's Rating according to the most current edition of Best's Key Rating Guide as determined at the time of the initial policy and at all times during the term hereof. All policies shall indicate that notices related to such insurance shall be sent to Mortgagee at:

American National Life Insurance Company of New York
Attn: Mortgage and Real Estate Investment Department
2525 South Shore Blvd., Ste. 207
League City, TX 77573

Any or all of such policies may be provided under a blanket policy or policies provided such blanket policies allocate the amount of insurance required hereunder to the Mortgaged Property. Mortgagor shall cause duplicate originals of any and all such insurance policies to be deposited with Mortgagee, or certificates of the insurers under such policies evidencing same. At least ten (10) days prior to the date the premiums on each such policy or policies shall become due and payable, Mortgagor shall furnish to Mortgagee evidence of the payment of such premiums. Each of such policies shall contain an agreement by the insurer that the same shall not be cancelled or modified without at least ten (10) days' prior written notice to Mortgagee. In the event of loss under any such policy, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. With respect to all insurance policies except public liability insurance, Mortgagee is hereby authorized, but not required, on behalf of and at the expense of Mortgagor, whether or not an Event of Default has then occurred, to make proof of loss, to collect for, adjust or compromise any losses under any insurance policy on the Mortgaged Property, to appear in and prosecute any action arising from any of such insurance policies, and to apply, at Mortgagee's option, the loss proceeds (less expenses of collection) on the Indebtedness without prepayment penalty, in any order and whether due or not, or to the restoration of the Mortgaged Property, or to be released to Mortgagor, but any such application or release shall not cure or waive any default. In case of a sale pursuant to the foreclosure provision hereunder, or any conveyance of all or any part of the Mortgaged Property in extinguishment of the Indebtedness,

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complete title to all insurance policies on or related to the Mortgaged Property, and the unearned premiums of same shall pass to and vest in the purchaser or grantee of the Mortgaged Property.

D. Escrow for Taxes and Insurance. The requirements for escrows for taxes and insurance have been conditionally waived by Mortgagee so long as no Termination of Escrow Waiver Event occurs. A "**Termination of Escrow Waiver Event**" means one or more of the following: (1) an Event of Default has occurred and is continuing; (2) any Taxes and Assessments are not paid prior to delinquency or any premium to maintain the insurance required in this Agreement is not paid when due; or (3) Mortgagor does not own the Mortgaged Property unless the subject loan has been assumed by a borrower approved in writing by Mortgagee, in Mortgagee's sole and absolute discretion. If a Termination of Escrow Waiver Event occurs, thereafter Mortgagor shall pay, in addition to the installments payable under the Note, on the same day as such installments are due and payable, a sum equal to 1/12th of the estimated annual taxes, hazard and rental insurance premiums, and special assessments, if any, next due on the Mortgaged Property. If the amount so paid is not sufficient to pay such taxes, insurance premiums and assessments when due, then Mortgagor will immediately deposit with Mortgagee amounts sufficient to pay the same. Funds deposited by Mortgagor pursuant to this provision shall be used to pay such taxes, insurance premiums and assessments when due, provided that Mortgagor has furnished Mortgagee with all tax statements, premium notices and other such notices at least thirty (30) days prior to the date that any such taxes, premiums and assessments may be due. If there is an Event of Default under this Agreement, Mortgagee may elect, at any time after default, to apply the funds accumulated under this provision against the Indebtedness in any manner or order. No interest shall accrue or be allowed on any payments under the provisions of this paragraph. Mortgagee shall not be required to deposit or hold monies in an account special or separate from its general funds. Mortgagor expressly releases Mortgagee from any liability to Mortgagor arising out of the maintenance by Mortgagee of an escrow as provided herein or for payment of any sums out of such escrow. Mortgagor further indemnifies Mortgagee against claims arising out of payment of taxes or insurance premiums where Mortgagor has failed to provide Mortgagee with tax statements and premium notices as required hereby. The maintenance by Mortgagee of an escrow for Taxes and Assessments and insurance shall not relieve Mortgagor of its obligations under this Agreement respecting Taxes and Assessments and insurance on the Mortgaged Property if such escrow is insufficient or otherwise applied as provided in accordance with this Agreement. A charge of \$200.00 per month for administration expenses shall be assessed against Mortgagor for each successive month that all paid tax receipts and insurance policies are not delivered to Mortgagee within thirty (30) days after notice to Mortgagor of failure to deliver such documents.

E. FF&E Reserve.

(1) Concurrently with the funding of the Loan, Mortgagor and Mortgagee have established a reserve account for furniture, fixtures and equipment, which amount shall include interest, if any, accrued thereon (the "**FF&E Reserve**"), for payment of repair and replacement of furniture, fixtures and equipment used in the operation of the Hotel (collectively, the "**FF&E**"), and Mortgagor shall maintain such FF&E Reserve in an account to be maintained by Mortgagee at all

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times while the Note is outstanding. Mortgagor intends that Mortgagee shall have a perfected security interest in the FF&E Reserve in first lien position, and in this regard, upon the request of Mortgagee, Mortgagor shall enter into a deposit control agreement with the applicable financial institution and Mortgagee, as contemplated by Article 9 of the UCC. On the date hereof, Mortgagor shall fund into the FF&E Reserve an initial deposit of \$300,000.00. Thereafter, commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Mortgagor shall pay to Mortgagee for deposit into the FF&E Reserve account, concurrently with and in addition to the monthly payment date due under the Note and until the Note and all other Indebtedness secured hereby is fully paid and performed, a deposit in an amount equal to four percent (4%) of all Gross Hotel Revenues for the month preceding the month just ended, which deposits shall be made monthly with the monthly installments of principal and/or interest due on the Note.

(2) All sums in the FF&E Reserve shall be held by Mortgagee in the FF&E Reserve to pay the costs and expenses of FF&E. Provided there is no Event of Default or an event which, with notice or the passage of time, or both, could result in an Event of Default by Mortgagor under the Note, this Mortgage or any of the other Loan Documents, Mortgagee shall, to the extent funds are available for such purpose in the FF&E Reserve, disburse to Mortgagor the amount paid or incurred by Mortgagor in repairing or replacing such FF&E within ten (10) days following: (a) the receipt by Mortgagee of a written request from Mortgagor for disbursement from the FF&E Reserve and a certification from Mortgagor that the repair or replacement of the applicable items of FF&E have been completed; (b) the delivery to Mortgagee of invoices, receipts or other evidence satisfactory to Mortgagee, verifying the cost of performing the FF&E; (c) for disbursement requests in excess of \$75,000.00, the delivery to Mortgagee of affidavits, lien waivers or other evidence reasonably satisfactory to Mortgagee showing that all material men, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Mortgaged Property have been paid all amounts due for labor and materials furnished to the Mortgaged Property; and (d) for construction projects budgeted to require disbursement requests in excess of \$75,000.00, delivery to Mortgagee of a certification from an inspecting architect or other third party acceptable to Mortgagee describing the completion of the repaired or replaced FF&E and verifying the completion of such repair or replacement and the value of the repaired or replaced FF&E. Mortgagee shall not be required to make advances from the FF&E Reserve more frequently than once in any one month period. In making any payment from the FF&E Reserve, Mortgagee shall be entitled to rely on such request from Mortgagor without any inquiry into the accuracy, validity or contestability of any such amount. Mortgagee may, at Mortgagor's expense, make or cause to be made during the term of the Loan an annual inspection of the Mortgaged Premises to determine the need, as determined by Mortgagee in its reasonable judgment, for further replacement or repair of the FF&E, provided that such further replacements or repairs are consistent with brand standards. In the event that such inspection reveals that further replacements or repairs of FF&E are required, Mortgagee shall provide Mortgagor with a written description of the required FF&E to be repaired or replaced, and Mortgagor shall complete such repair or replacement to the reasonable satisfaction of Mortgagee within ninety (90) days after the receipt of such description

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from Mortgagee, or such later date as may be approved by Mortgagee (in writing) in its sole discretion.

