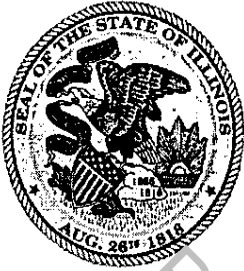


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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud 844-768-1713



\*2000745122\*

Doc# 2000745122 Fee \$88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/07/2020 02:57 PM PG: 1 OF 50

The property identified as: PIN: 04-23-107-009-0000

Address:

Street: 1110 Willow Road

Street line 2:

City: Northbrook

State: IL

ZIP Code: 60062

Lender: Access Point Financial, LLC

Borrower: BSPRT Northbrook, LLC

Loan / Mortgage Amount: \$11,000,000.00

This property is located within the program area and is exempt from the requirements of 705 ILCS 77/70 et seq. because it is commercial property.

SY  
P 56  
S  
M X  
SC  
E X  
INTA

Certificate number: 447A0864-8A65-4C81-8528-06BCA11B6742

Execution date: 1/6/2020

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PREPARED BY AND RETURN TO:

Luther C. Curtis, Esq.  
 Miller & Martin PLLC  
 1180 West Peachtree Street NW  
 Suite 2100  
 Atlanta, Georgia 30309

Tax Parcel ID: 04-23-107-009-0000  
 Common Address: 1110 Willow Road  
 Northbrook, Illinois 60062

## LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

**THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT** (hereinafter referred to as "Mortgage"), made to be effective as of the 6<sup>th</sup> day of January, 2020, by and between **BSPRT NORTHBROOK, LLC**, a Delaware limited liability company as mortgagor, having an address 1345 Avenue of the Americas, New York, NY 10105 (hereinafter referred to as "Borrower"), and **ACCESS POINT FINANCIAL, LLC**, a Delaware limited liability company as mortgagee, having an address at 1 Ravinia Drive, Suite 900, Atlanta, Georgia 30346 ("Lender").

**WITNESSETH**, that for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, the parties hereto agree to amend and restate the Original Mortgage in its entirety as follows:

1. **Definition of Terms.** As used herein, the following terms shall have the following meanings:

1.1 **Borrower's Notice Address:** 1345 Avenue of the Americas, New York, NY 10105

1.2 **Casualty:** as defined in Paragraph 5.1.

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- 1.3 **Contested Sum**: as defined in clause (e) of Paragraph 4.1.
- 1.4 **Events of Default**: as defined in Paragraph 7.1.
- 1.5 **Franchise Agreement**: that certain Franchise Agreement dated August 19, 2019 by and between Borrower and Franchisor, as may be amended.
- 1.6 **Franchisor**: Marriott International, Inc.
- 1.7 **Improvements**: all buildings, structures, and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personalty.
- 1.8 **In its Sole Discretion**: as defined in Paragraph 9.8.
- 1.9 **Insurance Premiums**: as defined in Paragraph 4.3.
- 1.10 **Insurance Proceeds**: as defined in clause (a) of Paragraph 5.3.
- 1.11 **Laws**: as defined in clause (c) of Paragraph 4.2.
- 1.12 **Land**: the land described in **Exhibit "A"** attached hereto, together with all estate, title, interest, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either in law or in equity, in possession or in expectancy, and all estate, right, title and interest of Borrower in and to all streets, roads and public places opened or proposed, now or appertaining to, the Land.
- 1.13 **Leases**: all agreements for the rental of hotel rooms, leases, tenancies, licenses, subleases, assignments and/or rental or occupancy agreements and other agreements or arrangements (including, without limitation, any and all guarantees of any of the foregoing) heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Property and the Improvements, including any extensions, renewals, modifications or amendments thereof (collectively, the "Leases") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property and the Improvements, including, without limitation, all hotel receipts, revenues and

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credit card receipts collected from guest rooms, restaurants, bars (including, without limitation, service charges for employees and staff), mini-bars, meeting rooms, banquet rooms, apartments, parking, and recreational facilities, health club membership fees, food and beverage wholesale and retail sales, service charges, convention services, special events, audio-visual services, boat cruises, travel agency fees, telephone charges, laundry services, vending machines and otherwise, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the possession, use and occupancy of all or any portion of the Property and the Improvements or personalty located thereon, or rendering of services by Borrower or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space, and charges for services such as room service, telecommunication and video, electronic mail, internet connection and other communications and entertainment services), license, lease, sublease and concession fees and rentals, and proceeds, if any, from business interruption or other loss of income insurance and any other items of revenue which would be included in operating revenues under the Uniform System of Accounts for Lodging Industry, current edition (the "Rents"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Secured Debt, however to the right power, and authority (the "License") granted Borrower herewith to collect and apply the Rents as provided herein.

1.14 **Lease Assignment**: a certain Assignment of Rents and Leases between Borrower and Lender of even date herewith and all modifications or amendments thereto or extensions thereof.

1.15 **Loan Agreement**: a certain Loan Agreement between Borrower and Lender of even date herewith and all modifications or amendments thereto or extensions thereof.

1.16 **Loan Documents**: this Mortgage, the Note, the Lease Assignment, the Loan Agreement and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Lender.

1.17 **Maturity Date**: January 1, 2022.

1.18 **Note**: a certain Promissory Note of even date herewith made by Borrower in favor of Lender in the amount of \$11,000,000.00 and all modifications, renewals and extensions thereof, which Note is payable in monthly installments until the Maturity Date subject to any call option of Lender to accelerate the principal due as may be set forth in the Note. The Note constitutes a business or commercial loan and is not a consumer loan.

1.19 **Parties in Interest**: as defined in clause (d) of Paragraph 7.1.

1.20 **Personalty**: all of Borrower's interest in the personal property of any kind or nature whatsoever, whether tangible or intangible, whether or not any of such personal property is now or becomes a "fixture" or attached to the Realty, which is used or will be used in

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the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper, equipment, general intangibles, inventory (as those terms are defined in the Uniform Commercial Code of the State of Illinois), those items of personal property listed on **Exhibit "B"** attached hereto, all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies and proceeds of insurance, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.

1.21 **Property:** the Realty and Personalty or any portion thereof or interest therein, except as the context otherwise requires.

1.22 **Property Liabilities:** as defined in clause (d) of Paragraph 4.1.

1.23 **Property Taxes and Charges:** as defined in clause (b) of Paragraph 4.1.

1.24 **Realty:** the Land and Improvements or any portion thereof or interest therein, as the context requires.

1.25 **Secured Debt:** to the extent not prohibited by applicable Laws, collectively (and each, a "Secured Debt") (a) all indebtedness and other obligations now owing or hereafter incurred by Borrower to Lender pursuant to the Note and the other Loan Documents, and includes, without limitation, all principal, interest, additional interest, fees, late charges and other sums, charges, premiums and other amounts due or to become due under the Note and Loan Documents, together with any other sums expended or advanced by Lender under the Loan Documents or otherwise with respect to the care or preservation of the Property or the enforcement of the Loan Documents, including, without limitation, any legal fees or costs incurred by the Lender; (b) each renewal, extension, consolidation or refinancing of any of the foregoing, in whole or in part; and (c) every other liability now or hereafter owing by the Borrower to the Lender, including, without limitation, every liability, whether owing only by Borrower or by Borrower with one or more others in a several, joint or joint and several capacity, whether owing absolutely or contingently, whether created by note, overdraft, guaranty of payment or other contract or by quasi-contract, tort, statute or other operation of law, whether incurred directly to Lender or acquired by Lender by purchase, pledge or otherwise; and (d) all costs and expenses, including attorney fees, incurred by Lender in connection with the Note, the Loan Documents, or in connection with the collection of any portion of the indebtedness or other obligations described in (a), (b), or (c) hereof.

1.26 **Taking:** as defined in Paragraph 5.1.

1.27 **Taking Proceeds:** as defined in clause (a) of Paragraph 5.3.

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2. **Granting Clauses.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably mortgages, grants, bargains, sells, pledges, transfers, assigns and warrants to Lender all of Borrower's estate, right, title and leasehold interest in, to and under, and grants to Lender a first and prior security interest in, Borrower's leasehold interest in the Property and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

(a) All of Borrower's leasehold estate in the Land, including Borrower's right, title interest, benefits and privileges arising out of the following: that certain Agreement of Sublease Agreement dated January 24, 2007, having a commencement date of January 24, 2007 and an expiration date of December 31, 2127 if all extension options are exercised, originally by and between Northbrook Hotel Group L.P., an Illinois limited partnership, as subtenant, and FCL Founders Drive, LLC, an Illinois limited liability company, as sublandlord, (said sublandlord's interest in the land was created by that ground lease memorialized by that certain Short Form and Memorandum of Ground Lease recorded July 31, 2006 as Document Number 0621218089, by and between Chicago Title Land Trust Company, as Trustee under Trust Agreement dated May 31, 2006 and known as Trust Number 1114332, as lessor, and FCL Founders Drive, LLC, an Illinois limited liability company, as lessee, and Assignment and Assumption of Agreement recorded November 24, 2010 as Document Number 1032842097, by and between FCL Founders Drive, LLC, an Illinois limited liability company, assignor, to Willow Investments Partners, LLC, a Delaware limited liability company, assignee; and Ground Lease Assignment and Assumption Agreement recorded May 22, 2014 as Document Number 1414235203, by and between Chicago Title Land Trust Company, as Trustee under Trust Agreement dated May 31, 2006 and known as Trust Number 1114332, assignor, to Parcel SE-1B-2 LLC, an Illinois limited liability company, assignee). The Agreement of Sublease is memorialized by that certain Memorandum of Agreement of Sublease recorded on May 17, 2007 as Document Number 0713739089; and Assignment of Agreement of Sublease recorded on August 22, 2019 as Document Number 1923415100, by and between Northbrook Hotel Group, L.P., an Illinois limited liability company, assignor, to BSPRT Northbrook, LLC, a Delaware limited liability company, assignee; and Memorandum of Sublease Assignment and Assumption Agreement recorded October 15, 2019 as Document Number 1928822159, by and between Willow Investment Partners, LLC, a Delaware limited liability company, assignor, to Parm Hotel Management Northbrook LLC, an Illinois limited liability company, assignee, (as assigned, hereinafter referred to as the "Ground Lease Agreement")

(b) All Leases;

(c) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;

(d) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and

(e) All Insurance Proceeds and all Taking Proceeds.

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**FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO LENDER**, in such order of priority as Lender may elect:

- (1) Payment of the Secured Debt;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents to protect the security of this Mortgage at the default rate set forth in the Note, even if the sum of the amounts outstanding at any time exceeds the amount of the Note; and
- (3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Mortgage is also intended to be a Security Agreement under the Uniform Commercial Code as in force from time to time in the State of Illinois as well as a Mortgage. Accordingly, Borrower hereby grants to Lender a security interest in all items of personal property described herein above. Borrower named herein shall be the "debtor" and Lender named herein shall be the "secured party". Borrower hereby authorizes Lender to file, without execution by Borrower where permitted by law, one or more financing statements or continuation statements and amendments thereto relating to the Personalty. Time is of the essence of the obligations of the parties hereunder.

**TO HAVE AND TO HOLD** all and singular the Property and all parts thereof unto Lender and its successors and assigns forever, subject, however, to the terms and conditions herein.

3. **Representations and Warranties.** It is a condition of this Mortgage that the warranties and representations below in this Paragraph be true, correct and complete at all times, and Borrower hereby represents and warrants to Lender as follows:

3.1 **Due Organization, Authority.** Borrower is a limited liability company that is duly organized and validly existing, and in good standing under the laws of the State of Delaware and registered to do business in the State of Illinois and has power adequate to carry on its business as presently conducted, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

3.2 **Execution, Delivery and Effect of Loan Documents.** The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).

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3.3 **Other Obligations.** Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instrument or obligation relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of the Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and, to Borrower's knowledge, do not and will not violate or contravene any Law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. To Borrower's knowledge, no approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

3.4 **Construction and Completion of Improvements.** The presently existing Improvements, if any have been completed and installed by Borrower, have been completed and installed in a good and workmanlike manner, in compliance with all Laws and the plans and specifications previously delivered to Lender. The Improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

Borrower understands that any septic system or sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are mortgaged to Lender hereunder as part of the Property, whether located on the Property as described in **Exhibit "A"** or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specification or construction contract for the construction of any such sewer facility or sewer line without the written consent of Lender not to be unreasonably withheld, conditioned or delayed. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances reasonably acceptable to the Lender, and that the Lender will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

3.5 **Legal Actions.** There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to Borrower's knowledge, threatened against or affecting Borrower, its business or the Ground Lease, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting



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Borrower, Borrower's business or the Ground Lease, except actions, suits and proceedings covered by insurance and previously disclosed in writing to Lender. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Ground Lease. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents, or (b) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.

