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. COOK COUNTY RECORDER	
. DEPT-10 PENALTY	1139.00

EVANSTON NORTHSORE HOTEL PARTNERS, L.L.C.  
(Mortgagor)

and

CREDIT SUISSE FIRST BOSTON MORTGAGE CAPITAL LLC  
(Mortgagee)

*CC 11/19 Kelly*

*14/10*

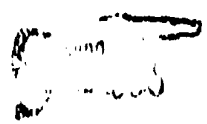
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### SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

Dated: As of September 30, 1997

PROPERTY LOCATION:  
Holiday Inn  
Evanston, Illinois

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:



Sullivan & Worcester LLP  
767 Third Avenue  
New York, New York 10017  
Attention: Michael J. Waters, Esq.

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THIS SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (the "Second Mortgage"), made as of September 30, 1997, by EVANSTON NORTHSORE HOTEL PARTNERS, L.L.C. an Illinois limited liability company, having its principal place of business c/o SB Yen's Management Group, Inc., 920 York Road, Hinsdale, Illinois 60521 ("Mortgagor"), to CREDIT SUISSE FIRST BOSTON MORTGAGE CAPITAL L.L.C., a Delaware limited liability company ("Mortgagee"), having an address at Eleven Madison Avenue, New York, New York 10010

## WITNESSETH

To secure the payment of an indebtedness in the original principal sum of Seven Million Six Hundred Thousand and No/100 Dollars (\$7,600,000 00), lawful money of the United States of America, to be paid with interest, and due on October 11, 2022, according to a certain mortgage note of even date herewith made by Pacific Tai, LLC, an Illinois limited liability company (the "Chicago Borrower") to Mortgagee (the mortgage note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Chicago Note", and the loan evidenced by the Chicago Note hereinafter being referred to as the "Chicago Loan") and all other sums due thereunder, under the other Chicago Loan Documents (hereinafter defined) and under the Chicago Note (said indebtedness and interest due under the Chicago Note and all other sums due thereunder under the Chicago Note and the other Chicago Loan Documents being hereinafter collectively referred to as the "Chicago Debt"). Mortgagor has mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, and hypothecated and by these presents does hereby deed, mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee, its successors and/or assigns, the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements").

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

## GRANTING CLAUSE ONE

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

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

## GRANTING CLAUSE TWO

All machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor, if any (including, but not limited to, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, food carts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, pipes, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamo, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary hotel equipment and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "Equipment"), including any leases of any of the foregoing, any deposits existing at any time in connection with any of the foregoing, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interests" as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Second Mortgage;

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## GRANTING CLAUSE THREE

Awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;

## GRANTING CLAUSE FOUR

All leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (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, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance (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 Chicago Debt;

## GRANTING CLAUSE FIVE

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

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## GRANTING CLAUSE SIX

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

## GRANTING CLAUSE SEVEN

All accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, franchise agreements, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "Intangibles"); and

## GRANTING CLAUSE EIGHT

All proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Chicago Borrower shall well and truly pay to Mortgagee the Chicago Debt at the time and in the manner provided in the Chicago Note and this Second Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Chicago Note and in the other Chicago Loan Documents (hereinafter defined) in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

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

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## PART I

### GENERAL PROVISIONS

1. **Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay the Chicago Debt at the time and in the manner provided in the Chicago Note and in this Second Mortgage. All the covenants, conditions and agreements contained in (a) the Chicago Note and (b) all and any of the documents including the Chicago Note and this Second Mortgage now or hereafter executed by Chicago Borrower and/or Mortgagor and/or others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Chicago Note or otherwise is executed and/or delivered in connection with the Chicago Note and this Second Mortgage (the "Chicago Loan Documents") are hereby made a part of this Second Mortgage to the same extent and with the same force as if fully set forth herein.