(3) The FF&E Reserve is solely for the protection of Mortgagee and entails no responsibility on Mortgagee's part beyond the payment of the costs and expenses described in this Section VI(E) in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the FF&E Reserve are inadequate to pay the cost of the repair or replacement of the FF&E, Mortgagor shall pay the amount of such deficiency. Upon assignment of the Loan by Mortgagee, any funds in the FF&E Reserve shall be turned over to the assignee and any responsibility of Mortgagee, as assignor, with respect thereto shall terminate. If there is an Event of Default under the Note, this Mortgage or any of the other Loan Documents, Mortgagee may, but shall not be obligated to, apply at any time the balance then remaining in the FF&E Reserve against the Indebtedness secured hereby in whatever order Mortgagee shall subjectively determine. No such application of the FF&E Reserve shall be deemed to cure any default by Mortgagor or Event of Default under the Note, this Mortgage or any of the other Loan Documents. Upon full payment of the Indebtedness secured hereby in accordance with its terms or at such earlier time as Mortgagee may elect, the balance of the FF&E Reserve then in Mortgagee's possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto.

F. Waste, Demolition, Alteration or Replacement. Mortgagor will cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will not commit or permit waste thereon, will not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Mortgaged Premises, without the prior written consent of Mortgagee, and will comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and will from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Mortgagor agrees not to remove any of the fixtures or personal property included in the Mortgaged Property without the prior written consent of Mortgagee and unless immediately replaced with like property of at least equal value; provided that Mortgagor may remove and replace fixtures or personal property in the ordinary course of operation of the hotel located on the Mortgaged Premises. Mortgagor shall act as necessary to continue or cause the continuance of such income producing activity as is presently conducted upon or contemplated for the Mortgaged Property.

G. Inventory of Personal Property. Upon request of Mortgagee, Mortgagor shall deliver to Mortgagee an inventory describing and showing the make, model, serial number and location of all fixtures and personal property owned by Mortgagor and from time to time used in the management, maintenance and operation of the Mortgaged Property (other than inventory or property, if any, expressly excluded from the operation of this Agreement by separate written agreement) with a certification by Mortgagor that said inventory is a true and complete schedule of such fixtures and personal property owned by Mortgagor and used in the management, maintenance

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and operation of the Mortgaged Property and that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance and operation of the Mortgaged Property and that such items are owned by Mortgagor free and clear of security interests, liens, conditional sales contracts or title retention arrangements. Mortgagor hereby grants to Mortgagee a security interest in all such items of fixtures and personal property owned by Mortgagor under the terms and conditions of this Agreement.

H. **Financial Statement.** April 30th of each and every year is the “**Financial Statement Due Date**”. The requirement for certified financial statements has been conditionally waived by Mortgagee so long as no Termination of Certified Statement Waiver Event (as defined below) occurs. A “**Termination of Certified Statement Waiver Event**” means one or more of the following: (1) an Event of Default has occurred (beyond any applicable notice and cure periods); or (2) on or before the Financial Statement Due Date, Mortgagor has failed to furnish to Mortgagee both (a) annual operating information relating to the Mortgaged Property for each calendar year in the form required by the most recent version of the CRE Finance Council Investor Reporting Package, or such other form as may be reasonably acceptable to Mortgagee from time to time, signed by an executive officer of Mortgagor or the Manager, as applicable and (b) to the extent applicable, a detailed listing of all tenants leasing space in the Mortgaged Property which listing evidences the rate, the term, the amount of space, annual rent, any other reimbursements paid by each tenant, and, where appropriate, sales information provided by such tenant on the form attached hereto as **Exhibit “C”** attached hereto and incorporated herein for all purposes (or such other form as may be reasonably acceptable to Mortgagee from time to time) signed by Mortgagor. Mortgagor acknowledges and agrees that each such annual operating statement shall include the certification of Mortgagor, during the period of time covered by the particular statement, (1) no activity has been conducted upon the property in violation of any state, federal or local law, ordinance or regulation pertaining to toxic or hazardous materials, industrial hygiene or environmental conditions, and (2) the Mortgaged Property has complied with the Americans With Disabilities Act of 1990, as amended, and any state-level equivalent law (collectively the “**ADA**”). If a Termination of Certified Statement Waiver Event occurs, Mortgagor will furnish to Mortgagee on or prior to the Financial Statement Due Date, until the Indebtedness secured hereby has been fully paid, both the certified financial statements of Mortgagor covering the operation of the Mortgaged Property and the certified financial statements of Mortgagor’s Principal, each such statement prepared in accordance with sound accounting principles consistently applied and each such statement shall be certified by Mortgagor prepared and signed by an independent certified public accountant. For Mortgagor, the financial statements shall contain the certification of Mortgagor that, during the period of time covered by the particular statement, to the best of Mortgagor’s knowledge, (i) no activity has been conducted upon the Mortgaged Property in violation of any state, federal or local law, ordinance or regulation pertaining to Hazardous Materials, industrial hygiene or environmental conditions, and (ii) the Mortgaged Property complies with the ADA.

In addition to any other right or remedy of Mortgagee for failure timely deliver any of the operating statements, lists, certifications or other documents and information required in this paragraph, if Mortgagor does not deliver the financial statements as and when required by this

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paragraph, there shall be added to the Indebtedness and Mortgagor agrees to pay upon demand \$200.00 for each calendar month or part thereof until the required financial statements are delivered to Mortgagee.

I. Restrictions upon Sale, Transfer or Mortgaging the Mortgaged Property or the Interest in Mortgagor. Mortgagor acknowledges that Mortgagee is relying on the credit worthiness and skill of Mortgagor in advancing sums secured hereby. Except for a natural person's transfer by will or applicable state intestacy laws or transfers of interests in Mortgagor by members of Mortgagor for estate planning purposes that do not result in such member losing control of such interests (collectively, together with any other matters specifically defined below, "**Permitted Transfers**"): (i) if Mortgagor should sell, trade, convey, transfer, mortgage, assign, exchange, pledge or encumber (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) all or any part of the Mortgaged Property, or any interest of Mortgagor therein, absolutely or as security for a debt or other obligation, whether done in a direct or indirect method or enter into any contractual arrangements to do so, or (ii) if a shareholder, partner, member, trustee or beneficiary of Mortgagor (sometimes, a "**Tier Two Owner**") or if any shareholder, partner, member, trustee or beneficiary of any shareholder, partner, trustee or beneficiary of a Tier Two Owner (any and all of the preceding a "**Constituent Owner**") should sell, trade, convey, transfer, mortgage, assign, exchange, pledge or encumber (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) all or any part of its interest in Mortgagor or if such shareholder, partner, member, trustee or beneficiary in or of Mortgagor shall otherwise be diluted, or (iii) if Mortgagor shall in any way, voluntarily or involuntarily be divested of title or of any interest in the Mortgaged Property, then Mortgagee, at its option, may elect to accelerate the maturity of the Note and declare the entire amount of the Indebtedness immediately due and payable whereupon Mortgagor shall have thirty (30) days to pay the full sum of the Indebtedness including, without limitation, principal and interest, whether or not any such sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge, or encumbrance might diminish the value of the security for the Indebtedness or increase the likelihood of an Event of Default or increase the likelihood of Mortgagee having to resort to any other security for the Indebtedness after default or add or remove liability of any party for payment or performance of the Indebtedness. Mortgagor further agrees that the foregoing restriction shall be effective and remain in full force and effect throughout the term of this Agreement and shall be applicable to Mortgagor, each shareholder, partner, member, trustee and beneficiary and each Constituent Owner and their respective heirs, executors, administrators, successors and assigns. The consent by Mortgagee to any one such sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge, or encumbrance (one or more of the preceding a "**Transaction**") shall not waive or forfeit the right of Mortgagee to elect to accelerate the Indebtedness to maturity as to any other Transaction. Mortgagor further covenants and agrees to give written notice to Mortgagee in the event there occurs any Transaction which would violate the terms and conditions of this provision. The term "**Transaction**" shall include any voluntary or involuntary act or omission of Mortgagor. Nothing herein contained shall prevent Mortgagee from accelerating the Note at any time in the event Mortgagor enters into such a transaction and does not notify Mortgagee of same. Mortgagor may request Mortgagee to waive the right to declare the entire amount of the Indebtedness immediately due and payable and Mortgagee

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may, in its reasonable discretion, consent or refuse to consent to the Transaction (other than a Permitted Transfer). As a condition of consenting to the Transaction (other than a Permitted Transfer), Mortgagee may, in its absolute discretion, make one or more of the following requirements:

- (1) that the rate of interest contained in the Note be increased to a rate acceptable to Mortgagee;
- (2) that a transfer fee, in an amount determined by Mortgagee, be paid;
- (3) that a principal payment be made against the Note;
- (4) that the proposed transferee execute an assumption agreement or other document as Mortgagee may reasonably require; or
- (5) that any other requirement reasonably deemed appropriate by Mortgagee is satisfied.