3.6 **Financial Statements.** All statements, financial or otherwise, submitted to Lender in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity is now solvent.

3.7 **[Reserve]**

3.8 **Title to Property.** Borrower has good and clear record and marketable title to a leasehold estate in the Land and good and merchantable title to the Personality and Borrower shall and will warrant and forever defend the title thereto and Lender's first and prior lien on Borrower's leasehold estate in the Land unto Lender, its successors and assigns, subject to all matters identified as special exceptions in the title insurance policy issued to Lender, against the claims of all persons whomsoever.

3.9 **Compliance with Laws.** To Borrower's knowledge, Borrower's use of the Property complies with all Laws.

3.10 **Independence of the Property.** Borrower has not by act or omission permitted any building or other improvements on property not covered by this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvements; and no Improvement on the Property shall rely on any property not covered by this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

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## 4. Borrower's Covenants.

### 4.1 Payments.

(a) **Secured Debt.** Borrower shall pay or cause to be paid promptly to Lender, when due and in the manner prescribed in any governing documents, including, without limitation the Loan Documents, any indebtedness constituting a Secured Debt, as that term is defined in Section 1.25 of this Mortgage.

(b) **Property Taxes and Charges.** Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all real estate taxes and personal property taxes, betterments, assessments (general and special), imports, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits or use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed ("Property Taxes and Charges"). Borrower shall furnish Lender with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof.

As used in this Paragraph 4.1(b), the term "real estate taxes" shall include any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

(c) **Taxes on Lender.** If any Law of the State of Illinois or the United States or any other governmental authority imposes upon Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws relating to taxation so as to adversely affect the Loan Documents or Lender, then Borrower shall pay the Property Taxes and Charges or reimburse Lender immediately therefor, unless in the opinion of counsel to Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law.

(d) **Liabilities.** Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property Liabilities"), including, without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.

(e) **Right to Contest.** Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sums"), after written notice of the same to

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Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender cash or other security, in form satisfactory to Lender in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any obligation, whether mature or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(f) **Expenses.** Borrower shall, to the extent allowed by Law, pay on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, reasonable attorneys' fees and disbursements), taxes, except income taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents; (ii) Lender's exercise and enforcement of its rights and remedies under Paragraphs 7, 8, and elsewhere hereof; and (iii) Lender's protection of the Property and its interest therein.

Borrower is not entitled to any credit on any indebtedness constituting a Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (f).

## 4.2 Operation of the Property.

(a) **Maintenance and Alterations.** Subject to the terms of the Franchise Agreement (including any PIP prepared by Franchisor from time to time), Borrower shall maintain and preserve the Property in habitable repair and condition in accordance with applicable codes and regulations. Borrower shall pursue diligently any remedies or recourse which Borrower may have under the Franchise Agreement or other agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any waste of the Property or any use or occupancy which constitutes a public or private nuisance. Except as contemplated in the Loan Agreement, Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Lender in each instance; provided, however, Borrower may, subject to the Franchise Agreement (including any PIP prepared by Franchisor from time to time) make replacements or substitution of any items of the Property if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Mortgage.

(b) **Liens.** Except as provided in Paragraph 4.1(e), Borrower shall promptly discharge or transfer to bond any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to Borrower or the Property.

(c) **Compliance with Laws and Private Covenants.** Borrower shall truly keep, observe and satisfy all, and not suffer violations of, any federal, regional, state

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and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority court or arbitrator (herein collectively "Laws") and private covenants affecting the Property applicable to Borrower, in each case, in all material respects.

(d) **Use and Management.** The Property shall at all times be used as a hotel pursuant to the Franchise Agreement or a replacement franchise agreement reasonably approved by Lender. The Property shall at all times be managed by a leasing and management agent which has been approved by the Lender prior to execution of any such leasing and management agreement with the same; provided, however, that Borrower may manage the Property until the occurrence of an Event of Default hereunder, which is continuing. Any change in the use of the Property or the management agent shall be subject to the prior written approval of Lender.

(e) **Inspection.** Borrower shall permit Lender to enter upon and inspect the Property at reasonable times on reasonable notice without delay, hindrance or restriction.

4.3 **Insurance.** Borrower, at its sole cost, for the mutual benefit of Borrower and Lender, shall obtain and maintain during the Term the following policies of insurance:

(a) Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies including fire, lightning, flood, earthquake, vandalism, and malicious mischief, boiler and machinery and, if available, "certified" (as defined in the Terrorism Risk Insurance Act of 2002) acts of terrorists (or such policies shall have no exclusion from coverage with respect thereto) and such other insurable hazards as, under good insurance practices, from time to time are insured against for other property and buildings similar to the Property in nature, use, location, height, and type of construction. Such insurance policy shall also insure costs of demolition and increased cost of construction (which insurance for demolition and increased cost of construction may contain a sub-limit satisfactory to Lender). Each such insurance policy shall (i) be in an amount equal to the greater of (A) one hundred percent (100%) of the then replacement cost of the property based on a current appraisal or derived from a 3rd party valuation method without deduction for physical depreciation, and (B) such amount as is necessary so that the insurer would not deem Borrower a co-insurer under such policies, (ii) have deductibles no greater than the lesser of \$100,000 or five percent (5%) of Net Operating Income per occurrence, and (iii) contain an agreed amount replacement cost endorsement with a waiver of depreciation, and shall cover, without limitation, all tenant improvements and betterments that Borrower is required to insure pursuant to any Lease on a replacement cost basis. If the insurance required under this subparagraph is not obtained by blanket insurance policies, the insurance policy shall be endorsed to also provide guaranteed building replacement cost to the Improvements and such tenant improvements in an amount to be subject to the consent of Lender, which consent shall not be unreasonably withheld, but in all events, not less than would be required to restore the Property following a Casualty. Lender shall be named Lender Loss Payee on a Standard Mortgage Endorsement.

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(b) Flood insurance if any part of the Improvements is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, in an amount at least equal to the maximum limit of coverage available under the National Flood Insurance Plan with respect to the Property; provided, however, that Lender shall be entitled to require flood insurance in amounts greater than the foregoing, in its reasonable discretion. Flood insurance deductibles shall be no greater than 5% of the total insurable value when flood insurance is provided in excess of the NFIP limit.

(c) Public liability insurance, including (i) "Commercial General Liability Insurance", (ii) "Owned", "Hired" and "Non Owned Auto Liability" (if applicable); and (iii) umbrella liability coverage for personal injury, bodily injury, death, accident and property damage, such insurance providing in combination no less than \$5,000,000 per occurrence and in the annual aggregate on per location basis, if aggregate limits are shared with other locations the amount of umbrella liability insurance to be provided shall be not less than \$20,000,000. The policies described in this subsection shall also include coverage for elevators, escalators, independent contractors, "Contractual Liability" (covering, to the maximum extent permitted by law, Borrower's obligation to indemnify Lender as required under this Agreement and the other Loan Documents), "Products" and "Completed Operations Liability" coverage.

(d) Rental loss and/or business interruption insurance (i) with Lender being named as "Lender Loss Payee", (ii) in an amount equal to one hundred percent (100%) of the projected Rents from the Property during the period of restoration; and (iii) containing an extended period of indemnity endorsement which provides that after the physical loss to the Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Property is damaged, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such insurance shall be increased from time to time during the Term as and when the estimated or actual Rents increase.

(e) To the extent such equipment is located at the Property, comprehensive boiler and machinery insurance covering all high pressure boilers (if applicable) against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Borrower is required to insure pursuant to the lease on a replacement cost basis and in the minimum amount of \$3,000,000.

(f) Worker's compensation and disability insurance with respect to any employees of Borrower, if any, as required by any Legal Requirement.

(g) During any period of construction, repair or restoration, builder's "all-risk" insurance in an amount equal to not less than the full insurable value of the Property, against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender, and coverage to compensate for the cost of demolition and the increased cost of construction in an amount satisfactory to Lender.

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(h) Such other insurance (including environmental liability insurance, earthquake insurance and windstorm insurance) as may from time to time be reasonably required by Lender in order to protect its interests. When Earthquake coverage is required, amount of coverage should be equal to probable maximum loss plus twelve (12) months of business interruption with max deductible of 5%. Windstorm coverage must be provided at full replacement cost with a maximum deductible of 3%.

## Section 4.3.1 Insurance Policies

All policies of insurance (the "Policies") required pursuant to these insurance requirements shall (i) be issued by companies approved by Lender and licensed to do business in the State, with a claims paying ability rating of "AA" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A:VII or better in the current Best's Insurance Reports; (ii) name Lender and its successors and/or assigns as their interests may appear as the mortgagee (in the case of property and rent loss or business interruption insurance) or an additional insured (in the case of liability insurance); (iii) contain (in the case of property insurance) a Non-Contributory Standard Mortgagee Clause and a Lender's Loss Payable Endorsement, or their equivalents naming Lender as the Person to which all payments made by such insurance company shall be paid; (iv) provisions permitting Borrower to waive its rights of subrogation against Lender; (v) contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including (A) endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under the Policies, (B) that Lender shall receive at least thirty (30) days' prior written notice of any modification, reduction or cancellation of any of the Policies, (C) an agreement whereby the insurer waives any right to claim any premiums and commissions against Lender, provided that the policy need not waive the requirement that the premium be paid in order for a claim to be paid to the insured and (D) providing that Lender is permitted to make payments to effect the continuation of such Policy upon notice of cancellation due to non-payment of premiums; (vi) in the event any insurance policy (except for general public and other liability and workers compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Lender, such insurance policy shall not be invalidated by and shall insure Lender regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Loan Documents; and (vii) be satisfactory in form and substance to Lender and approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Borrower shall pay the insurance premiums for such Policies (the "Insurance Premiums") as the same become due and payable and furnish to Lender evidence of the renewal of each of the Policies together with (unless such Insurance Premiums have been paid by Lender pursuant to this Mortgage) receipts for or other evidence of the payment of the Insurance Premiums reasonably satisfactory to Lender. If Borrower does not furnish such evidence and receipts prior to the expiration of any expiring Policy, then Lender may, but shall not be obligated to, procure such insurance and pay the Insurance Premiums therefor, and Borrower shall reimburse Lender for the cost of such Insurance Premiums promptly on demand, with interest accruing at the Default Rate. Borrower shall deliver to Lender a certified copy of each Policy within thirty (30) days after

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its effective date, provided that the Policy is available. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, hereby waives the right of subrogation against Lender. Borrower will inform its insurers of the waiver and obtain a waiver of subrogation endorsement if applicable. Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses. Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which established standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon. Upon foreclosure of this Mortgage or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to the purchaser at such sale.

4.4 Escrow. (a) To secure the payment of the Property Taxes and Charges referred to in Paragraph 4.1 and the Insurance Premiums referred to in Paragraph 4.3, on the date hereof Borrower shall deposit with Lender an amount equal to one-twelfth (1/12<sup>th</sup>) of the sum of the Property Taxes and Charges next coming due plus an amount equal to one-twelfth (1/12<sup>th</sup>) of the Insurance Premiums next coming due. Additionally, Borrower shall deposit, in addition to the monthly installments of interest (and, when due, principal) due and payable under the Note, monthly until the Secured Debt is fully paid the following sums (collectively the "Tax and Insurance Deposits"):

(i) a sum equal to one-twelfth (1/12<sup>th</sup>) of the annual Property Taxes and Charges next due on the Property, all as reasonably estimated by Lender (the "Tax Deposits");

(ii) a sum equal to one-twelfth (1/12<sup>th</sup>) of the annual Insurance Premiums next payable for the insurance herein required to be maintained on or with respect to the Property (the "Insurance Deposits"); and

(iii) notwithstanding (i) and (ii) above the amount of the initial Tax Deposits shall be increased by Lender, and Borrower shall pay the amount estimated by Lender, to adequately fund the escrow to pay taxes, assessments and Insurance Premiums next due following the date hereof.