2. **Warranty of Title.** Mortgagor warrants that Mortgagor has good, marketable and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Second Mortgage and to deed, encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for (i) the mortgage made by Mortgagor to Mortgagee dated as of the date hereof which is a first lien on the Premises securing an indebtedness of Mortgagor in the original principal amount of Seven Million Six Hundred Thousand and No/100 Dollars (\$7,600,000.00) (the "First Mortgage"); and (ii) those exceptions shown in the title insurance policy insuring the lien of this Second Mortgage. This Second Mortgage is and will remain a valid and enforceable second lien on and security interest in the Mortgaged Property, subject only to said First Mortgage and said exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Second Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. **Insurance.**

(a) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall obtain and maintain during the entire term of this Second Mortgage (the "Term") policies of insurance against loss or damage by fire, windstorm, lightning and such other perils as are included in a standard "all-risk" endorsement, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the greatest of (i) the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation, (ii) the outstanding principal balance of the Chicago Loan, and (iii) such amount

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that the insurer would not deem Mortgagor a co-insurer under said policies. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance (except as otherwise agreed to in writing by Mortgagee) and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation, and shall have a deductible no greater than the least of (x) \$25,000.00, (y) five percent (5%) of the full replacement cost of the Improvements and (z) five percent (5%) of the annual Net Operating Income (as hereinafter defined) of the Mortgaged Property, unless so agreed by Mortgagee

(b) Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall also obtain and maintain during the Term the following policies of insurance

(i) Flood insurance if any part of the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Program in an amount at least equal to the outstanding principal amount of the Chicago Loan or the maximum limit of coverage available with respect to the Improvements and Equipment under said Program, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of \$1,000,000 and \$2,000,000 in the aggregate for any policy year. In addition, at least \$15,000,000 excess and/or umbrella liability insurance shall be obtained and maintained for any and all claims, including all legal liability imposed upon Mortgagor and all court costs and attorneys' fee incurred in connection with the ownership, operation and maintenance of the Mortgaged Property.

(iii) Rental loss and/or business interruption insurance in an amount equal to the greater of (A) estimated gross revenues for eighteen (18) months from the operations of the Mortgaged Property or (B) the projected operating expenses (including debt service) for eighteen (18) months for the maintenance and operation of the Mortgaged Property. The amount of such insurance shall be increased from time to time during the Term as and when new Leases and renewal Leases are entered into and the Rents increase or the estimate of (or the actual) gross revenue, as may be applicable, increases.

(iv) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions), to the extent that such items now or hereafter exist upon the Mortgaged Property, in an amount at least

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equal to the outstanding principal amount of the Chicago Note or \$2,000,000, whichever is less.

(v) Worker's compensation insurance with respect to any employees of Mortgagor, as required by any governmental authority or legal requirement.

(vi) During any period of repair or restoration, builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Mortgaged Property insuring against such risks (including, without limitation, fire and extended coverage and collapse of the Improvements to agreed limits) as Mortgagee may request, in form and substance acceptable to Mortgagee.

(vii) Ordinance or law coverage to compensate for the cost of demolition and the increased cost of construction.

(viii) Earthquake insurance, if available, with a limit of not less than an amount approved by Mortgagee.

(ix) Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests.

(c) All policies of insurance (the "Policies") required pursuant to this paragraph: (i) shall be issued by companies approved by Mortgagee and licensed to do business in the state where the Mortgaged Property is located, with a claims paying ability rating of "AA" or better by Standard & Poor's Rating Services, a division of the McGraw Hill Companies, Inc. and/or a rating of "A.X" or better in the current Best's Insurance Reports; (ii) shall name Mortgagee and its successors and/or assigns as their interest may appear as the beneficiary/mortgagee; (iii) shall contain a non-contributory standard mortgagee clause and a lender's loss payable endorsement or their equivalents, naming Mortgagee as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Mortgagee; (v) shall be maintained throughout the Term without cost to Mortgagee; (vi) shall be assigned and the originals delivered to Mortgagee; (vii) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; and (viii) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and shall furnish to Mortgagee evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Mortgagee (provided, however, that Mortgagor is not required to furnish such evidence of payment to Mortgagee in the event that such Insurance Premiums have been paid by Mortgagee

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pursuant to Section 5 hereof). If Mortgagor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Mortgagor agrees to reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices.

#### 4. Casualty.

(a) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty"), Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of an Insured Casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall become part of the Chicago Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand.

(b) Subject to the provisions of the First Mortgage, in case of loss or damages covered by any of the Policies, the following provisions shall apply:

(i) In the event of an Insured Casualty that does not exceed the lesser of (a) \$250,000.00 or (b) ten percent (10%) of the then outstanding principal balance of the Chicago Note, Mortgagor may settle and adjust any claim without the consent of Mortgagee and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Mortgagor is hereby authorized to collect and receipt for any such insurance proceeds.