No Transaction pursuant to the foregoing provisions of this Section VI(J) or described in Section VIII(A)(5) below shall in any way release Mortgagor or any other party liable on any of the Indebtedness or liable under any document securing, evidencing or relating to the Indebtedness from any such liability, unless such release is approved by Mortgagee in writing. In the case of a Permitted Transfer, the transferor shall automatically be released from liability related to the Indebtedness and the Loan Documents that arises after the effective date of the transfer.

In addition to the foregoing, the following shall constitute "**Permitted Transfers**" hereunder: (a) a natural person's transfer by will or applicable intestacy laws; (b) transfers of ownership interests in Mortgagor to any related entity provided that the identity of the entity or individuals who ultimately own and control Mortgagor do not change; (c) the transfer of up to five percent (5%), in the aggregate, of the ownership interests in Mortgagor to any other entity, provided, however, that (i) such transfer of ownership interests does not cause a change in the management and control of Mortgagor (or of any entity owning an ownership interest in Mortgagor), (ii) Noteholder is provided written notice of any such transfer no later than fifteen (15) days prior to the date of the transfer, and (iii) the transferee(s) execute such further documents as Noteholder may reasonably require; (d) the reallocation of ownership interests in Mortgagor or its members due to the death, disability or incapacity of a principal; and (e) transfers of up to forty-nine percent (49%), in the aggregate, of Mortgagor to an estate, spouse or trust of a member.

J. Delivery of Substitute Note. Mortgagor will, if the Note is mutilated, destroyed, lost or stolen, deliver to Mortgagee, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued but unpaid interest. Mortgagor shall be furnished with satisfactory evidence of the mutilation, destruction, loss or theft of the Note, and also such security or indemnity as may be reasonably requested by Mortgagor; provided, however, that if the original mortgagee named herein is the then-

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mortgagee under this Agreement, an unqualified indemnity from the original noteholder named herein shall be deemed to be satisfactory security or indemnification.

K. Compliance with Covenants, Conditions, Restrictions and Recorded Documents. Mortgagor shall, and shall cause the Mortgaged Property, to fully and timely comply with all restrictions covenants, conditions and agreements benefiting, burdening or imposed on the Mortgaged Property or any portion thereof or the owner of all or such portion of the Mortgaged Property.

L. Obligation to Obtain and Comply with Franchise Agreement. As a material inducement to Mortgagee to enter into the Loan, Mortgagor shall at all times comply with that certain Doubletree by Hilton Hotel Chicago-Arlington Height franchise license agreement entitled "Franchise Agreement" by and between Mortgagor, as licensee, and Doubletree Franchise LLC a Delaware limited liability company, as licensor, dated effective as of February 12, 2014 ("Franchise Agreement") and a recognition agreement and comfort letter from Doubletree Hotel Systems, Inc. with respect to the Mortgaged Property which are each in a form and substance satisfactory to Mortgagee. Mortgagor agrees to fulfill or perform each and every covenant of such Franchise Agreement (so as to keep it at all times in full force and effect), and not to make any modification, consent to any modification of, or cancel, terminate or consent to the surrender of the Franchise Agreement without the prior written consent of Mortgagee.

M. ERISA. As of the date hereof and throughout the term of this Agreement, (i) Mortgagor is not and will not be an "employee benefit plan" as defined in Section 3(3) of Employee Retirement Income Security Act, as may be amended ("ERISA"), which is subject to Title I of ERISA; (ii) the assets of Mortgagor do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; (iii) Mortgagor is not and will not be a "governmental plan" within the meaning of Section 3(3) of ERISA; (iv) transactions by or with Mortgagor are not and will not be subject to state statutes applicable to Mortgagor regulating investments of fiduciaries with respect to governmental plans; and (v) Mortgagor shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Mortgagee of any of its rights under this Agreement, the Note, or the other loan documents evidencing, securing or relating to the Note) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Mortgagor further agrees to deliver to Mortgagee such certifications or other evidence of compliance with the provisions of this section as Mortgagee may from time to time request.

N. Segregated Parcel. The Mortgaged Premises shall be taxed separately as a distinct tax parcel within inclusion of any other real estate, and each such parcel, as described on Exhibit "A", shall constitute a legally subdivided lot under all applicable statutes, regulations, ordinances or publications and for all purposes may be mortgaged, conveyed and otherwise dealt with as an independent parcel.

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O. Single Purpose Entity/Separateness. Mortgagor represents, warrants and covenants as follows:

(1) Limited Purpose. The sole purpose conducted by Mortgagor is to engage in the following activities:

(a) to acquire, own, hold, lease, operate, manage, maintain, develop and improve the Mortgaged Premises (or an undivided interest therein) and to contract for the operation, maintenance, management and development of the Mortgaged Premises;

(b) enter into and perform its obligations under the Loan Documents;

(c) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Mortgaged Premises to the extent permitted under the Loan Documents; and

(d) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Illinois that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

(2) Limitations on Debt, Actions. Notwithstanding anything to the contrary in the Loan Documents or in any other document governing the formation, management or operation of Mortgagor, Mortgagor shall not:

(a) guarantee any obligation of any other entity, or become obligated for the debts of any other entity or hold out its credit as being available to pay the obligations of any other entity;

(b) engage, directly or indirectly, in any business other than as required or permitted to be performed under this Section VI(N);

(c) create or assume any debt other than (i) the Loan, (ii) indebtedness relating to passenger van purchases relating to Hotel guest transportation to and from the Hotel and (iii) unsecured trade payables incurred in the ordinary course of its business that are related to the ownership and operation of the Mortgaged Premises and which shall (A) not exceed four percent (4%) of the outstanding balance of the Loan, (B) not be evidenced by a note, (C) be paid within sixty (60) days, and (D) otherwise expressly be permitted under the Loan Documents;

(d) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any other entity, except that Mortgagor may invest in those investments permitted under the Loan Documents;

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(e) fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the ordinary course of Mortgagor's business;

(f) buy or hold evidence of indebtedness issued by any other entity (other than cash or investment-grade securities);

(g) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity;

(h) own any asset or property other than the Mortgaged Premises (or an undivided interest therein) and incidental personal property necessary for the ownership or operation of the Mortgaged Premises; or

(i) take any action under any bankruptcy or debtor relief law without the unanimous written approval of all shareholders of Mortgagor.

(3) Separateness Covenants. In order to maintain its status as a separate entity and to avoid any confusion or potential consolidation with any other entity, Mortgagor represents and warrants that in the conduct of its operations since its organization it has observed, and covenants that it will continue to observe, the following covenants:

(a) maintain books and records and bank accounts separate from those of any other entity;

(b) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;

(c) comply with all organizational formalities necessary to maintain its separate existence;

(d) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;

(e) separate financial statements, showing its assets and liabilities separate and apart from those of any other entity and not have its assets listed on any financial statement of any other entity; except that Mortgagor's assets may be included in a consolidated financial statement so long as appropriate notation is made on such consolidated financial statements to indicate the separateness of Mortgagor and to indicate that Mortgagor's assets and credit are not available to satisfy the debts and other obligations of any other entity;

(f) prepare and file its own tax returns separate from those of any other entity to the extent required by applicable law, and pay any taxes required to be paid by applicable law;

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(g) allocate and charge fairly and reasonably any common employee or overhead shared with other entities;

(h) not enter into any transaction with other entities except on an arm's-length basis on terms which are intrinsically fair and no less favorable than would be available for unaffiliated third parties, and pursuant to written, enforceable agreements;

(i) conduct business in its own name, and use separate stationery, invoices and checks;

(j) not commingle its assets or funds with those of any other entity;

(k) not assume, guarantee or pay the debts or obligations of any other entity;

(l) any known misunderstanding as to its separate identity;

(m) not permit any other entity to guarantee or pay its obligations (other than limited guarantees and indemnities set forth in the Loan Documents);

(n) not make loans or advances to any other entity;

(o) pay its liabilities and expenses out of and to the extent of its own funds;

(p) maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds;

(q) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require any equity owner to make additional capital contributions to Mortgagor; and

(r) cause the managers, officers, employees, agents and other representatives of Mortgagor to act at all times with respect to Mortgagor consistently and in furtherance of the foregoing and in the best interests of Mortgagor.