The amounts paid as Tax and Insurance Deposits are herein called the "Other Payments."

(b) Should the total Tax and Insurance Deposits on hand not be sufficient to pay all of the Property Taxes and Charges and Insurance Premiums, together with all penalties and interest thereon, when the same become due and payable, then the Borrower shall pay to Lender promptly following written demand any amount necessary to make up the

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deficiency. If the total of such Tax and Insurance Deposits exceeds the amount required to pay the Property Taxes and Charges and Insurance Premiums, such excess shall be credited on the immediate subsequent payments to be made for such items.

(c) All such Tax and Insurance Deposits:

(i) shall be held by Lender or a depository designated by Lender, in trust, with no obligation to segregate such payments and without any obligation arising for the payment of any interest thereon;

(ii) shall be held in trust to be applied by Lender for the purposes for which made (as hereinabove provided) subject, however, to the security interest granted Lender herein; and

(d) Provided that no Event of Default (as hereinafter defined) exists and there are sufficient funds in the Tax and Insurance Deposits, Lender agrees to make the payment of the Property Taxes and Charges or insurance premiums with reasonable promptness following its receipt of appropriate tax and/or insurance bills therefor, or alternatively upon presentation by Borrower of receipts (paid for) tax and/or insurance bills Lender shall reimburse the Borrower for such Property Taxes and Charges and insurance premium payments made by the Borrower.

(e) Upon the occurrence of an Event of Default, which is continuing, Lender may, at its option, without being required to do so, apply any Tax and Insurance Deposits on hand on account of any of the Indebtedness, in such order and manner as Lender may elect. When the Indebtedness has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Borrower.

Notwithstanding the foregoing, in no event shall Lender establish escrows for taxes and insurance on more than one loan to Borrower.

4.5 **Sales and Encumbrances.** (a) Borrower shall not, without the prior written consent of Lender, which consent, if given in Lender's sole discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the terms of the Note, delivery of a management contract approved by Lender with a management company approved by Lender, and/or the satisfaction of other conditions required by Lender or one or more of the foregoing or other requirements of Lender convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein, or any or all of the rents, issues, deposits or profits therefrom.

(b) Notwithstanding anything to the contrary contained in this Mortgage, the following equity transfers shall be permitted without Lender's consent:



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(i) the sale, transfer or issuance of shares of common stock (or similar instrument) in any direct or indirect owner of any interest in Borrower that is a publicly traded entity;

(ii) a transfer (but not a pledge) in one or a series of transactions of the direct or indirect ownership interests in Borrower (provided, that, the foregoing shall not be deemed to waive, qualify or otherwise limit Borrower's obligation to comply with (or to cause the compliance with) the other covenants set forth herein and in the other Loan Documents) so long as, in any case, each of the following conditions is satisfied:

(A) no Event of Default has occurred and is continuing, or would occur as a result of such transfer;

(B) Lender shall receive not less than thirty (30) days prior written notice of such transfers;

(C) no such transfers shall result in a change in the Control of Borrower;

(D) after giving effect to such transfers, the Property shall continue to be managed by a property manager approved in accordance with the applicable terms and conditions hereof; and

(F) no such transfers shall be permitted to any person or entity which appears on the SND List (as defined in Paragraph 4 below).

(c) For purposes of this paragraph 4.5, "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of the Borrower, whether through ownership of beneficial interests, by contract or otherwise.

(d) Upon written request from Lender, Borrower shall promptly provide Lender with a revised organizational chart reflecting any equity transfer consummated in accordance with this paragraph 4.5.

**4.6 Financial Records and Statements.** Borrower shall keep accurate books and records in accordance with federal income tax basis of accounting, consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Lender, its designee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Lender within one hundred twenty (120) days after the end of each fiscal year a statement of condition or balance sheet of Borrower relating solely to the Property as at the end of such year and an annual operating statement showing in reasonable detail all income and expense of Borrower with respect to the Property, both certified as to accuracy by Borrower, and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to their accuracy by a representative of Borrower acceptable to Lender, and in form and substance satisfactory to Lender.

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4.7 **Further Assurances.** Borrower shall promptly upon request of Lender and at no cost to Borrower (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgement thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases) and do such further acts, in either case as may be necessary, desirable or proper in Lender's opinion to (i) carry out more effectively the purposes of the Loan Documents, (ii) protect and preserve the first and valid lien and security interest of this Mortgage on the Property or to subject thereto any property intended by the terms hereof to be covered hereby, including, without limitation, any renewals, additions, substitutions or replacements thereto or (iii) protect the interest and security interest of Lender in the Property against the rights or interests of third parties.

Upon the occurrence and continuance of an Event of Default, Borrower, Borrower hereby appoints Lender as its attorney in fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7.

4.8 **Indemnity.** Borrower shall indemnify, defend and hold harmless Lender from and against, and reimburse Lender for, all costs and expenses actually incurred by Lender as a direct result of any claims, demands, liabilities, losses, damages, judgments, penalties, including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Lender on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents.

4.9 **No Preferences.** Borrower shall not repay any sums borrowed from anyone other than Lender, if, as a result of, or concurrently with the making of, such payments, Borrower would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Property.

4.10 **Notices.** Borrower shall deliver to Lender at Lender's address set forth above, promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases.

4.11 **Estoppel Certificates.** Borrower shall promptly furnish to Lender from time to time, on the request of Lender, but not more frequently than twice in a calendar year, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Lender.

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4.12 **Legal Existence.** If Borrower is executing this instrument as a limited liability company, partnership, corporation, trust, or other form of entity or organization:

(a) The Borrower warrants that (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) it is duly qualified to do business and is in good standing in the state where the Property is located, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents, and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the Borrower.

(b) The Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Lender except as may be otherwise provided herein.

(c) Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied it will not change its place of business, or if it has more than one place of business, it will not change its chief executive office (i.e. the place from where the Borrower manages the main part of its business operations or affairs), unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

(d) If Borrower as an individual is executing this instrument, Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied, Borrower will not change his or her place of residence unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change, and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

(e) Borrower shall not change its name or identity unless Borrower shall have delivered to Lender written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Lender determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.13 **Defense and Notice of Actions.** Borrower shall, without liability, cost or expense to Lender, protect, preserve and defend title to its leasehold interest in the Property,

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the security hereof and the rights or powers of Lender, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrances assert title paramount to that of Borrower or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

4.14 **Lost Note.** Borrower shall, if the Note is mutilated, destroyed, lost or stolen deliver to Lender, 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 and unpaid interest, and that it is in substitution for the Note, all at Lender's sole cost and expense.

4.15 **Personalty.** Borrower shall use the Personalty primarily for business purposes and keep it at the Land. Borrower shall immediately notify Lender in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Lender, upon any acquisition of items or property constituting Personalty, Borrower shall provide Lender with a current, accurate inventory of the Personalty.

4.16 **SDN List.** An Event of Default shall exist if the following appear on the list of Specially Designated Nationals and Blocked Persons that is maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or on any other similar list maintained by any governmental entity or agency (collectively, the "SDN List"): (a) Borrower; (b) any partner of Borrower; (c) any person or entity related to Borrower under the Loan Documents or (d) any assignee or transferee of any interest (legal or beneficial) in Borrower.

4.17 **Borrower's Certificate.** Borrower shall at the end of each calendar quarter following the date hereof certify to Lender the following:

1. The quarterly management prepared financial statements are true and correct;
2. The STR Report is based on the current competitive set and is an accurate picture of the performance of the hotel located on the Property (the "Hotel"); and
3. The Hotel is current on the franchise fees with Franchisor and, otherwise, not in default of any of its obligations under the Franchise Agreement.

## 5. **Casualties and Takings.**

5.1 **Notice to Lender.** In the event of an act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Lender describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Lender copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.

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5.2 **Repair and Replacement.** In case of a Casualty, subject to the Franchise Agreement (including any PIP prepared by the Franchisor from time to time) and the availability of insurance proceeds from Lender pursuant to Paragraph 5.3(c)(ii) below Borrower will promptly restore the Property to the equivalent of its original condition, so long as Lender disburses to Borrower sufficient insurance proceeds and additional sums required to complete such restoration. In case of a Taking, the Borrower will promptly restore, repair or alter the remaining property in a manner reasonably satisfactory to the Lender, so long as Lender disburses to Borrower sufficient condemnation proceeds in its possession to complete such restoration, repair or restoration; provided, however, upon a Casualty or Taking, if Lender applies the Insurance Proceeds (defined below) or the Taking Proceeds (defined below) to the reduction of the Secured Debt, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as is practicable under the circumstances.

## 5.3 **Proceeds.**

(a) **Collection.** Borrower shall use commercially reasonable efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Lender may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Lender's prior written consent.

(b) **Assignment to Lender.** Borrower hereby assigns, sets over and transfers to Lender all Insurance Proceeds and Taking Proceeds and authorizes payments of such Proceeds to be made directly to Lender. Lender may, at its sole option, apply such Proceeds to either of the following, or any combination thereof:

(i) payment of any indebtedness constituting a Secured Debt, either in whole or in part, in any order determined by Lender in its sole and unfettered discretion; or

(ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of any indebtedness constituting a Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the applicable governing loan documents, including, without limitation, the Loan Documents. Lender shall not, in any event or circumstance, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds. Notwithstanding anything set forth in the Loan Documents to the contrary, in the event Lender elects to apply such Proceeds to payment of any

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indebtedness constituting a Secured Debt, either in whole or in part, Borrower may prepay the remaining balance of the Secured Debt in full, but not in part, within ninety (90) days of Lender's application of such proceeds to the Secured Debt as set forth herein without prepayment premium, minimum interest or penalty (other than the Exit Fee (as defined in the Note) which shall be due and payable in connection with any such prepayment).

6. **Legal Proceedings.** Whether or not an Event of Default (as defined in Paragraph 7.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Lender's sole unfettered discretion, affect the Property, the Leases or any of the rights created by the Loan Documents.

## 7. **Defaults, Remedies of Lender.**

7.1 **Defaults; Events of Default.** Any of the following shall constitute an "Event of Default" hereunder:

(a) **Breach of Named Covenant.** Any breach by Borrower of the covenants in this Mortgage in Paragraphs 4.1 (Payments), 4.3 (Insurance), 4.5 (Sales and Encumbrances) or 4.8 (Indemnity), and such breach is not cured within any applicable notice and/or cure period provided thereof, which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default hereunder; or

(b) **Misrepresentations.** Any representation or warranty made by Borrower or any person(s) or entity(ies) comprising Borrower under the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled; provided, however, that to the extent that the person or entity making such representation or warranty had no actual knowledge of the falsehood or misleading nature of such representation or warranty when made and such representation or warranty can be made true and correct by an action of such party, then such false or misleading representation or warranty shall not constitute an Event of Default if Borrower or such Person makes true and accurate such representation or warranty (by modifying or correcting the condition underlying such representation or warranty or taking such other action as may be required) within fifteen (15) days after Borrower's or such Person's or entity's discovery of such underlying condition; or

(c) **Breach of Covenant.** Any breach by Borrower of any other covenant in the Loan Documents or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents and such breach is not cured within any applicable notice and/or cure period provided therefor; or

(d) **Bankruptcy.** Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Lender: (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any indemnitor under the

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non-recourse provisions under the Note) or, if Borrower is a partnership, any general partner or joint venturer (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admit in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceedings brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within sixty (60) days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, is adjudged a debtor under the Bankruptcy Code or insolvent, or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within sixty (60) days after the filing thereof; or (v) any composition, arrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

(e) **Adverse Court Action.** A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a substantial part of, the Property, or the Property is taken on execution or by other process of law; or

(f) **Death or Suspension.** Borrower or any persons(s) or entity(ies) comprising Borrower under the Loan Documents dies (if an individual) or dissolves its active status (if a partnership, corporation or other entity); or

(g) **Default Under Other Agreements.** (i) Borrower shall (A) default in the payment of any indebtedness (other than the Secured Debt) beyond the period of grace, if any, provided in an instrument or agreement under which such indebtedness was created; or (B) default in the observance or performance of any agreement or condition relating to any indebtedness (other than the Secured Debt) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such indebtedness to become due prior to its stated maturity, or (ii) any indebtedness (other than the Secured Debt) of Borrower shall be declared to be (or shall become) due and payable, or required to be prepaid (other than by (A) a regularly scheduled required prepayment, or (ii) a mandatory (prepayment (unless such required prepayment or mandatory prepayment results from a default thereunder or an event of the type that constitutes and Event of Default)), prior to the stated maturity thereof; provided, however, that subpart (ii) does not apply to secured indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such indebtedness, if such sale or transfer is permitted under the documents providing for such indebtedness.