(ii) In the event an Insured Casualty shall exceed the lesser of (a) \$250,000.00 or (b) ten percent (10%) of the then outstanding principal balance of the Chicago Note, then and in that event Mortgagee may settle and adjust any claim without the consent of Mortgagor and agree with the insurance company or companies on the amount to be paid on the loss and the proceeds of any such policy shall be due and payable solely to Mortgagee and held in escrow by Mortgagee in accordance with the terms of this Second Mortgage.

(iii) In the event of an Insured Casualty where the loss is in an aggregate amount less than fifty percent (50%) of the original principal balance of the Chicago Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property



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can be restored within six (6) months and prior to the Anticipated Repayment Date (as defined in the Chicago Note) to an economic unit not materially less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Chicago Debt, then, if no Event of Default (as hereinafter defined) shall have occurred and be then continuing, the proceeds of insurance (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iv) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Chicago Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Chicago Debt shall be without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred, then the Mortgagor shall pay to Mortgagee an additional amount equal to the Yield Maintenance Premium (as defined in the Chicago Loan Documents), if any, that would be required under the Chicago Loan Documents if Defeasance Collateral (as defined in the Chicago Loan Documents) was to be purchased by Mortgagor. Any such application to the Chicago Debt shall be applied to those payments of principal and interest last due under the Chicago Note but shall not postpone or reduce any payments otherwise required pursuant to the Chicago Note other than such last due payments.

(v) In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other reasonable evidences of cost, payment and performance as Mortgagee may reasonably require and approve. Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and

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approved by Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to any party entitled thereto.

5. **Payment of Taxes, Etc.** Except during any period when such payments are made under the First Mortgage, Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as the same become due and payable. Mortgagor will deliver to Mortgagee receipts for payment or other evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, that Mortgagor is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid for by Mortgagee pursuant to Section 6 hereof).

## 6. **Tax and Insurance Impound Fund; Replacement Escrow Fund.**

(a) Except during any period when such payments are being made under the First Mortgage, Mortgagor shall pay to Mortgagee on each Payment Date (i) one-twelfth of the Taxes that Mortgagee estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mortgagee sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "Tax and Insurance Impound Fund"). The Tax and Insurance Impound Fund and the payments of interest or principal or both, shall be added

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together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagee will apply the Tax and Insurance Impound Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Section 4 and Section 5 hereof. In making any payment relating to the Tax and Insurance Impound Fund, Mortgagee may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Impound Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 4 and Section 5 hereof, Mortgagee shall, in its sole discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Impound Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If at any time Mortgagee determines that the Tax and Insurance Impound Fund is not or will not be sufficient to pay the items set forth in (a) and (b) above, Mortgagee shall notify Mortgagor of such determination and Mortgagor shall increase its monthly payments to Mortgagee by the amount that Mortgagee estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or expiration of the Policies, as the case may be. Until expended or applied as above provided, any amounts in the Tax and Insurance Impound Fund shall constitute additional security for the Chicago Debt. The Tax and Insurance Impound Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the Tax and Insurance Impound Fund shall be payable to Mortgagor. If Mortgagee so elects at any time, Mortgagor shall provide, at Mortgagor's expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the Term.

(b) Except during any period when such payments are made under the First Mortgage, Mortgagor shall pay to Mortgagee commencing on October 11, 1997 and on the eleventh (11th) day of each calendar month thereafter a sum equal to five percent (5%) of the gross revenue generated by the Mortgaged Property during the calendar month occurring two (2) months prior to the required date of such deposit, in each case, which shall be deposited with and held by Mortgagee for replacement and repairs required to be made to the Mortgaged Property during the calendar year and for any other work approved by Mortgagee ("Replacement Escrow Fund"). Mortgagee may in its reasonable discretion reassess its estimate of the amount necessary for the Replacement Escrow Fund from time to time and in its discretion, and may adjust the monthly amounts required to be deposited into the Replacement Escrow Fund by giving thirty (30) days notice to Mortgagor. Mortgagee shall make disbursements from the Replacement Escrow Fund as requested by Mortgagor, and approved by Mortgagee in its sole discretion, no more frequently than once in any thirty (30) day period of no less than \$5,000.00 upon delivery by Mortgagor of Mortgagee's standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Mortgagee for requests in excess of \$10,000.00, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Mortgagee may require an inspection of the Mortgaged Property at

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Mortgagor's expense prior to making a monthly disbursement in order to verify completion of replacements and repairs of items in excess of \$10,000.00 for which reimbursement is sought. The Replacement Escrow Fund shall be held in an interest bearing account in Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. All earnings or interest on the Replacement Escrow Fund shall be and become part of such Replacement Escrow Fund and shall be disbursed as provided in this Section 6(b). Until expended or applied as above provided, the Replacement Escrow Fund shall constitute additional security for the Chicago Debt. The Replacement Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee.