P. No District Inclusion. To Mortgagor's knowledge, the Mortgaged Premises is not within the boundaries of any quasi-governmental entity, including without limitation, any special district or metropolitan district, with the power to assess taxes or assessments against the Mortgaged Premises, except as identified in the Permitted Exceptions or as identified on the tax certificate provided to Mortgagee or its counsel in connection with the Loan as evidenced by the Note.

VII. RELEASE OF MORTGAGE

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If Mortgagor shall well and truly pay, or cause to be paid, all of the Indebtedness and does keep and perform each and every covenant, duty, condition, and stipulation herein imposed on Mortgagor, in the Note contained, or in any other document securing, evidencing or relating to the Indebtedness, then this Agreement and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to Mortgagor and the entire estate, right, title and interest of Mortgagee will thereupon cease; and Mortgagee in such case shall deliver to Mortgagor a release of mortgage and any other proper documents acknowledging satisfaction of this document; otherwise, this Agreement shall remain in full force and effect.

VIII. EVENTS OF DEFAULT

A. Acts Constituting Default. Mortgagor will be in default under this Agreement upon the happening of any of the following events or conditions, or the happening of any other Event of Default as defined elsewhere in this Agreement (herein collectively referred to as an "Event of Default"):

(1) Mortgagor fails to make when due any payment of principal or interest or installment of principal and interest under the Indebtedness.

(2) Mortgagor fails to keep or perform any of the covenants, conditions or stipulations contained in this Agreement, the Note or in any other documents securing, evidencing or relating to the Indebtedness other than any event or condition specified in Sections VIII(A)(1), (3), (4), (5), (6), (7), (8), (9) or (10), within thirty (30) days of receipt of written notice of same from Mortgagor.

(3) Any warranty or representation made in this Agreement by Mortgagor is determined by Mortgagee to be untrue in any material respect.

(4) Any person, corporation or other entity that (a) owns all or any part of the Mortgaged Property, (b) is liable for the payment of all or any part of the Indebtedness, or (c) is a guarantor of all or any part of the Indebtedness (i) admits in writing its inability to pay its debts generally as they become due, (ii) files a petition or answer in bankruptcy as a Debtor or seeking reorganization or an arrangement or otherwise to take advantage of any State or Federal bankruptcy or insolvency law, (iii) makes an assignment for the benefit of creditors, (iv) files a petition for or consents to the appointment of a receiver for its assets or any part thereof, or (v) without its consent has a petition filed in any bankruptcy or insolvency proceeding or an order, decree or judgment entered by a court of competent jurisdiction appointing a receiver of the Mortgaged Property or approving a petition filed against it seeking reorganization or an arrangement of it or its assets or debts under any bankruptcy or insolvency law and such petition, order, decree or judgment is not dismissed, vacated, set aside or stayed within sixty (60) days from the date of entry.

(5) Except for Permitted Transfers, Mortgagor sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) the Mortgaged

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Property, the Collateral or any portion thereof or interest therein, or, except for Permitted Transfers, Mortgagor or any shareholder, partner, member, trustee or beneficiary of Mortgagor or a Constituent Owner sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting any of the provisions of this subparagraph, the granting of a security interest in) any part of its interest in Mortgagor or any Constituent Owner, except for Permitted Transfers, or any such event occurs involuntarily to Mortgagor or such shareholder, partner, member, trustee or beneficiary of Mortgagor or any shareholder, partner, member, trustee or beneficiary of any Constituent Owner, all without the prior written consent of Mortgagee.

(6) The corporate authority and right of Mortgagor to do business in the State of Illinois is terminated, withdrawn, cancelled or modified.

(7) Mortgagor's Principal ceases to be the Manager of Mortgagor, unless within ninety (90) days from the date on which the original Mortgagor's Principal ceases to be the Manager a substitute person or entity of the same financial capacity is made the new manager or managing member of Mortgagor.

(8) Except as a result of Permitted Transfers, Mortgagor's Principal ceases to be a member of Mortgagor or own at least twenty percent (20%) of Mortgagor.

(9) Mortgagor's Principal sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting these provisions or any similar references in this Agreement, the granting of a security interest in) his ownership interest in Mortgagor which results in or may result in Mortgagor's Principal owning less than 20% of the ownership interest in of Mortgagor.

(10) Mortgagor's existence as a legal entity for any reason, by operation of law or otherwise, is modified in any way adverse to Mortgagee or terminates and is not reinstated within ninety (90) days thereafter.

B. [INTENTIONALLY RESERVED]

IX. RIGHTS OF MORTGAGEE UPON DEFAULT

A. Acceleration of Indebtedness. Upon occurrence of an Event of Default or at any time thereafter, Mortgagee may at its option and without demand or notice to Mortgagor, accelerate the maturity of the Note and declare the Indebtedness secured hereby immediately due and payable. Unless otherwise provided herein, Mortgagor hereby waives presentment for payment, protest and demand, notice of protest, demand, dishonor and default, notice of intent to declare the Indebtedness immediately due and payable and notice of the declaration that the Indebtedness is immediately due and payable, and any and all rights Mortgagor may have to a hearing before any judicial authority prior to the exercise by Mortgagee of any of its rights under this Agreement or any other agreements securing or executed in connection with the Indebtedness, all to the extent authorized by law.

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B. Operation of Property by Mortgagee. Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on Mortgagee, Mortgagee (or any person, firm or corporation designated by Mortgagee) may, but will not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that Mortgagor could do so. If the Mortgaged Property includes any type of business enterprise, Mortgagee may operate and manage such business without any liability of Mortgagee to Mortgagor resulting therefrom (excepting failure to use ordinary care in the operation and management of the Mortgaged Property); and Mortgagee or Mortgagee's designee may collect, receive and receipt for all proceeds accruing from such operation and management, and, at Mortgagor's expense, make repairs and purchase needed additional property, and exercise every power, right and privilege of Mortgagor with respect to the Mortgaged Property. When and if the expenses of such operation and management have been paid and the Indebtedness has been paid, the Mortgaged Property shall be returned to Mortgagor (providing there has been no foreclosure sale). This provision is a right created by this Agreement and cumulative of, and is not in any way to affect, the right of Mortgagee to the appointment of a receiver given Mortgagee by law.

C. Judicial Proceedings Upon the occurrence of an Event of Default, or at any time thereafter, or upon the breach of any covenant, term or condition herein contained, Mortgagee may proceed by suit for a foreclosure of its lien on the Mortgaged Property, or to sue Mortgagor for damages on, arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right.

D. Foreclosure; Expense of Litigation.

(1) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, sec. 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(2) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (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, and similar data and assurances with respect to the title as Mortgagee may deem reasonably 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

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title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

E. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Mortgagee may determine in its sole and absolute discretion.

F. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Mortgaged Property in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Mortgaged Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, 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 foreclosure sale, and (b) any deficiency upon a sale and deficiency.

G. Mortgagee's Right of Possession in Case of Default. At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Mortgaged Property. Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Mortgaged Property, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce

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the payment or security of the avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- (1) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (2) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (3) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date 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 Mortgaged 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, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (4) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;
- (5) insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation and management thereof; and
- (6) receive all of such avails, rents, issues and profits.

H. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Mortgaged Property to the payment of or on account of the following, in such order as Mortgagee may determine:

- (1) to the payment of the operating expenses of the Mortgaged Property, including cost of management and leasing thereof (which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
- (2) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

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(3) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

I. Compliance with Illinois Mortgage Foreclosure Law.

(1) If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act 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 Act.

(2) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section IX(F) of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(3) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Sec. 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

J. Waiver of Rights. Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Mortgaged Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under 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; and without limiting the foregoing:

(1) To the fullest extent allowed by law, Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 - 1601 or other applicable law or replacement statutes;

(2) To the fullest extent allowed by law, Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

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(3) To the fullest extent allowed by law, if Mortgagor is a trustee, Mortgagor represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

X. USE OF INSURANCE PROCEEDS

A. **Holding of Proceeds.** Notwithstanding the provisions of Section VI(C) herein, any insurance proceeds paid to Mortgagee will be first applied in payment of the expenses, if any, incurred by Mortgagee in the collection of said insurance proceeds and the balance, if any, will be held and disbursed by Mortgagee in accordance with the following provisions:

(1) Should (a) there exist an Event of Default at the time of the casualty or should there occur at any time thereafter an Event of Default; (b) any insurance proceeds be remaining after the completion of all restoration work; or (c) Mortgagor fail to comply with the requirements for disbursing the insurance proceeds, then in any of the said events, Mortgagee may, at its sole option, apply the insurance proceeds (or any portion thereof) to the Indebtedness, in any order and whether due or not, and/or to the restoration of the Mortgaged Property, and/or release the insurance proceeds (or any portion thereof) to Mortgagor, but any such application or release shall not cure or waive any such Event of Default.