(h) **Franchise Agreement.** The occurrence of any default or event of default (subject to all applicable notice and grace periods) under or termination of the Franchise Agreement, including but not limited to any failure to comply with the requirements of Franchisor with respect to any property improvement plan or similar requirement, and, in the event

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of a termination of the Franchise Agreement, a replacement franchise agreement, in form and substance approved by Lender in its sole discretion, is not entered into by Borrower within thirty (30) days of such termination.

7.2 **Remedies.** In case of an Event of Default, which is continuing, Lender may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

(a) **Acceleration.** Declare any and all indebtedness constituting a Secured Debt to be immediately due and payable, at which point such indebtedness shall be immediately due and payable;

(b) **Offset Rights.** Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4;

(c) **Cure of Default.** Without releasing Borrower from any obligation, including, without limitation, Borrower's obligations created hereunder, under the Loan Documents, or under any other document that creates, secures, or relates to a Secured Debt, cure any Event of Default. In connection therewith, Lender may, subject to applicable Laws, enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing. Should Lender make any such payments, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest at the default rate specified in the Note until repaid;

(d) **Possession of Property.** Subject to applicable Laws, take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the same, to hire a professional property manager for the Property, and to apply any rents, royalties, income or profits collected to the reduction of the Secured Debt without in any way curing or waiving any default. Subject to applicable Laws, if necessary to obtain possession as provided for above, Lender may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including, without limitation, one or more actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Lender pursuant to this subparagraph (d), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other act or omission of Lender in managing the Property unless caused by the willful misconduct or bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless



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and defend Lender from and against any liability, loss or damage incurred by Lender under any Lease or under the Loan Documents as a result of Lender's lawful exercise of rights or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest at the default rate specified in the Note until repaid. Lender shall have full power, following the occurrence of an Event of Default, which is continuing, to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender;

(e) **Foreclosure.** Institute appropriate proceedings for foreclosure of the Property in accordance with the laws of the State of Illinois in effect from time to time in bar of all equity of redemption, any statutory or common law right of redemption, homestead, dower, and all other exemptions permitted or allowed under applicable law, and upon the sale of the property, the Property shall be conveyed to the purchaser in fee simple and possession of the Property shall be delivered to the purchaser, which Borrower binds itself shall be given without obstruction, hindrance or delay. Upon the institution of such foreclosure proceedings, Lender shall, upon application therefore to a court of competent jurisdiction, at its option and without notice be entitled to have a receiver appointed to take possession of the Property hereby conveyed and Lender shall be entitled to all of the rents, issues and profits arising therefrom during the pendency of any such foreclosure proceedings. Borrower agrees that in case of any sale hereunder as permitted by law, it will at once surrender possession of the Property, and will from that moment become and be the tenant at will of the purchaser, and removable by process as upon a forcible and unlawful detainer suit, hereby agreeing to pay such purchaser the reasonable rental value of the Property after such sale. Borrower further agrees that in the event of a sale hereunder Lender shall have the right to bid thereat and to become the purchaser. Lender may require the successful bidder at any sale to deposit immediately with Lender cash or a certified check in an amount not to exceed five percent of his bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. The sale of the Property or any part thereof or any interest therein, whether pursuant to foreclosure, power of sale or otherwise under this Mortgage, shall, to the extent permitted by law, forever bar any claim with respect to the Property by the Borrower. Borrower hereby waives all right to appraisal allowed under any Laws, which appraisal may be obtained at the option of Lender.

All proceeds from the foreclosure of the Property shall be applied in the following manner:

**First:** Payment of the costs and expense of the sale, including but not limited to, Lender's fees, reasonable legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Lender, together with interest at the default rate provided under the Note on all advances made by the Lender.

**Second:** Payment of all sums expended by the Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the default rate provided under the Note.

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**Third:** Payment of the indebtedness and obligations of the Borrower secured by this Mortgage in any order that the Lender chooses.

**Fourth:** The remainder, if any, to the person or persons appearing of record to be the owner of the Property.

(f) **Receiver.** Secure the appointment of a receiver or receivers, as a matter of right for the Property, whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender. The appointment of such receiver, trustee or other appointee by virtue of any court order, or pursuant to applicable Laws shall not impair or in any manner prejudice the rights of Lender to receipt of payment of the rents and income pursuant to the Lease Assignment;

(g) **Uniform Commercial Code Remedies.** Exercise any and all rights of a secured party with respect to the Personalty under the Uniform Commercial Code of the State of Illinois and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) take possession of, assemble and collect the Personalty or render it unusable by Borrower; and

(ii) require Borrower to assemble the Personalty and make it available at any place Lender may designate so as to allow Lender to take possession or dispose of the Personalty.

Written notice mailed to Borrower, as provided herein, fifteen (15) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with a sale of the Property as provided in this Mortgage. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personalty and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personalty prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personalty be present at the location of such sale.

(h) **Judicial Actions.** Commence and maintain an action or actions in any court of competent jurisdiction to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that the covenants herein shall be specifically enforceable by injunction or any other appropriate equitable remedy;

(i) **Subrogation.** Have and exercise all rights and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without

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limitation, any rights or remedies under any mechanics' or vendors' lien or liens, superior titles, mortgages, deeds of trust, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record;

(j) **SDN List.** Upon an Event of Default under Paragraph 4.16 herein, which is continuing, Lender shall have the right to take any and all action or make any report or notification required by OFAC or any other applicable governmental agency or by applicable laws; or

(k) **Other.** Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under applicable Laws.

Any sums advanced by Lender under this Paragraph 7.2 shall bear interest at the default rate specified in the Note, shall be payable by Borrower on demand and, together with such interest, shall constitute a part of the Secured Debt. All sums realized by Lender under this Paragraph 7.2, less all costs and expenses incurred by Lender under this Paragraph 7.2, including, without limitation, reasonable attorneys' fees and disbursements, property management fees, costs of alterations, renovation, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

7.3 **Holding Over.** Should Borrower, after an Event of Default, which continues uncured, remain in possession of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of Lender, at a reasonable rental per diem, based upon the value of the Property occupied to be computed by Lender in its sole unfettered discretion, such rental to be due and payable daily to Lender.

## 7.4 **General Provisions.**

(a) **Multiple Sales.** Several sales may be made pursuant to Paragraph 7.2 without exhausting Lender's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 7.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, any applicable loan documentation creating, securing or referring to such Secured Debt shall remain in full force and effect as though no such sale had been made.

(b) **Cumulative Remedies.** All of the rights, remedies and options set forth in Paragraph 7.2 or otherwise available at law or in equity are cumulative and

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may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Lender.

(c) **Right to Purchase.** At any sale or sales of the Property pursuant to Paragraph 7.2, Lender shall have the right to purchase the Property being sold, and in such cases the right to credit upon the amount of the bid made therefor (to the extent necessary to satisfy such bid) against the amount of the Secured Debt then due.

(d) **Right to Terminate Proceedings.** Lender may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 7.2, terminate, without prejudice to Lender, such proceedings or actions.

(e) **No Waiver or Release.** Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) **Waivers and Agreements Regarding Remedies.** To the full extent permitted under Illinois law, Borrower hereby:

(i) waives and agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, exemption, valuation, appraisal, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;

(ii) waives all rights to a marshalling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents, or any other applicable loan documentation, to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Lender to the payment of the Secured Debt out of proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon

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which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(v) waives the defense of laches and any applicable statutes of limitations.

(g) **Lender's Discretion.** Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.

## 8. **Possession and Defeasance.**

8.1 **Possession.** Until the occurrence and continuation of an Event of Default, and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, subject, however, to all of the terms and provisions of the Loan Documents.

8.2 **Defeasance.** If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyance and assignments evidenced hereby, and Lender shall release or cause to be released in a recorded document, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Mortgage shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. Lender shall not have any duty to determine the rights of persons claiming to be rightful owners of any of the Property. When the Mortgage has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

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## 9. General.

9.1 Lender's Right to Waive, Consent or Release. Lender may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property, or any interest therein from this Mortgage and the lien created by the Loan Documents or any other applicable loan documentation. No such act shall in any way impair the rights hereunder of Lender, except to the extent specifically agreed to by Lender in such writing.

9.2 No Impairment. The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including, without limitation, (a) any renewal, extension or modification which Lender may grant with respect to any of the Secured Debt, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Property or any interest therein, or (c) any release or indulgence granted to any maker, endorser, or surety of any of the Secured Debt.

9.3 Amendments. The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Lender, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

9.4 No Usury. Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on, any of the Secured Debt in excess of the maximum rate of interest permitted by applicable Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 9.4 shall control. Borrower's and Lender's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

9.5 Notices. Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail, postage prepaid or telegram sent to the intended addressee at the applicable addresses of the parties set forth above or to such different addresses as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or, if earlier, in the case of delivery by certified United States Mail, three (3) business days after deposit therein. No notice or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

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9.6 **Successors and Assigns.** The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the Land. All references in this Mortgage to Borrower or Lender shall be deemed to include all such successors, substitutes and assigns. If, in contravention of the provisions of this Mortgage or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to the Borrower, whether or not Lender has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way violating or discharging Lender's remedies under or Borrower's liability under the Loan Documents or on the Secured Debt.

9.7 **Severability.** A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

9.8 **Gender and Construction.** Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Mortgage to "herein", "hereunder" or "hereby" shall refer to this entire Mortgage, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria as it chooses in approving or disapproving the requested or pending action without regard to the reasonableness of such criteria or Lender's ultimate decision.

9.9 **Limitation of Liability.** The personal liability of Borrower and its members for the obligations, covenants, agreements, representations and warranties contained within the Loan Documents, as well as the obligations arising hereunder, are and shall be limited, if at all, to the extent set forth in the Note. If Borrower is comprised of more than one party, then the obligations, covenants, agreements, representations, and warranties contained in the Loan Documents are and shall be joint and several as to each party.

9.10 **Modifications.** References to any of the Loan Documents in this Mortgage shall be deemed to include all amendments, modifications, extensions and renewals thereof.

9.11 **Governing Laws.** This Mortgage shall be construed according to and governed by the laws of the State of Illinois, provided, however, that certain of the Loan Documents are governed by Georgia law.

9.12 **Captions.** All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

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9.13 **Compliance with Illinois Law.** In the event that any provision of this Mortgage shall be unenforceable under the laws of the State of Illinois, this Mortgage shall be revised so as to be enforceable under Illinois law.

9.14 **Acknowledgement of Receipt.** Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Mortgage.

9.15 **Hazardous Waste.** Borrower covenants, represents, and warrants that (a) no toxic or hazardous substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls, have been or shall be generated, treated, stored or disposed of, or otherwise deposited in or located on the Property, including, without limitation, the surface and subsurface waters of the Property; (b) no activity has been or shall be undertaken on the Property which would cause (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 et seq., or any similar state law or local ordinance, (ii) a release or threatened release of hazardous waste from the Property within the meaning of, or otherwise bring the Property within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or any similar state law or local ordinance or any other environmental law, or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., or the Clean Air Act, 42 U.S.C. §7401, et seq., or any similar state law or local ordinance; (c) there are and shall be no substances or conditions in or on the Property which may support a claim or cause of action under RCRA, CERCLA, SARA, or any other federal, state or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements, and (d) there are and shall be no underground storage tanks or underground deposits located on the Property.

9.16 **Waiver of Trial by Jury.** **BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS MORTGAGE, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

9.17 **Consent to Jurisdiction.** **TO THE GREATEST EXTENT PERMITTED BY LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (EACH, A "PROCEEDING"), BORROWER IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN CHICAGO, ILLINOIS, AND (B) WAIVES ANY OBJECTION**



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WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. BORROWER FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY STATE OR UNITED STATES COURT SITTING IN CHICAGO, ILLINOIS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

## 10. State-Specific Provisions.

10.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 10 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 10 shall control and be binding.

## 10.2 Illinois Mortgage Foreclosure.

(a) It is the express intention of Borrower and Lender that the rights, remedies, powers and authorities conferred upon the Lender pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Illinois Mortgage Foreclosure Law (735 ILCS § 5/15-1101 et seq.) (herein called the "IMFL") and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Mortgage shall be inconsistent with any provision in the IMFL, the provisions of the IMFL shall take precedent over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMFL.

(b) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether provided for in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

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(c) The powers, authorities and duties conferred upon the Lender, in the event that the Lender takes possession of the Property, and upon a receiver hereunder, shall also include all such powers, authority and duties as may be conferred upon a Lender in possession or receiver under and pursuant to the IMFL. To the extent the IMFL may limit the powers, authorities and duties purportedly conferred hereby, such power, authorities and duties shall include those allowed, and be limited as proscribed by IMFL at the time of their exercise or discharge.

(d) BORROWER KNOWINGLY AND VOLUNTARILY RELEASES AND WAIVES, ON BEHALF OF ITSELF AND ALL PERSONS OR ENTITIES NOW OR HEREAFTER INTERESTED IN THE PROPERTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW INCLUDING IMFL, (I) ALL RIGHTS UNDER ALL APPRAISEMENT, HOMESTEAD, MORATORIUM, VALUATION, EXEMPTION, STAY, EXTENSION, REDEMPTION, SINGLE ACTION, ELECTION OF REMEDIES AND MARSHALING STATUTES, LAWS OR EQUITIES NOW OR HEREAFTER EXISTING, (II) ANY AND ALL REQUIREMENTS THAT AT ANY TIME ANY ACTION MAY BE TAKEN AGAINST ANY OTHER PERSON OR ENTITY AND BORROWER AGREES THAT NO DEFENSE BASED ON ANY THEREOF WILL BE ASSERTED IN ANY ACTION ENFORCING THIS INSTRUMENT, AND (III) ANY AND ALL RIGHTS TO REINSTATEMENT AND REDEMPTION AS ALLOWED UNDER SECTION 15-1601(B) AND SECTION 1602 OF THE IMFL OR TO CURE ANY DEFAULTS, EXCEPT SUCH RIGHTS OF REINSTATEMENT AND CURE AS MAY BE EXPRESSLY PROVIDED BY THE TERMS OF THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS.

(e) BORROWER HEREBY KNOWINGLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS OF REDEMPTION FROM SALE OR OTHERWISE UNDER ANY ORDER OR DECREE OF FORECLOSURE, DISCLAIMS ANY STATUS WHICH IT MAY HAVE AS AN "OWNER OF REDEMPTION" AS THAT TERM MAY BE DEFINED IN SECTION 15-1212 OF THE IMFL, PURSUANT TO RIGHTS HEREIN GRANTED, ON BEHALF OF BORROWER AND ALL PERSONS BENEFICIALLY INTERESTED THEREIN, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN, OR TITLE TO, THE PROPERTY DESCRIBED HEREIN SUBSEQUENT TO THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OTHER PERSONS TO THE FULLEST EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS STATUTES.

## 10.3 Protective Advances.

(a) All advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Loan Documents or by the IMFL (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL, including those provisions of the IMFL hereinbelow referred to:

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(i) all advances by Lender in accordance with the terms of the Loan Documents to: (A) complete, preserve or maintain, repair, restore or rebuild the improvements upon the Property; (B) preserve the lien of this Mortgage or the priority hereof; or (C) enforce this Mortgage, each as referred to in subsection (b)(5) of Section 5/15-1302 of the IMFL;

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

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d)(2) and 5/15-1510 of the IMFL; (B) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Mortgage or arising from the interest of the Lender hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Property;

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

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the IMFL;

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(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (B) if Borrower's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Lender takes possession of the Property imposed by subsection (c)(l) of Section 5/15-1704 of the IMFL; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (G) if the Loan is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; and (H) pursuant to any lease or other agreement for occupancy of the Property for amounts required to be paid by Borrower;

(viii) all Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan Documents;

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

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

A. determination of the amount of indebtedness secured by this Mortgage at any time;

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

C. determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the IMFL;

D. application of income in the hands of any receiver or Lender in possession;

and

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E. computation of any deficiency judgment pursuant to Section 5/15-1511 of the IMFL.

10.4 **Agricultural or Residential Real Estate.** Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL) or residential real estate (as defined in Section 15-1219 of the IMFL).

10.5 **Use of Proceeds.** Borrower represents and warrants to Lender that the proceeds of the obligations secured hereby shall be used solely for business purpose, and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

10.6 **Maximum Principal Amount.** The maximum indebtedness secured by this Mortgage shall include advances made hereafter but shall not exceed two hundred percent (200%) of the aggregate, original principal amount of the Loan.

10.7 **Receivership.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall appoint a receiver of the Property whenever Lender, when entitled to possession, so requests pursuant to Section 15-1702(a) of the IMFL, 735 ILCS 5/15-1101 et seq., as amended from time to time or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the IMFL, including the power to make leases to be binding upon all parties; including the Borrower after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Property after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the IMFL. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing Leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder 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 Borrower and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Lender is authorized to make a protective advance; and (b) the deficiency in case of a sale and deficiency.

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10.8 **Possession.** In any case in which under the provisions of this Mortgage Lender has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after judgment thereunder, and at all times until confirmation of sale, Borrower shall forthwith, upon demand of Lender, surrender to Lender and Lender shall be entitled to take and upon Lender's request to the court to be placed in actual possession of, Lender shall be placed in possession of the Property or any part thereof, personally, or by its Lender or attorneys as provided in Subsections (b)(2) and (c) of Section 1701 of the IMFL. In such event Lender in its reasonable discretion may enter upon and take and maintain or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of said Property, together with all documents, books, records, papers and accounts of Borrower or then owner of the Property relating thereto, and may exclude Borrower, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Borrower, or in its own name as Lender and under the powers herein granted, hold, operate, manage and control the Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its reasonable discretion or in the reasonable discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any Lease or sublease for any cause or on any ground that would entitle Borrower to cancel the same; (b) to elect to disaffirm any Lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to Lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder 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 Borrower and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Property; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Property as to it may deem judicious; (f) to insure and reinsure the same and all risks incidental to Lender's possession, operation and management thereof, and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter. Without limiting the generality of the foregoing provisions of this Section, Lender shall also have all power, authority and duties as provided in Section 15-1703 of the IMFL.

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Section 10.9 **Insurance Replacement.** If at any time Lender is not in receipt of written evidence that all insurance required under the Loan Documents is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, pursuant to the terms of the Collateral Protection Act, 815 ILCS 180/1 et seq., Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Property and to maintain the insurance required by the Loan Documents. This insurance may, but need not, protect Borrower's interests. The coverage purchased by Lender may not pay any claim made by Borrower or any claim that is made against Borrower in connection with the Property or any required insurance policy. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by the Loan Documents. If Lender purchases insurance for the Property or insurance otherwise required by the Loan Documents, Borrower will be responsible for the costs of that insurance, including interest and other charges imposed by Lender in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be paid by Borrower to Lender within five (5) days after written notice requesting payment thereof, and until paid shall be secured by this Mortgage, shall bear interest at the Default Rate and shall be added to the Debt. The cost of the insurance may be more than the cost of insurance Borrower is able to obtain on its own.

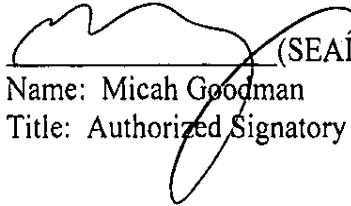
[Signature Appears on the Following Page]

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IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal to be effective as of the day and year first above written.

**BORROWER:**

BSPRT NORTHBROOK, LLC, a Delaware limited liability company

By:  (SEAL)  
Name: Micah Goodman  
Title: Authorized Signatory

STATE OF NY )  
 ) SS.  
COUNTY OF NY )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MICAH GOODMAN, the Authorized Signatory of BSPRT NORTHBROOK, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of January, 2020

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

VICTORIA A. KUHNE  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01KU6328486  
Qualified in New York County  
Commission Expires August 03, 2023



**UNOFFICIAL COPY****EXHIBIT "A"****PARCEL 1:**

SUB-LEASEHOLD ESTATE, AS LEASEHOLD ESTATE IS DEFINED IN PARAGRAPH 1 (C) OF THE ALTA FORM 13.0/13.1, CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE AGREEMENT OF SUBLEASE, SAID AGREEMENT OF SUBLEASE AGREEMENT DATED JANUARY 24, 2007, HAVING A COMMENCEMENT DATE OF JANUARY 24, 2007 AND AN EXPIRATION DATE OF DECEMBER 31, 2127 IF ALL EXTENSION OPTIONS ARE EXERCISED, ORIGINALLY BY AND BETWEEN NORTHBROOK HOTEL GROUP L.P., AN ILLINOIS LIMITED PARTNERSHIP, AS SUBTENANT, AND FCL FOUNDERS DRIVE, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AS SUBLANDLORD, ("LEASE AGREEMENT") (SAID SUBLANDLORD'S INTEREST IN THE LAND WAS CREATED BY THAT GROUND LEASE MEMORIALIZED BY THAT CERTAIN SHORT FORM AND MEMORANDUM OF GROUND LEASE RECORDED JULY 31, 2006 AS DOCUMENT NUMBER 0621218089, BY AND BETWEEN CHICAGO TITLE LAND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 31, 2006 AND KNOWN AS TRUST NUMBER 1114332, AS LESSOR, AND FCL FOUNDERS DRIVE, LLC AN ILLINOIS LIMITED LIABILITY COMPANY, AS LESSEE, AND ASSIGNMENT AND ASSUMPTION OF AGREEMENT RECORDED NOVEMBER 24, 2010 AS DOCUMENT NUMBER 1032842097, BY AND BETWEEN FCL FOUNDERS DRIVE, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, ASSIGNOR, TO WILLOW INVESTMENTS PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ASSIGNEE; AND GROUND LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED MAY 22, 2014 AS DOCUMENT NUMBER 1414235203, BY AND BETWEEN CHICAGO TITLE LAND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 31, 2006 AND KNOWN AS TRUST NUMBER 1114332, ASSIGNOR, TO PARCEL SE-1B-2 LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, ASSIGNEE). THE AGREEMENT OF SUBLEASE IS MEMORIALIZED BY THAT CERTAIN MEMORANDUM OF AGREEMENT OF SUBLEASE RECORDED ON MAY 17, 2007 AS DOCUMENT NUMBER 0713739089; AND ASSIGNMENT OF AGREEMENT OF SUBLEASE RECORDED ON AUGUST 22, 2019 AS DOCUMENT NUMBER 1923415100, BY AND BETWEEN NORTHBROOK HOTEL GROUP, L.P., AN ILLINOIS LIMITED LIABILITY COMPANY, ASSIGNOR, TO BSPRT NORTHBROOK, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ASSIGNEE; AND MEMORANDUM OF SUBLEASE ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED OCTOBER 15, 2019 AS DOCUMENT NUMBER 1928822159, BY AND BETWEEN WILLOW INVESTMENT PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ASSIGNOR, TO PARM HOTEL MANAGEMENT NORTHBROOK LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, ASSIGNEE, IN THE PUBLIC RECORDS OF COOK COUNTY, ILLINOIS, THE FOLLOWING DESCRIBED PREMISES (EXCEPT THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE LAND), TO-WIT:

THAT PART OF LOT SE-1B IN TECHNY PARCEL SE-1, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 14, AND PART OF THE NORTHWEST QUARTER OF SECTION 23. AND PART OF THE NORTHEAST QUARTER OF SECTION