(2) If subparagraph (1) is not applicable or the insurance proceeds have not been disbursed under the provisions of subparagraph (1) hereof, or if under subparagraph (1) Mortgagee elects to permit the insurance proceeds to be used for restoration of the Mortgaged Property, the proceeds will be held and disbursed as follows:

(a) Should the insurance proceeds be less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), Mortgagor shall immediately commence and complete the work of restoring the damaged property and Mortgagee will disburse the portion of the insurance proceeds to pay actual costs to replace, repair and restore the damaged property to Mortgagor upon (i) completion of the restoration work to a condition satisfactory to Mortgagee, (ii) submission of a written report by Mortgagor that all restoration work has been completed, and (iii) receipt by Mortgagee of such evidence as Mortgagee may require that all contractors, laborers and suppliers performing work or supplying materials for the repair or restoration work have been fully paid.

(b) Should the insurance proceeds equal or be in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), but less than Five Hundred Thousand and No/100 Dollars (\$500,000.00), Mortgagor shall cause plans and specifications ("**Plans**") for the restoration of the damaged property to be submitted to Mortgagee for approval. Such approval, or Mortgagee's requirements for obtaining such approval, shall be given within five (5) business days after receipt of the Plans by Mortgagee. Upon receipt of Mortgagee's approval, Mortgagor shall forthwith commence and complete the restoration of the damaged property in accordance with the approved Plans. Mortgagee will disburse the portion of the insurance proceeds to pay the actual

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costs to repair and restore the damaged property to Mortgagor upon (i) completion of the restoration work to a condition satisfactory to Mortgagee, (ii) submission of a written report by Mortgagor that all restoration work has been completed, and (iii) receipt by Mortgagee of such evidence as Mortgagee may require that all contractors, laborers and suppliers performing work or supplying materials for the restoration work have been completely paid. Mortgagee shall allow partial draws of the proceeds (not to exceed three (3) draws) as portions of the work are completed, based on costs incurred by Mortgagor.

(c) If the insurance proceeds are equal or in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00): (i) Plans for the restoration of the damaged property and a cost estimate will both be prepared by an architect employed by Mortgagor and acceptable to Mortgagee. The Plans and cost estimates will be submitted to Mortgagee for approval. Such approval, or Mortgagee's requirements for obtaining such approval, shall be given within five (5) business days of receipt of the Plans by Mortgagee. Upon receipt of Mortgagee's approval, Mortgagor will promptly commence and diligently pursue the restoration work in accordance with the approved Plans. (ii) If prior to the commencement of, or at any time during the restoration work, Mortgagee shall determine that the total cost of the restoration work shall exceed the balance of the insurance proceeds held in its possession, Mortgagor shall immediately pay, in cash, to Mortgagee the amount of such excess costs or shall be required to pay such excess costs using Mortgagor's own funds on a "first-in" basis toward the restoration work. Until the amount of said excess costs is paid to Mortgagee or is expended by Mortgagor on restoration costs, Mortgagee shall not be obligated to disburse any of the insurance proceeds held by it. The insurance proceeds and the amount of excess costs paid by Mortgagor are hereinafter called "**Construction Funds**". The amount of such excess costs paid by Mortgagor to Mortgagee shall be disbursed prior to the disbursement of any of the insurance proceeds held by Mortgagee. (iii) The Construction Funds will be made available to Mortgagor as restoration repair work progresses pursuant to certificates of the architect approved by Mortgagee, submitted not more than once every thirty (30) days. There shall be delivered to Mortgagee such other evidences as Mortgagee may reasonably request, from time to time, during the restoration work, as to the progress of the work, the compliance with the approved Plans, the total cost of restoration work to date of request, the total cost needed to complete the restoration work, lien waivers or evidence of no liens against the Mortgaged Property. If at any time during the course of the restoration work, Mortgagee learns of facts concerning the restoration work which is materially adverse to Mortgagee, or payment or nonpayment of mechanics and materialmen, or inaccuracy of any information furnished with respect to it, Mortgagee may withhold the disbursement of funds until such time as it is prudent to continue to disburse the Construction Funds or, after written notice to Mortgagor and the failure of Mortgagor to cure such adverse condition to Mortgagee's reasonable satisfaction within thirty (30) days, may determine not to make any further disbursements of the Construction Funds and instead to apply all such funds remaining to the payment of the Indebtedness then outstanding, whether due or not at such time and in such order as determined by Mortgagee.

B. No Duty to Segregate Funds. Mortgagee shall not be required to hold any funds received by it described in this Article X in any account special or separate from Mortgagee's general

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account. No such funds shall be required to be placed in any interest bearing account, and any interest earned thereon shall constitute additional insurance proceeds to be applied as provided in this Agreement.

XI. SPECIAL CONDITIONS

This Agreement is expressly made subject to the following special conditions.

A. Jury Trial Waiver. MORTGAGOR RECOGNIZES THAT DISPUTES ARISING OUT OF THE LOAN TRANSACTION SECURED BY THIS MORTGAGE ARE LIKELY TO BE COMPLEX AND WISHES TO STREAMLINE AND MINIMIZE THE COST OF THE DISPUTE RESOLUTION PROCESS BY AGREEING TO WAIVE ITS RIGHT TO JURY TRIAL. MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY MORTGAGEE IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.

B. Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

C. Waiver and Election. The exercise of any right or remedy by Mortgagee shall not be considered as a waiver of any right or remedy nor shall any acceptance by Mortgagee of Mortgagor's partial payment or partial performance of obligations under the Note or hereunder, nor shall any failure or delay by Mortgagee in exercising any of its rights or remedies as to any Event of Default which may occur, operate as a waiver by Mortgagee of its rights or remedies with respect to the occurrence of any other or further Event of Default or to the recurrence of the same Event of Default. The filing of a suit to foreclose the mortgage lien granted by this Agreement either on any matured portion of the Indebtedness or for the whole of the Indebtedness, shall never be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Agreement, preclude the exercise by Mortgagee of any other right or remedy including, without limitation, the prosecution of a later suit thereon.

D. Landlord-Tenant Relationship. Any sale of the Mortgaged Property under this Agreement shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Mortgagor and any person or entity claiming an interest in the Mortgaged Property through Mortgagor or otherwise occupying any of the Mortgaged Property, upon failure to surrender possession thereof, Mortgagor and all such persons and entities may be removed by a writ of possession upon suit by the purchaser.

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E. Usury. Notwithstanding any provision in this Agreement to the contrary, it is expressly provided that in no case or event should the aggregate amounts, which by applicable law are deemed to be interest with respect to this Agreement, the Note or any document securing the Note ever exceed the "Maximum Nonusurious Rate" or the "Maximum Lawful Rate" (as either term is defined in the Note). In this connection, it is expressly stipulated and agreed that it is the intention of Mortgagee and Mortgagor to contract in strict compliance with applicable usury laws of the State of Illinois and/or of the United States (whichever permits the higher rate of interest) from time to time in effect. Nothing in this Agreement, the Note or any document securing, evidencing or relating to the Note shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the Maximum Nonusurious Rate. If under any circumstances the aggregate amounts contracted for, charged or paid with respect to the Note which by applicable law are deemed to be interest, would produce an interest rate greater than the Maximum Nonusurious Rate, Mortgagor and any other person obligated to pay the Note, stipulates that the amounts will be deemed to have been paid, charged or contracted for as a result of an error on the part of Mortgagor, any other person obligated for the payment of the Note and Mortgagee and upon discovery of the error or upon notice thereof from Mortgagor or the party making such payment, Mortgagee or the party receiving such excess payment shall, at its option, refund the amount of such excess payment or credit the excess payment against any other amount due under the Note without prepayment penalty. In addition, all sums paid or agreed to be paid to the holder of the Note for the use, forbearance or detention of monies shall be, to the extent permitted by applicable law, amortized, prorated, allocated and spread through the term of the Note.