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23, ALL IN TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO PLAT THEREOF RECORDED DECEMBER 22, 2000, AS DOCUMENT NUMBER 0001007540, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT SE-1B; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT SE-1B THE FOLLOWING EIGHT (8) COURSES DISTANCES: 1) NORTH 12 DEGREES 07 MINUTES 24 SECONDS EAST, 376.79 FEET; 2) NORTH 36 DEGREES 57 MINUTES 13 SECONDS EAST, 282.03 FEET; 3) NORTH 01 DEGREES 05 MINUTES 24 SECONDS WEST, 173.10 FEET; 4) NORTH 29 DEGREES 13 MINUTES 03 SECONDS WEST, 115.60 FEET; 5) NORTH 82 DEGREES 11 MINUTES 33 SECONDS WEST, 132.97 FEET; 6) NORTH 00 DEGREES 24 MINUTES 56 SECONDS WEST, 131.03 FEET; 7) NORTH 81 DEGREES 48 MINUTES 23 SECONDS EAST, 126.59 FEET; 8) NORTH 43 DEGREES 14 MINUTES 15 SECONDS EAST, 37.43 FEET; THENCE SOUTH 46 DEGREES 45 MINUTES 45 SECONDS EAST, 55.26 FEET FOR THE PLACE OF BEGINNING; THENCE NORTHERLY AND EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 84 DEGREES 09 MINUTES 51 SECONDS EAST, 5.53 FEET TO A POINT OF TANGENCY; THENCE SOUTH 20 DEGREES 44 MINUTES 29 SECONDS EAST, 14.50 FEET; THENCE NORTH 69 DEGREES 15 MINUTES 31 SECONDS EAST, 27.21 FEET; THENCE SOUTH 88 DEGREES 41 MINUTES 55 SECONDS EAST, 117.81 FEET; THENCE NORTH 01 DEGREES 18 MINUTES 05 SECONDS EAST, 14.50 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 4.00 FEET HAVING A CHORD BEARING OF SOUTH 88 DEGREES 41 MINUTES 50 SECONDS EAST, 12.57 FEET TO A POINT OF TANGENCY; THENCE; SOUTH 01 DEGREES 18 MINUTES 05 SECONDS WEST, 14.50 FEET; THENCE SOUTH 88 DEGREES 41 MINUTES 55 SECONDS EAST, 136.00 FEET; THENCE NORTH 01 DEGREES 18 MINUTES 05 SECONDS EAST, 16.00 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY AND EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 58 DEGREES 47 MINUTES 41 SECONDS EAST, 5.02 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 28.00 FEET, HAVING A CHORD BEARING OF SOUTH 35 DEGREES 36 MINUTES 39 SECONDS EAST, 27.47 FEET TO A POINT OF COMPOUND CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 42 DEGREES 12 MINUTES 07 SECONDS WEST, 4.34 FEET TO A POINT OF TANGENCY; THENCE NORTH 88 DEGREES 05 MINUTES 10 SECONDS WEST, 15.65 FEET; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 863.00 FEET, HAVING A CHORD BEARING OF SOUTH 04 DEGREES 38 MINUTES 09 SECONDS WEST, 82.00 FEET; THENCE SOUTH 82 DEGREES 38 MINUTES 31 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 14.49 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 4.07

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FEEET. HAVING A CHORD BEARING OF SOUTH 07 DEGREES 37 MINUTES 25 SECONDS WEST, 12.82 FEET TO A POINT OF TANGENCY; THENCE NORTH 82 DEGREES 06 MINUTES 39 SECONDS WEST, 14.49 FEET; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 863.00 FEET, HAVING A CHORD BEARING OF SOUTH 10 DEGREES 36 MINUTES 40 SECONDS WEST, 82.00 FEET; THENCE SOUTH 76 DEGREES 40 MINUTES 00 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 16.00 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 31 DEGREES 35 MINUTES 07 SECONDS EAST, 3.93 FEET TO A POINT OF TANGENCY; THENCE SOUTH 14 DEGREES 12 MINUTES 29 SECONDS WEST, 21.90 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 14.92 FEET, HAVING A CHORD BEARING OF SOUTH 82 DEGREES 15 MINUTES 20 SECONDS WEST, 35.45 FEET TO A POINT OF TANGENCY; THENCE NORTH 31 DEGREES 03 MINUTES 50 SECONDS WEST, 3.81 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 2.53 FEET, HAVING A CHORD BEARING OF NORTH 12 DEGREES 46 MINUTES 21 SECONDS EAST, 3.87 FEET TO A POINT OF TANGENCY; THENCE NORTH 57 DEGREES 15 MINUTES 50 SECONDS EAST, 16.03 FEET; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 185.00 FEET, HAVING A CHORD BEARING OF NORTH 54 DEGREES 39 MINUTES 39 SECONDS WEST, 142.58 FEET; THENCE SOUTH 13 DEGREES 15 MINUTES 35 SECONDS WEST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 16.02 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 57 DEGREES 50 MINUTES 09 SECONDS WEST, 3.89 FEET TO A POINT OF TANGENCY; THENCE NORTH 78 DEGREES 24 MINUTES 11 SECONDS WEST, 4.74 FEET; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 25.78 FEET, HAVING A CHORD BEARING OF SOUTH 25 DEGREES 23 MINUTES 29 SECONDS EAST, 0.89 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 20.54 FEET, HAVING A CHORD BEARING OF SOUTH 02 DEGREES 38 MINUTES 48 SECONDS EAST, 15.60 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 28.40 FEET, HAVING A CHORD BEARING OF SOUTH 29 DEGREES 01 MINUTES 55 SECONDS WEST, 9.84 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHWESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 13.94 FEET, HAVING A CHORD BEARING OF SOUTH 39 DEGREES 21 MINUTES 39 SECONDS WEST, 0.20 FEET; THENCE SOUTH 78 DEGREES 18 MINUTES 43 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 2.67 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG AN OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A

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RADIUS OF 2.48 FEET, HAVING A CHORD BEARING OF SOUTH 32 DEGREES 15 MINUTES 20 SECONDS EAST, 3.98 FEET TO A POINT OF TANGENCY; THENCE SOUTH 13 DEGREES 15 MINUTES 35 SECONDS WEST, 15.98 FEET; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 123.00 FEET, HAVING A CHORD BEARING OF SOUTH 61 DEGREES 49 MINUTES 56 SECONDS EAST, 64.01 FEET; THENCE NORTH 38 DEGREES 52 MINUTES 47 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 15.85 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 86 DEGREES 15 MINUTES 10 SECONDS EAST, 4.13 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 141.50 FEET, HAVING A CHORD BEARING OF SOUTH 38 DEGREES 59 MINUTES 37 SECONDS EAST, 36.46 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHERLY AND WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 10.00 FEET, HAVING A CHORD BEARING OF SOUTH 36 DEGREES 29 MINUTES 54 SECONDS WEST, 23.78 FEET TO A POINT OF TANGENCY; THENCE NORTH 75 DEGREES 23 MINUTES 26 SECONDS WEST, 13.33 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 30 DEGREES 23 MINUTES 26 SECONDS WEST, 3.93 FEET TO A POINT OF TANGENCY; THENCE NORTH 14 DEGREES 36 MINUTES 34 SECONDS EAST, 15.99 FEET; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 528.00 FEET, HAVING A CHORD BEARING OF NORTH 83 DEGREES 17 MINUTES 44 SECONDS WEST, 150.31 FEET; THENCE SOUTH 01 DEGREES 23 MINUTES 48 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 15.99 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 44 DEGREES 14 MINUTES 50 SECONDS WEST, 3.98 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 40.00 FEET, HAVING A CHORD BEARING OF NORTH 59 DEGREES 39 MINUTES 47 SECONDS WEST, 42.51 FEET TO A POINT OF TANGENCY; THENCE NORTH 29 DEGREES 13 MINUTES 03 SECONDS WEST, 21.22 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY AND EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 10.00 FEET, HAVING A CHORD BEARING OF NORTH 27 DEGREES 47 MINUTES 03 SECONDS EAST, 19.90 FEET TO A POINT OF TANGENCY; THENCE NORTH 84 DEGREES 47 MINUTES 08 SECONDS EAST, 2.47 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 50 DEGREES 12 MINUTES 52 SECONDS EAST, 3.93 FEET TO A POINT OF TANGENCY; THENCE SOUTH 05 DEGREES 12 MINUTES 52 SECONDS EAST, 16.00 FEET; THENCE NORTH 84 DEGREES 47 MINUTES 08 SECONDS EAST, 28.00 FEET;

A-4

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THENCE NORTH 05 DEGREES 12 MINUTES 52 SECONDS WEST, 16.00 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 39 DEGREES 47 MINUTES 08 SECONDS EAST, 3.93 FEET TO A POINT OF TANGENCY; THENCE NORTH 84 DEGREES 47 MINUTES 08 SECONDS EAST, 0.95 FEET; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 26.09 FEET, HAVING A CHORD BEARING OF NORTH 30 DEGREES 07 MINUTES 41 SECONDS WEST, 4.34 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 20.58 FEET, HAVING A CHORD BEARING OF NORTH 03 DEGREES 40 MINUTES 41 SECONDS WEST, 15.58 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 28.12 FEET, HAVING A CHORD BEARING OF NORTH 24 DEGREES 56 MINUTES 16 SECONDS EAST, 6.80 FEET; THENCE SOUTH 84 DEGREES 47 MINUTES 08 SECONDS WEST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 7.44 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 3.00 FEET, HAVING A CHORD BEARING OF NORTH 50 DEGREES 12 MINUTES 52 SECONDS WEST, 4.71 FEET TO A POINT OF TANGENCY; THENCE NORTH 05 DEGREES 12 MINUTES 52 SECONDS WEST, 15.50 FEET; THENCE SOUTH 84 DEGREES 47 MINUTES 08 SECONDS WEST, 42.00 FEET; THENCE SOUTH 05 DEGREES 12 MINUTES 52 SECONDS EAST, 16.00 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 39 DEGREES 47 MINUTES 08 SECONDS WEST, 3.93 FEET TO A POINT OF TANGENCY; THENCE SOUTH 84 DEGREES 47 MINUTES 08 SECONDS WEST, 8.51 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 10.00 FEET, HAVING A CHORD BEARING OF NORTH 62 DEGREES 12 MINUTES 57 SECONDS WEST, 11.52 FEET TO A POINT OF TANGENCY; THENCE NORTH 29 DEGREES 13 MINUTES 03 SECONDS WEST, 5.31 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 50.00 FEET, HAVING A CHORD BEARING OF NORTH 18 DEGREES 24 MINUTES 45 SECONDS WEST, 18.86 FEET TO A POINT OF COMPOUND CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 38 DEGREES 35 MINUTES 20 SECONDS EAST, 4.03 FEET TO A POINT OF TANGENCY; THENCE NORTH 84 DEGREES 47 MINUTES 08 SECONDS EAST, 15.96 FEET; THENCE NORTH 05 DEGREES 12 MINUTES 52 SECONDS WEST, 64.00 FEET; THENCE SOUTH 84 DEGREES 47 MINUTES 08 SECONDS WEST, 16.00 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD SEARING OF NORTH 49 DEGREES 57 MINUTES 45 SECONDS WEST, 3.95 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 58.00 FEET, HAVING A CHORD BEARING OF NORTH 03 DEGREES 02 MINUTES 35 SECONDS EAST, 15.70 FEET TO A

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POINT OF COMPOUND CURVATURE; THENCE NORTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 20.00 FEET, HAVING A CHORD BEARING OF NORTH 21 DEGREES 36 MINUTES 17 SECONDS EAST, 7.55 FEET TO A POINT OF TANGENCY; THENCE NORTH 32 DEGREES 24 MINUTES 47 SECONDS EAST, 30.92 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

BUILDING AND IMPROVEMENTS LOCATED ON THE REAL PROPERTY KNOWN AS 1110 WILLOW ROAD, NORTHBROOK, ILLINOIS 60062, BUT EXPRESSLY EXCLUDING ANY LAND UNDER OR NEAR THE BUILDING AND IMPROVEMENTS. THE BUILDING AND IMPROVEMENTS IS LOCATED ON THE FOLLOWING DESCRIBED TRACT OF LAND:

THAT PART OF LOT SE-1B IN TECHNY PARCEL SE-1, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 14, AND PART OF THE NORTHWEST QUARTER OF SECTION 23, AND PART OF THE NORTHEAST QUARTER OF SECTION 23, ALL IN TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO PLAT THEREOF RECORDED DECEMBER 22, 2000, AS DOCUMENT NUMBER 001007540, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT SE-1B; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT SE-1B THE FOLLOWING EIGHT (8) COURSES DISTANCES: 1) NORTH 12 DEGREES 07 MINUTES 24 SECONDS EAST, 376.79 FEET; 2) NORTH 36 DEGREES 57 MINUTES 13 SECONDS EAST, 282.03 FEET; 3) NORTH 01 DEGREES 05 MINUTES 24 SECONDS WEST, 173.10 FEET; 4) NORTH 29 DEGREES 13 MINUTES 03 SECONDS WEST, 115.60 FEET; 5) NORTH 82 DEGREES 11 MINUTES 33 SECONDS WEST, 132.97 FEET; 6) NORTH 00 DEGREES 24 MINUTES 56 SECONDS WEST, 131.03 FEET; 7) NORTH 81 DEGREES 48 MINUTES 23 SECONDS EAST, 126.59 FEET; 8) NORTH 43 DEGREES 14 MINUTES 15 SECONDS EAST, 37.43 FEET; THENCE SOUTH 46 DEGREES 45 MINUTES 45 SECONDS EAST, 55.26 FEET FOR THE PLACE OF BEGINNING; THENCE NORTHERLY AND EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 84 DEGREES 09 MINUTES 51 SECONDS EAST, 5.53 FEET TO A POINT OF TANGENCY; THENCE SOUTH 20 DEGREES 44 MINUTES 29 SECONDS EAST, 14.50 FEET; THENCE NORTH 69 DEGREES 15 MINUTES 31 SECONDS EAST, 27.21 FEET; THENCE SOUTH 88 DEGREES 41 MINUTES 55 SECONDS EAST, 117.81 FEET; THENCE NORTH 01 DEGREES 18 MINUTES 05 SECONDS EAST, 14.50 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 4.00 FEET HAVING A CHORD BEARING OF SOUTH 88 DEGREES 41 MINUTES 50 SECONDS EAST, 12.57 FEET TO A POINT OF TANGENCY; THENCE; SOUTH 01 DEGREES 18 MINUTES 05 SECONDS WEST, 14.50 FEET; THENCE SOUTH 88 DEGREES 41 MINUTES 55 SECONDS EAST, 136.00 FEET; THENCE NORTH 01 DEGREES 18 MINUTES 05 SECONDS EAST, 16.00 FEET TO A POINT OF CURVATURE; THENCE

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NORTHERLY AND EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 58 DEGREES 47 MINUTES 41 SECONDS EAST, 5.02 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 28.00 FEET, HAVING A CHORD BEARING OF SOUTH 35 DEGREES 36 MINUTES 39 SECONDS EAST, 27.47 FEET TO A POINT OF COMPOUND CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 42 DEGREES 12 MINUTES 07 SECONDS WEST, 4.34 FEET TO A POINT OF TANGENCY; THENCE NORTH 88 DEGREES 05 MINUTES 10 SECONDS WEST, 15.65 FEET; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 863.00 FEET, HAVING A CHORD BEARING OF SOUTH 04 DEGREES 38 MINUTES 09 SECONDS WEST, 82.00 FEET; THENCE SOUTH 82 DEGREES 38 MINUTES 31 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 14.49 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 4.07 FEET, HAVING A CHORD BEARING OF SOUTH 07 DEGREES 37 MINUTES 25 SECONDS WEST, 12.82 FEET TO A POINT OF TANGENCY; THENCE NORTH 82 DEGREES 06 MINUTES 39 SECONDS WEST, 14.49 FEET; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 863.00 FEET, HAVING A CHORD BEARING OF SOUTH 10 DEGREES 36 MINUTES 40 SECONDS WEST, 82.00 FEET; THENCE SOUTH 76 DEGREES 40 MINUTES 00 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 16.00 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 31 DEGREES 35 MINUTES 07 SECONDS EAST, 3.93 FEET TO A POINT OF TANGENCY; THENCE SOUTH 14 DEGREES 12 MINUTES 29 SECONDS WEST, 21.90 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 14.92 FEET, HAVING A CHORD BEARING OF SOUTH 82 DEGREES 15 MINUTES 20 SECONDS WEST, 35.45 FEET TO A POINT OF TANGENCY; THENCE NORTH 31 DEGREES 03 MINUTES 50 SECONDS WEST, 3.81 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 2.53 FEET, HAVING A CHORD BEARING OF NORTH 12 DEGREES 46 MINUTES 21 SECONDS EAST, 3.87 FEET TO A POINT OF TANGENCY; THENCE NORTH 57 DEGREES 15 MINUTES 50 SECONDS EAST, 16.03 FEET; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 185.00 FEET, HAVING A CHORD BEARING OF NORTH 54 DEGREES 39 MINUTES 39 SECONDS WEST, 142.58 FEET; THENCE SOUTH 13 DEGREES 15 MINUTES 35 SECONDS WEST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 16.02 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 57 DEGREES 50 MINUTES 09 SECONDS WEST, 3.89 FEET

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TO A POINT OF TANGENCY; THENCE NORTH 78 DEGREES 24 MINUTES 11 SECONDS WEST, 4.74 FEET; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 25.78 FEET, HAVING A CHORD BEARING OF SOUTH 25 DEGREES 23 MINUTES 29 SECONDS EAST, 0.89 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 20.54 FEET, HAVING A CHORD BEARING OF SOUTH 02 DEGREES 38 MINUTES 48 SECONDS EAST, 15.60 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 28.40 FEET, HAVING A CHORD BEARING OF SOUTH 29 DEGREES 01 MINUTES 55 SECONDS WEST, 9.84 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHWESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 13.94 FEET, HAVING A CHORD BEARING OF SOUTH 39 DEGREES 21 MINUTES 39 SECONDS WEST, 0.20 FEET; THENCE SOUTH 78 DEGREES 18 MINUTES 43 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 2.67 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 2.48 FEET, HAVING A CHORD BEARING OF SOUTH 32 DEGREES 15 MINUTES 20 SECONDS EAST, 3.98 FEET TO A POINT OF TANGENCY; THENCE SOUTH 13 DEGREES 15 MINUTES 35 SECONDS WEST, 15.98 FEET; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 123.00 FEET, HAVING A CHORD BEARING OF SOUTH 61 DEGREES 49 MINUTES 56 SECONDS EAST, 64.01 FEET; THENCE NORTH 38 DEGREES 52 MINUTES 47 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 15.85 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 86 DEGREES 15 MINUTES 10 SECONDS EAST, 4.13 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 141.50 FEET, HAVING A CHORD BEARING OF SOUTH 38 DEGREES 59 MINUTES 37 SECONDS EAST, 36.46 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHERLY AND WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 10.00 FEET, HAVING A CHORD BEARING OF SOUTH 36 DEGREES 29 MINUTES 54 SECONDS WEST, 23.78 FEET TO A POINT OF TANGENCY; THENCE NORTH 75 DEGREES 23 MINUTES 26 SECONDS WEST, 13.33 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 30 DEGREES 23 MINUTES 26 SECONDS WEST, 3.93 FEET TO A POINT OF TANGENCY; THENCE NORTH 14 DEGREES 36 MINUTES 34 SECONDS EAST, 15.99 FEET; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH AND NONTANGENT TO THE LAST DESCRIBED LINE, HAVING A RADIUS OF 528.00 FEET, HAVING A CHORD BEARING OF NORTH 83 DEGREES 17 MINUTES 44 SECONDS WEST, 150.31 FEET; THENCE SOUTH 01 DEGREES 23 MINUTES 48 SECONDS EAST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 15.99 FEET TO A POINT OF



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CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 44 DEGREES 14 MINUTES 50 SECONDS WEST, 3.98 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 40.00 FEET, HAVING A CHORD BEARING OF NORTH 59 DEGREES 39 MINUTES 47 SECONDS WEST, 42.51 FEET TO A POINT OF TANGENCY; THENCE NORTH 29 DEGREES 13 MINUTES 03 SECONDS WEST, 21.22 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY AND EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 10.00 FEET, HAVING A CHORD BEARING OF NORTH 27 DEGREES 47 MINUTES 03 SECONDS EAST, 19.90 FEET TO A POINT OF TANGENCY; THENCE NORTH 84 DEGREES 47 MINUTES 08 SECONDS EAST, 2.47 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 50 DEGREES 12 MINUTES 52 SECONDS EAST, 3.93 FEET TO A POINT OF TANGENCY; THENCE SOUTH 05 DEGREES 12 MINUTES 52 SECONDS EAST, 16.00 FEET; THENCE NORTH 54 DEGREES 47 MINUTES 08 SECONDS EAST, 28.00 FEET; THENCE NORTH 05 DEGREES 12 MINUTES 52 SECONDS WEST, 16.00 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 39 DEGREES 47 MINUTES 08 SECONDS EAST, 3.93 FEET TO A POINT OF TANGENCY; THENCE NORTH 84 DEGREES 47 MINUTES 08 SECONDS EAST, 0.95 FEET; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 26.09 FEET, HAVING A CHORD BEARING OF NORTH 30 DEGREES 07 MINUTES 41 SECONDS WEST, 4.34 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 20.58 FEET, HAVING A CHORD BEARING OF NORTH 03 DEGREES 40 MINUTES 41 SECONDS WEST, 15.58 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 28.12 FEET, HAVING A CHORD BEARING OF NORTH 24 DEGREES 56 MINUTES 16 SECONDS EAST, 6.80 FEET; THENCE SOUTH 84 DEGREES 47 MINUTES 08 SECONDS WEST ALONG A LINE NONTANGENT TO THE LAST DESCRIBED CURVE, 2.44 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 3.00 FEET, HAVING A CHORD BEARING OF NORTH 50 DEGREES 12 MINUTES 52 SECONDS WEST, 4.71 FEET TO A POINT OF TANGENCY; THENCE NORTH 05 DEGREES 12 MINUTES 52 SECONDS WEST, 15.50 FEET; THENCE SOUTH 84 DEGREES 47 MINUTES 08 SECONDS WEST, 42.00 FEET; THENCE SOUTH 05 DEGREES 12 MINUTES 52 SECONDS EAST, 16.00 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF SOUTH 39 DEGREES 47 MINUTES 08 SECONDS WEST, 3.93 FEET TO A POINT OF TANGENCY; THENCE SOUTH 84 DEGREES 47 MINUTES 08 SECONDS WEST, 8.51 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 10.00 FEET, HAVING A CHORD BEARING OF NORTH 62 DEGREES 12

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MINUTES 57 SECONDS WEST, 11.52 FEET TO A POINT OF TANGENCY; THENCE NORTH 29 DEGREES 13 MINUTES 03 SECONDS WEST, 5.31 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 50.00 FEET, HAVING A CHORD BEARING OF NORTH 18 DEGREES 24 MINUTES 45 SECONDS WEST, 18.86 FEET TO A POINT OF COMPOUND CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD BEARING OF NORTH 38 DEGREES 35 MINUTES 20 SECONDS EAST, 4.03 FEET TO A POINT OF TANGENCY; THENCE NORTH 84 DEGREES 47 MINUTES 08 SECONDS EAST, 15.96 FEET; THENCE NORTH 05 DEGREES 12 MINUTES 52 SECONDS WEST, 64.00 FEET; THENCE SOUTH 84 DEGREES 47 MINUTES 08 SECONDS WEST, 16.00 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2.50 FEET, HAVING A CHORD SEARING OF NORTH 49 DEGREES 57 MINUTES 45 SECONDS WEST, 3.95 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 58.00 FEET, HAVING A CHORD BEARING OF NORTH 03 DEGREES 02 MINUTES 35 SECONDS EAST, 15.70 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 20.00 FEET, HAVING A CHORD BEARING OF NORTH 21 DEGREES 36 MINUTES 17 SECONDS EAST, 7.55 FEET TO A POINT OF TANGENCY; THENCE NORTH 32 DEGREES 24 MINUTES 47 SECONDS EAST, 30.92 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

### PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DECLARATION AND GRANT OF EASEMENTS FOR PRIVATE DRIVES AND DRIVEWAYS DATED JANUARY 21, 2000 AND RECORDED APRIL 13, 2000 AS DOCUMENT NUMBER 00261797 FROM SOCIETY OF THE DIVINE WORD, AN ILLINOIS NOT-FOR-PROFIT CORPORATION AND AS AMENDED BY AMENDED AND RESTATED DECLARATION AND GRANT OF EASEMENTS FOR PRIVATE DRIVES AND DRIVEWAYS DATED SEPTEMBER 15, 2005 AND RECORDED SEPTEMBER 23, 2005 AS DOCUMENT NUMBER 0526639112, FOR THE PURPOSE OF ESTABLISHING CERTAIN EASEMENTS OVER, UNDER, UPON AND ALONG CERTAIN PORTIONS OF PARCEL SE-1.