F. Enforceability. If any provision hereof is presently or at any time becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of Mortgagee to effectuate the provisions hereof.

G. Application of Payments. If the lien or liens created by this Agreement are invalid or unenforceable as to any part of the Indebtedness or if such lien or liens are invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially unsecured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Indebtedness and all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness which is not secured or not fully secured by the lien or liens created herein.

H. Meaning of Particular Terms. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders. The words "**Mortgagor**" and "**Mortgagee**" shall include their heirs, executors, administrators, successors and assigns, and the word "Trustee", if any, shall include his or her successors and substitute trustees. For convenience of drafting the following groups of words, and derivations thereof, are used interchangeably and any reference to one or more shall include the others notwithstanding anything seemingly to the contrary: (a) the words "**act**", "**omission**" and "**occurrence**"; and (b) "**instrument**" and "**document**".

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I. Advances by Mortgagee. If Mortgagor shall fail to comply with the provisions with respect to the securing of insurance, payment of taxes, assessments, and other charges, the keeping of the Mortgaged Property in repair, or any other term or covenant herein contained, Mortgagee may, but shall not be obligated to, incur such expenses as deemed necessary by Mortgagee, and make advances to perform such provisions, terms or covenants, and where necessary enter the Mortgaged Property for the purpose of performing any such term or covenant. Mortgagee is further empowered, but not obligated, to make advances for any expenditure deemed advisable by Mortgagee for the preservation of the Mortgaged Property or for the continuation of the operation thereof. Mortgagor agrees to repay all sums so advanced or expended, and all expenses incurred by Mortgagee in connection with the exercise of any of its rights under this Agreement, upon demand, with interest from the date such advances or expenditures are made, determined on the same basis as matured principal in the Note and all sums so advanced or expended, with interest, shall be secured hereby.

J. Release or Extension by Mortgagee. Mortgagee, without notice, may release any part of the Mortgaged Property or any person liable for the Indebtedness without in any way affecting the liens hereof on any part of the Mortgaged Property not expressly released and may agree in writing with any party with an interest in the Mortgaged Property to extend the time for payment of all or any part of the Indebtedness or to waive the prompt and full performance of any term, condition or covenant of any document securing, evidencing or relating to the Indebtedness.

K. Partial Payments. Acceptance by Mortgagee of any payment of less than the amount due on the Indebtedness shall be deemed acceptance on account only and the failure to pay the entire amount then due shall be and continue to be a default, and at any time thereafter and until the entire amount due on the Indebtedness has been paid, Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Agreement upon the occurrence of an Event of Default.

L. Titles not to be Considered. All section, subsection, paragraph or other titles contained in this Agreement are for reference purposes only and this Agreement shall be construed without reference to said titles.

M. Construction of Agreement. This Agreement may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the intent hereof and the purposes and agreements herein set forth.

N. Additional Taxes and Indemnification. Mortgagor agrees that if any state, federal or municipal government, or any of its subdivisions having jurisdiction, shall levy, assess or charge any tax, assessment or imposition upon this Agreement or the credit or indebtedness secured hereby or the Note or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee by reason of any of the foregoing (excepting therefrom any income tax on interest payments on the principal portion of the Indebtedness secured hereby) then, Mortgagor shall pay all such taxes to or for Mortgagee as they become due and payable, and provided further that in the event of passage of any law or regulation permitting, authorizing or requiring the tax, assessment or imposition to be levied,

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assessed or charged, which law or regulation prohibits Mortgagor from paying the tax, assessment or imposition, to or for Mortgagee, then all sums hereby secured shall become immediately due and payable at the option of Mortgagee. Mortgagor agrees to exhibit to Mortgagee at any time upon request, official receipts showing payment of all taxes, assessments and charges which Mortgagor is required or elects to pay hereunder. Mortgagor agrees that if the United States Government or any department or bureau thereof shall at any time require revenue stamps to be affixed to the Note or this Agreement, Mortgagor will upon demand pay for stamps in the required amount and deliver them to Mortgagee and Mortgagor agrees to INDEMNIFY and HOLD HARMLESS Mortgagee against loss, damage, liability or expense (including reasonable attorney's fees and investigatory expenses) on account of such revenue stamps, whether such loss, damage, liability or expense arises before or after payment of the Note and any termination of the estate created by this Agreement whether as a result of the exercise by Mortgagee of any default remedies available to it at law or in equity or otherwise; SUCH INDEMNITY AND HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE, OF AN INDEMNITEE, but such indemnity and hold harmless shall not apply to the extent that such loss, damage, expense or liability is caused by or attributable to Mortgagee's gross negligence or willful misconduct.

O. Indemnification. MORTGAGOR AGREES TO INDEMNIFY AND HOLD HARMLESS MORTGAGEE FROM ALL LOSS, DAMAGE AND EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES AND INVESTIGATORY EXPENSES, INCURRED IN CONNECTION WITH ANY SUIT OR PROCEEDING IN OR TO WHICH MORTGAGEE MAY BE MADE A PARTY FOR THE PURPOSE OF PROTECTING THE LIEN OF THIS AGREEMENT, EVEN IF SUCH LOSS, COST, LIABILITY OR EXPENSE RESULT FROM OR ARE ATTRIBUTABLE TO THE NEGLIGENCE OF MORTGAGEE, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MORTGAGEE; SUCH INDEMNITY AND HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE, OF MORTGAGEE, but such indemnity and hold harmless shall not apply to the extent that such loss, damage, expense or liability is caused by or attributable to Mortgagee's gross negligence or willful misconduct. Mortgagor's obligations pursuant to the foregoing indemnity and hold harmless shall survive any termination of the estate created by this Agreement whether as a result of the exercise by Mortgagee of any default remedies available to it at law or in equity or otherwise.

P. Additional Documents. Mortgagor agrees that upon request of Mortgagee it will from time to time execute, acknowledge and deliver all such additional documents and further assurances of title and will do or cause to be done all such further acts and things as may be reasonably necessary fully to effectuate the intent of this Agreement. Mortgagor, within ten (10) days upon request in person or by mail, will furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Agreement, the date to which interest has been paid and stating

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either that no offsets or defenses exist against the debt secured hereby, or, if such offsets or defenses are alleged to exist, the nature thereof.

Q. Disclosure. Mortgagor agrees to disclose to Mortgagee upon request, the then ownership of the beneficial interest in any trust which then holds legal title to the Mortgaged Property and shall cause the owner(s) of such beneficial interest to furnish sufficient evidence to Mortgagee for it to determine the identity of all of the parties which compose such owner(s).

R. Subrogation. In the event the Note is given for money advanced in the payment of a sum owing upon another note or indebtedness, Mortgagor hereby acknowledges that it has requested and does hereby request Mortgagee to advance the money necessary to pay such note or indebtedness, whether or not a release or transfer of said other note or indebtedness has been or will be executed by the owner and holder thereof, and Mortgagor hereby agrees that Mortgagee and Mortgagee's assigns shall be, and are hereby, subrogated to any and all the rights, liens, remedies, equities, superior title and benefits held, owned, possessed or enjoyed at any time by any owner or holder of said other note or indebtedness, to secure payment to Mortgagee of the Note hereby secured and, accordingly, any such other note and indebtedness, and all liens securing same are hereby extended to the maturity date of the Note hereby secured in order to additionally secure such Note. Nothing in this Section XI(R) shall alter any obligation of Mortgagor hereunder or under the Note.

S. Time. Time is of the essence of this Agreement.

T. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original document and which, taken together, constitutes one and the same agreement.

U. Notices. All notices, demands, requests, and other communications desired or required to be given hereunder or in any other Loan Document (hereinafter individually referred to as a "Notice" and collectively referred to as the "Notices") shall be in writing and shall be given by: (1) hand delivery to the address for Notices; or (2) delivery by overnight courier service to the address for Notices. All Notices shall be deemed given and effective upon the earliest to occur of: (y) the hand delivery of such Notice to the address for Notices; and (z) one (1) business day after the deposit of such Notice with an overnight courier service by the time deadline for next day delivery addressed to the address for Notices. All Notices shall be addressed to the addresses contained on the first paragraph of this Mortgage or to such other person or at such other place as any party hereto may by Notice designate as a place for service of Notice in place of such person or address upon at least thirty (30) days prior Notice to the other party.