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## **EXHIBIT "B"**

### **[Personalty]**

(a) All of Borrower's building materials, machinery, apparatus, equipment, fittings and fixtures, whether or not actually or constructively attached to the real property described on **Exhibit "A"** hereof and to the improvements now or hereafter located thereon (said real property and improvements are hereinafter referred to as the "Property"), and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever now or hereafter located in, upon or under said Property or any part thereof and used or usable in connection with any present or future operation of said Property and now owned or hereafter acquired by Borrower, including, but without limiting the generality of the foregoing, shades; awnings; rugs and carpets; draperies; furniture and furnishings of the type customarily located in hotels of the type and nature as the Improvements on the Land; together with all additions thereto and replacements thereof.

(b) All of Borrower's rents, security deposits, issues and profits which are now due or may hereafter become due from the Property, including, but not limited to rents, security deposits, issues and profits by reason of or in connection with the rents, leasing and bailment of said Property.

(c) All of Borrower's awards or payments, including interest thereon, and the right to receive the same, as a result of (i) the exercise of the right of eminent domain, (ii) the alteration of the grade of any street, or (iii) any other injury to, taking of, or decrease in the value of, the Property, to the extent of all amounts which may be owed by Borrower to Lender at the date of receipt of any such award or payment by Lender and of the reasonable attorney's fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment.

(d) All of Borrower's documents, instruments and contracts and rights relating to the construction of the improvements now or hereafter located on the Property, and including without limitation, any and all construction contracts, architectural contracts, engineering contracts, plans, specifications, drawings, surveys, bonds, permits, licenses, and other governmental approvals.

(e) All proceeds from Borrower's insurance policies which in any way relate to the Property or the other property described in this **Exhibit "B"** and all proceeds and payments owing to the insured under such insurance policies.

(f) All of Borrower's right, title and interest in and to all sales contracts, whether now existing or executed after the date hereof, pertaining to any portion of the real property described on **Exhibit "A"** hereof, and any modifications thereof.

(g) All proceeds and products of any of the foregoing.

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RECORDER OF DEEDS**

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**COOK COUNTY  
RECORDER OF DEEDS**

Property of Cook County Clerk's Office

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## EXHIBIT "C"

### (Further Stipulations)

C-1 Ground Lease Agreement Provisions. The following provisions are made a part of this Mortgage:

A. Representations and Warranties regarding Ground Lease Agreement. Borrower warrants and represents to Lender that, as of the date of this Mortgage: (i) the Ground Lease Agreement is in full force and effect in accordance with its terms; (ii) Borrower has not waived, canceled or surrendered any of its rights under the Ground Lease Agreement; (iii) Borrower is the sole owner of, and has good and marketable title to, the leasehold estate ("Leasehold Estate") created by the Ground Lease Agreement; (iv) the Leasehold Estate and the Land are free and clear of all liens, encumbrances and other matters affecting title, other than the lien of this Mortgage and the easements, restrictions and other matters listed in the schedule of exceptions to coverage in the title insurance policy issued to Lender in connection with the execution and recordation of this Mortgage and insuring Lender's interest in the Leasehold Estate; (v) there is no existing default under the Ground Lease Agreement (a "Ground Lessee Default") and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Ground Lessee Default; and (vi) to the best of Borrower's knowledge there is no existing default by the lessor ("Ground Lessor") under the Ground Lease Agreement (a "Ground Lessor Default") and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Ground Lessor Default.

B. Notices under Ground Lease Agreement. Borrower shall promptly deliver to Lender, and at a minimum within ten (10) days after Borrower's receipt, a true and correct copy of each notice, demand, complaint or request from the Ground Lessor under, or with respect to, the Ground Lease Agreement.

C. Borrower's Obligations to Comply with Ground Lease Agreement. Borrower shall (i) pay the rent and all other sums of money due and payable at any time and from time to time under the Ground Lease Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Ground Lease Agreement for the payment of any such sum, and (ii) at all times fully perform observe and comply with all other terms, covenants and conditions of the Ground Lease Agreement to be performed, observed or complied with by Borrower as lessee under the Ground Lease Agreement. Borrower shall make all payments due under the Ground Lease Agreement on or before the date on which each such payment becomes due and payable after taking into consideration any applicable grace period, if any, provided by the Ground Lease Agreement. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

D. Lender's Right to Cure Borrower Defaults. At any time after Lender receives notice of a Ground Lessee Default, (i) Lender may (but shall not be obligated to do so), make any payment, perform any obligation and take any other action Borrower would have the right to pay, perform or take under the Ground Lease Agreement which Lender deems necessary or desirable

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to cure the Ground Lessee Default, and (ii) Lender and its authorized agents shall have the right at any time or from time to time to enter the Leasehold Parcel and improvements thereon, or any part thereof, to such extent and as often as Lender, in its discretion, deems necessary or desirable in order to cure the Ground Lessee Default, subject to the rights of the tenants and occupants of the improvements thereon. Lender may exercise its rights under this section immediately after receipt of notice of a Ground Lessee Default and without regard to any grace period provided to Borrower in the Ground Lease Agreement to cure the Ground Lessee Default. Lender shall be fully protected for any action taken or omitted to be taken by Lender, in good faith, in reliance on any written notice from Ground Lessor stating that a Ground Lessee Default has occurred and is continuing even though Borrower may question or deny the existence or nature of the Ground Lessee Default. All expenditures made by Lender pursuant to this section to cure a Ground Lessee Default shall become an additional part of the Indebtedness.

E. Covenants to Protect Leasehold Estate. Borrower shall not, without the written consent of Lender (which may be given or withheld by Lender in its discretion), (i) surrender the Leasehold Estate or terminate or cancel the Ground Lease Agreement, (ii) amend, modify or change the Ground Lease Agreement, either orally or in writing, or waive any of Borrower's rights under the Ground Lease Agreement, (iii) subordinate the Ground Lease Agreement or the Leasehold Estate to any deed to secure debt, mortgage, deed of trust or other lien on the fee title of Ground Lessor to the Leasehold Parcel and Improvements thereon, or (iv) except as otherwise provided in Section F below, reject or assume the Ground Lease Agreement or assign the Leasehold Estate pursuant to Section 365(1) of the Bankruptcy Code. Borrower absolutely and unconditionally transfers and assigns to Lender all of Borrower's rights to surrender, terminate, cancel, modify and change the Ground Lease Agreement, and any such surrender, termination, cancellation, modification or change made without the prior written consent of Lender shall be void and have no legal effect.

F. Lessee's Bankruptcy.

(a) Subject to part (b) of this Section F, Borrower assigns to Lender, as additional security for the Indebtedness, Borrower's right to reject the Ground Lease Agreement under Section 265 of the Bankruptcy Code after the occurrence of a bankruptcy by Borrower.

(b) If, after the occurrence of a bankruptcy by Borrower, Borrower decides to reject the Ground Lease Agreement, Borrower shall give Lender written notice thereof at least fifteen (15) days in advance, of the date on which Borrower intends to apply to the Bankruptcy Court for authority and permission to reject the Ground Lease Agreement. Lender shall have the right, but not the obligation, within fifteen (15) days after receipt of Borrower's notice, to deliver to Borrower a notice ("Lender's Assumption Notice") in which (i) Lender demands that Borrower assume the Ground Lease Agreement and assign the Ground Lease Agreement to Lender, or its designee, in accordance with the Bankruptcy Code, and (ii) Lender agrees to cure or provide adequate assurance of prompt cure of all Ground Lessee Defaults reasonably susceptible of being cured by Lender and of future performance under the Ground Lease Agreement. If Lender timely delivers Lender's Assumption Notice to Borrower, Borrower shall not reject the Ground Lease Agreement

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and shall within fifteen (15) days after receipt of Lender's notice, comply with the demand contained in clause (i) of Lender's notice. If Lender does not timely deliver Lender's Assumption Notice to Borrower, Borrower shall have the right to reject the Ground Lease Agreement.

G. Lessor's Rejection of Ground Lease in Bankruptcy.

(a) If, after the occurrence of a bankruptcy by the Ground Lessor, the Ground Lessor rejects the Ground Lease Agreement pursuant to Section 365(h) of the Bankruptcy Code (i) Borrower, immediately after obtaining notice of the rejection, shall deliver a copy of the notice to Lender, (ii) Borrower shall not, without Lender's prior written consent (which may be given or withheld in Lender's discretion), elect to treat the Ground Lease Agreement as terminated pursuant to Section 365(h) or any other applicable provision of the Bankruptcy Code, and this Mortgage and the lien created by this Mortgage shall extend to and encumber Borrower's retained rights under the Ground Lease Agreement that are appurtenant to the Leasehold Parcel and Improvements thereon for the balance of the term of the Ground Lease Agreement and for any renewal or extension of those rights under the Ground Lease Agreement. Borrower transfers and assigns to Lender, as additional security for the Indebtedness, Borrower's rights, after the rejection of the Ground Lease Agreement by the Ground Lessor, to treat the Ground Lease Agreement as terminated, and any termination of the Ground Lease Agreement made by Borrower without Lender's prior written consent shall be void and have no legal effect.

(b) Borrower transfers and assigns to Lender, as additional security for the Indebtedness, all of Borrower's rights to damages caused by the rejection of the Ground Lease Agreement by the Ground Lessor after the occurrence of a bankruptcy by the Ground Lessor and all of Borrower's rights to offset such damages against rent and other charges payable under the Ground Lease Agreement. As long as no Default has occurred and is continuing, Lender agrees that it will not enforce its rights under the preceding sentence, but will permit Borrower to exercise such rights with Lender's prior written consent.

H. No Merger of Estates. If Borrower acquires the estate of the Ground Lessor (the "Ground Lessor's Estate") (i) there shall be no merger between the Ground Lessor's Estate and the Leasehold Estate unless all persons, including Lender, having an interest in the Ground Lease Agreement consent in writing to the merger, and (ii) simultaneously with Borrower's acquisition of the Ground Lessor's Estate, the lien of this Mortgage shall automatically, without the necessity of any further conveyance, be spread to cover the Ground Lessor's Estate and as so spread shall be prior to the lien of any deed to secure debt, mortgage, deed of trust or other lien placed on the Ground Lessor's Estate after the date of this Mortgage. Promptly after Borrower's acquisition of the Ground Lessor's Estate, Borrower, at its sole cost and expense, including payment of Lender's attorneys' fees and out-of-pocket disbursements, shall execute and deliver all documents and instruments necessary to subject the Ground Lessor's Estate to the lien of this Mortgage, and shall provide to Lender a title insurance policy insuring the lien of this Mortgage as a first lien on the Ground Lessor's Estate and the Leasehold Estate. If Lender acquires the Ground Lessor's Estate and the Leasehold Estate (whether pursuant to the provisions of the Ground Lease Agreement, by

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foreclosure of this Mortgage, or otherwise), the Ground Lessor's Estate and the Leasehold Estate shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until Lender shall expressly elect in writing to merge the Ground Lessor's Estate and the Leasehold Estate.

I. New Lease. If (i) the Ground Lease Agreement is cancelled or terminated for any reason before the natural expiration of its term, and (ii) Lender (or its designee) obtains from Ground Lessor a new lease in accordance with the term of the Ground Lease Agreement, Borrower shall have no right, title or interest in and to the new lease or the leasehold estate created by the new lease.

J. Appointment of Lender as Borrower's Attorney-in-Fact. Borrower makes, constitutes and appoints Lender as Borrower's attorney-in-fact, in Borrower's name, place and stead, with full power of substitution, to take all actions and to sign all documents and instruments which Lender, in its discretion, considers to be necessary or desirable to (i) prevent or cure a Ground Lessee Default pursuant to Section D above, (ii) perform or carry out any of the Borrower's covenants in these Sections A through J, (iii) request and obtain estoppel certificates from the Lessor under the Ground Lease Agreement, and (iv) take any other action that Borrower is entitled to take with respect to the Ground Lease Agreement. Borrower gives and grants to Lender, as Borrower's attorney-in-fact, full power and authority to do and perform every act and sign every document and instrument necessary and proper to be done in the exercise of the foregoing power as fully as Borrower might or could do, and Borrower hereby ratifies and confirms all acts that Lender, as Borrower's attorney-in-fact, shall lawfully do or cause to be done by virtue of this power of attorney. This power of attorney, being coupled with an interest, shall be irrevocable as long as any of the Indebtedness remains unpaid, provided, however, shall not limit any of the Borrower's rights related to the matters such power of attorney is so granted.