V. Governing Law. This Mortgage and all of the other Loan Documents shall be interpreted, construed and enforced in accordance with the internal laws of the State of Illinois, without regard to Illinois law with respect to conflict of laws.

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W. Business Loan. The Loan as evidenced by the Note is a business loan within the purview of the Illinois Interest Act, 815 ILCS 205/4(1)(c) and a loan secured by a mortgage on real estate within the purview of 815 ILCS 205/4(1)(l).

XII. LIMITATION OF LIABILITY

A. Except as otherwise specifically provided herein, in the event of a default in the payment of the Note by Mortgagor, or any default under this Agreement or any other document securing, evidencing or relating to the Note, Mortgagee's sole recourse shall be against the Mortgaged Property described in this Agreement and such other documents securing, evidencing or relating to the Note, and Mortgagee shall not be entitled to recover any deficiency judgment against Mortgagor if the foreclosure or recovery of such Mortgaged Property is not sufficient to pay the amount owed by Mortgagor hereunder. Notwithstanding the foregoing limitation of liability, Mortgagor shall be fully liable (a) for fraud or misrepresentation made in or in connection with the Note or any document securing, evidencing or relating to the payment of the Note or the apparent purpose of which is to deprive Mortgagee of the security for the Note; (b) for failure to pay taxes, assessments, charges for labor or materials or any other charges which can create liens on any portion of the Mortgaged Property; (c) for the misapplication of (i) proceeds of insurance covering any portion of the Mortgaged Property, or (ii) proceeds of the sale or condemnation of any portion of the Mortgaged Property, or (iii) rentals and security deposits received by or on behalf of Mortgagor subsequent to the date on which Mortgagee gives written notice of the posting of foreclosure notices or the exercise of Mortgagee's assignment of rents; (d) for failure to maintain, repair or restore the Mortgaged Property in accordance with any document securing, evidencing or relating to the payment of the Note; (e) for any act or omission knowingly or intentionally committed or permitted by Mortgagor which results in the waste, damage or destruction to the Mortgaged Property, but only to the extent such events are not covered by insurance proceeds which are received by Mortgagee; (f) for the return to Mortgagee of all unearned advance rentals and security deposits paid by tenants of the Mortgaged Property or any guarantors of the leases of such tenants which are not rightfully refunded to or which are forfeited by such tenants or guarantors; (g) for the return of, or reimbursement for, all personal property taken from the Mortgaged Property by or on behalf of Mortgagor; (h) for any liability of Mortgagor pursuant to the provision contained in this Agreement pertaining to hazardous or toxic materials or substances; (i) for any liability of Mortgagor pursuant to the Certificate and Indemnity Regarding Hazardous Substances executed by Mortgagor and delivered to Mortgagee in connection with the indebtedness evidenced by the Note; (j) for any delay after a default which is not cured, in deeding over the Mortgaged Property to Mortgagee or failure to cooperate in a consensual foreclosure, within ninety (90) days of Mortgagee's request; (k) for failure to maintain or alter the Mortgaged Property in compliance with the ADA; and (l) for all court costs and reasonable attorneys' fees incurred in connection with the enforcement of one or more of the above subparagraphs (a) through (k), inclusive.

B. CONSENT TO JURISDICTION. TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ANY ACTIONS OR

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PROCEEDINGS ARISING OUT OF OR RELATED TO THIS MORTGAGE WHICH ARE REQUIRED TO BE LITIGATED IN THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED, WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS AND ALL OTHER ACTIONS SHALL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN, AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

C. Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to two (2) times the face value of the Note; provided, however, that in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.

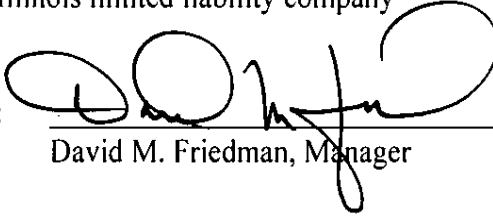
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EXECUTED effective as of the date first set forth above.

MORTGAGOR:


ARLINGTON HEIGHTS L.L.C.,
an Illinois limited liability company

By: 
David M. Friedman, Manager

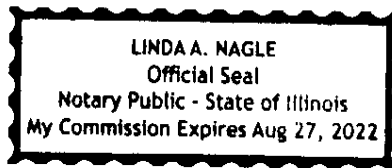
STATE OF ILLINOIS)
)
COUNTY OF COOK) ss

I, LINDA A. NAGLE a Notary Public in and for said County, in the State aforesaid, do hereby certify that David M. Friedman, the Manager of ARLINGTON HEIGHTS L.L.C., an Illinois limited liability company ("**Company**") who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/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 6th day of April, 2019.


NOTARY PUBLIC

(SEAL)



[Signature Page to Mortgage – Arlington Heights L.L.C.]

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EXHIBIT "A"

MORTGAGED PROPERTY

Parcel 1:

Lot 1 in Arlington Heights Place Subdivision, being a subdivision in Section 16, Township 41 North, Range 11, East of the Third Principal Meridian, according to the Plat recorded as document number 25261219 and filed as document LR3133810 in Cook County, Illinois, except the following described land:

Beginning at the Northeast corner of said Lot 1; thence on an assumed bearing of South 10 degrees 40 minutes 00 seconds West along the Easterly line of said Lot 1 a distance of 20.80 feet to a point on a 1,375.00 foot radius curve, the center of circle of said curve bears North 26 degrees 35 minutes 14 seconds East from said point; thence Northwesterly along said curve, radius 1,375.00 feet, central angle 8 degrees 23 minutes 05 seconds, 201.22 feet to a point on a 2,547.29 foot radius curve, the center of circle said curve bears North 27 degrees 55 minutes 41 seconds East from said point; thence Northwesterly along said curve, radius 2,547.29 feet, central angle 3 degrees 41 minutes 37 seconds, 164.21 feet; thence South 31 degrees 39 minutes 17 seconds West 9.00 feet to a point on a 2,551.07 foot radius curve, the center of circle of said curve bears North 32 degrees 51 minutes 12 seconds East from said point; thence Northwesterly along said curve, radius 2,551.07 feet, central angle 0 degrees 35 minutes 54 seconds, 26.64 feet to the Westerly line of said Lot 1; thence North 32 degrees 56 minutes 06 seconds East along the said Westerly line of Lot 1 a distance of 14.43 feet to the Northwest corner of said Lot 1, being also a point on a 2,541.29 foot radius curve, the center of circle of said curve bears North 32 degrees 12 minutes 53 seconds East from said point; thence Southeasterly along said curve, being also the Northerly line of said Lot 1, radius 2,541.29 feet, central angle 5 degrees 37 minutes 38 seconds, 249.59 feet (249.56 feet, recorded); thence South 63 degrees 24 minutes 45 seconds East along tangent, being also the Northerly line of said Lot 1 a distance of 135.20 feet to the point of beginning.

Parcel 2:

Reciprocal easements for ingress and egress appurtenant to and for the benefit of Parcel 1 as created by Reciprocal Easement Agreement dated August 2, 1979 and recorded October 1, 1979 as document 25171074 and filed October 1, 1979 as document LR3121973, as amended by First Amendment to Reciprocal Easement Agreement dated January 27, 1981 and recorded June 4, 1981 as document 25893428 and filed June 4, 1981 as document LR3218008, pertaining to the following parcels of land;

Parcel A: Lot 1 in Arlington Place Subdivision, being a subdivision in Section 16, Township 41 North, Range 11, East of the Third Principal Meridian in Cook County, Illinois.

Parcel B: Lot 2 in Arlington Place Subdivision, being a subdivision in Section 16, Township 41 North, Range 11, East of the Third Principal Meridian in Cook County, Illinois.

[Exhibit "A" to Mortgage – Arlington Heights L.L.C.]

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Parcel C: Lot 3 in Arlington Place Subdivision, being a subdivision in Section 16, Township 41 North, Range 11, East of the Third Principal Meridian in Cook County, Illinois.

Parcel D: Lot 2 in Carl M. Teutsch Subdivision of part of the East half of Section 16, Township 41 North, Range 11, East of the Third Principal Meridian in Cook County, Illinois.

Parcel 3:

Easement for creation and maintenance of a detention/retention pond appurtenant to and for the benefit of Parcel 1 created by Easement and Operating Agreement dated December 1, 1979 and recorded January 4, 1980 as document 25306989 and filed January 4, 1980 as document LR3139276, as amended by instrument recorded March 7, 1983 as document 26527048 and filed March 7, 1983 as document LR3296792, pertaining to Lots 1, 2 and 3, described therein as Easement Parcels A, B and C, in Arlington Place Subdivision, being a subdivision in Section 16, Township 41 North, Range 11, East of the Third Principal Meridian in Cook County, Illinois.

[Exhibit "A" to Mortgage – Arlington Heights L.L.C.]

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EXHIBIT "B"

PERMITTED EXCEPTIONS

- 1) GENERAL REAL ESTATE TAXES FOR TAX YEAR 2018-2019 AND SUBSEQUENT YEARS WHICH ARE NOT YET DUE AND PAYABLE.
- 2) EASEMENT AND OPERATING AGREEMENT DATED DECEMBER 1, 1979 MADE BY AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 8, 1978, AND KNOWN AS TRUST NUMBER 45170, RECORDED JANUARY 4, 1980 AS DOCUMENT 25306989 AND FILED JANUARY 4, 1980 AS DOCUMENT LR3139276, AS AMENDED BY INSTRUMENT RECORDED MARCH 7, 1983 AS DOCUMENT 26527048 AND FILED MARCH 7, 1983 AS DOCUMENT LR3296792, AND THE TERMS AND PROVISIONS CONTAINED THEREIN.

(AFFECTS PARCEL 1)

- 3) RECIPROCAL EASEMENT AGREEMENT DATED AUGUST 2, 1979 MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER A TRUST AGREEMENT DATED NOVEMBER 8, 1978 AND KNOWN AS TRUST NUMBER 45170, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER A TRUST AGREEMENT DATED JULY 3, 1979 AND KNOWN AS TRUST NUMBER 47058, URBS-SCHMITT & KEPPEL, INC., AN ILLINOIS CORPORATION, AND CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER A TRUST AGREEMENT DATED FEBRUARY 14, 1977 AND KNOWN AS TRUST NUMBER 1069244, AND RECORDED OCTOBER 1, 1979 AS DOCUMENT 25171074 AND FILED OCTOBER 1, 1979 AS DOCUMENT LR3121973, AND THE TERMS AND PROVISIONS CONTAINED THEREIN.

FIRST AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT RECORDED JUNE 4, 1981 AS DOCUMENT 25893428 AND FILED JUNE 4, 1981 AS DOCUMENT LR3218008.

(AFFECTS PARCEL 1)

- 4) EASEMENT OVER AND ACROSS THE SOUTHERLY 10 FEET AND THE EASTERLY 10 FEET OF LOT 1 AFORESAID IN FAVOR OF COMMONWEALTH EDISON COMPANY AND ILLINOIS BELL TELEPHONE COMPANY FOR POLE LINES, CONDUITS AND IN FAVOR OF NORTHERN ILLINOIS GAS COMPANY FOR THE INSTALLATION, RELOCATION, RENEWAL, AND REMOVAL OF GAS MAINS, AND THE TERMS AND CONDITIONS THEREIN, AS RESERVED ON THE PLAT OF

[Exhibit "B" to Mortgage – Arlington Heights L.L.C.]

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SUBDIVISION RECORDED NOVEMBER 29, 1979 AS DOCUMENT 25261219 AND FILED NOVEMBER 29, 1979 AS DOCUMENT LR3133810.

- 5) SIDEWALK EASEMENT OVER AND ACROSS THE NORTHEASTERLY 10 FEET OF LOT 1 AFORESAID, WHICH IS DIRECTLY ADJACENT TO ALGONQUIN ROAD, AND THE TERMS AND CONDITIONS THEREIN, AS SHOWN ON THE PLAT OF SUBDIVISION RECORDED NOVEMBER 29, 1979 AS DOCUMENT 25261219 AND FILED NOVEMBER 29, 1979 AS DOCUMENT LR3133810.
- 6) EASEMENT FOR PUBLIC UTILITIES AND DRAINAGE AFFECTING 10 FEET ON THE EASTERLY LINE AND 10 FEET ON THE SOUTHERLY LINE OF LOT 1 AFORESAID, AND THE TERMS AND CONDITIONS THEREIN, AS SHOWN ON THE PLAT OF SUBDIVISION RECORDED NOVEMBER 29, 1979 AS DOCUMENT 25261219 AND FILED NOVEMBER 29, 1979 AS DOCUMENT LR3133810.
- 7) EASEMENT IN FAVOR OF ILLINOIS BELL TELEPHONE FOR POLE LINES, CONDUITS AND MAINTENANCE PURPOSES CREATED BY INSTRUMENT FILED MAY 22, 1980 AS DOCUMENT LR3162153, AND THE TERMS AND PROVISIONS THEREOF.

(AFFECTS THE NORTHEASTERLY 100 FEET OF THE NORTHWESTERLY 15 FEET OF LOT 1 AFORESAID)
- 8) EASEMENT IN FAVOR OF THE NORTHERN ILLINOIS GAS COMPANY FOR THE INSTALLATION, RELOCATION, RENEWAL AND REMOVAL OF GAS MAINS, AND THE TERMS AND CONDITIONS THEREIN, CREATED BY INSTRUMENT FILED SEPTEMBER 23, 1980 AS DOCUMENT LR3179580 OVER AND ACROSS A PORTION OF THE LAND AS SHOWN ON DRAWING ATTACHED TO SAID INSTRUMENT.
- 9) PERMANENT EASEMENT DATED SEPTEMBER 28, 1998 AND RECORDED OCTOBER 20, 1998 AS DOCUMENT 98938739 MADE BY 75 ARLINGTON HEIGHTS LIMITED PARTNERSHIP, L.P. AND THE STATE OF ILLINOIS AND GRANTING THE NON-EXCLUSIVE RIGHT, EASEMENT AND PRIVILEGE TO ENTER UPON A PORTION OF THE LAND DESCRIBED THEREIN FOR THE PURPOSE OF INSTALLING AND MAINTAINING DETECTOR LOOPS, PAINT STRIPING AND TRAFFIC SIGNAL APPURTENANCES, AND THE TERMS AND PROVISIONS CONTAINED THEREIN.
- 10) ENCROACHMENT OF THREE STORY HOTEL BUILDING UPON INGRESS-EGRESS EASEMENTS CREATED BY INSTRUMENT RECORDED OCTOBER 1, 1979 AS DOCUMENT 25171074 AND FILED OCTOBER 1, 1979 AS DOCUMENT LR3121973 NOTED ABOVE AS SHOWN ON PLAT OF SURVEY MADE BY WEBSTER,

[Exhibit "B" to Mortgage – Arlington Heights L.L.C.]

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MCGRATH AND AHLBERG LTD., DATED MARCH 14, 2019, AND LAST CERTIFIED APRIL 3, 2019, JOB NO. 36579.

- 11) TERMS, CONDITIONS AND PROVISIONS OF THE INSTRUMENTS CREATING THE EASEMENTS DESCRIBED IN PARCEL 2 AND PARCEL 3 IN SCHEDULE A HEREOF, TOGETHER WITH THE RIGHTS OF ADJOINING OWNERS TO THE CONCURRENT USE OF SAID EASEMENTS.

(AFFECTS PARCELS 2 AND 3)

Property of Cook County Clerk's Office

[Exhibit "B" to Mortgage – Arlington Heights L.L.C.]

GHA408089
11278-053

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EXHIBIT "C"

(Form of Detailed Listing of Tenants and Lease and Rental Information.)

(This form must be submitted with each loan application except where entire property is owner-occupied.)

Loan Application of: _____

Property Address: _____

Name of Lessee or Tenant and guarantor, if any (Where applicable, list national tenants first, then regional then local.)	Type of Business	Date Lease Expires	Guaranteed Minimum Annual Rent	Actual Annual Overage Rent (If any)	Number of Sq. Ft. Leased	Guaranteed Rent per Sq. Ft.	Has Lease Been Signed?
Total							

Number of units not leased _____ Total square feet not leased _____ Do tenants pay any part of expenses? _____ (Explain if yes).

Remarks: _____

The above information is correct and this information is to be made a part of our mortgage loan application. We agree to assign all of the above leases and any additional leases to American National Insurance Company as additional security.

Date: _____, 20__

By: _____
President