(c) Mortgagor hereby pledges to Mortgagee and grants to Mortgagee a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound Fund and the Replacement Escrow Fund as additional security for the payment of the Chicago Debt. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Tax and Insurance Impound Fund and/or the Replacement Escrow Fund to the payment of the Chicago Debt in any order in its sole discretion.

7. Condemnation. Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a "Condemnation") and shall deliver to Mortgagee copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Mortgagor, regardless of whether an Award (hereinafter defined) is available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with applicable law.

(a) Mortgagee is hereby irrevocably appointed as Mortgagor's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment ("Award") for any taking accomplished through a Condemnation (a "Taking") and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Second Mortgage. Notwithstanding any Taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a Taking), Chicago Borrower shall continue to pay the Chicago Debt at the time and in the manner provided for in the Chicago Note, in this Second Mortgage and the other Chicago Loan Documents and the Chicago Debt shall not be reduced unless and until any Award shall have been actually received and applied by Mortgagee to expenses of collecting the Award and to discharge of the Chicago Debt. Mortgagee shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Chicago Note. Mortgagor shall cause any Award that is payable to Mortgagor to be paid directly to Mortgagee.

(b) In the event of any Condemnation where the Award is in an aggregate amount less than the lesser of (i) \$250,000.00 or (ii) ten percent (10%) of the then

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outstanding original principal balance of the Chicago Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months and prior to the Anticipated Repayment Date to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Chicago Debt, then, if no Event of Default shall have occurred and be then continuing, the proceeds of the Award (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Condemnation, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the Award made available pursuant to the terms hereof.

(c) Except as provided above, the Award collected upon any Condemnation shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Chicago Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Chicago Debt shall be without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred then the Mortgagor shall pay to Mortgagee an additional amount equal to the Yield Maintenance Premium (as defined in the Chicago Loan Documents), if any, that would be required under the Chicago Loan Documents if Defeasance Collateral (as defined in the Chicago Loan Documents) was to be purchased by Mortgagor. Any such application to the Chicago Debt shall be applied to those payments of principal and interest last due under the Chicago Note but shall not postpone or reduce any payments otherwise required pursuant to the Chicago Note other than such last due payments. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Chicago Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to pay the Chicago Debt.

(d) In the event Mortgagor is entitled to reimbursement out of the Award received by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding resulting from such condemnation, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of the Award to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of costs, payment and performance as Mortgagee may reasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair,

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replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of the Award received by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, in the sole and absolute discretion of Mortgagee, be retained by Mortgagee and applied to payment of the Chicago Debt.

## 8. Leases and Rents.

(a) Subject to the provisions of the First Mortgage, Mortgagor does hereby absolutely and unconditionally assign to Mortgagee, all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Chicago Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Chicago Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) All leases shall be written on the standard form of lease which has been approved by Mortgagee. No material changes may be made to the Mortgagee-approved standard lease without the prior written consent of Mortgagee. All Leases shall provide that they are subordinate to this Second Mortgage and that the tenant agrees to attorn to Mortgagee. Unless otherwise approved by Mortgagee, each Lease shall contain a provision requiring the continuous operations of tenant's business on the premises. None of the Leases shall contain any

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option to purchase, any right of first refusal to lease or purchase, any right to terminate the lease term (except in the event of the destruction of all or substantially all of the Mortgaged Property), any non-disturbance or similar recognition agreement or other similar provisions which adversely affect the Mortgaged Property or which might adversely affect the rights of any holder of the Chicago Loan without the prior written consent of Mortgagee. Each tenant shall conduct business only in that portion of the Mortgaged Property covered by its lease. Upon request of Mortgagee, Mortgagor shall furnish Mortgagee with executed copies of all Leases.

(c) Mortgagor shall not, without the prior consent of Mortgagee (i) enter into any Lease of all or any part of the Mortgaged Property in excess of 5% of the total net rentable area of the Mortgaged Property (a "Major Lease"), (ii) cancel, terminate, abridge or otherwise modify the terms of any Major Lease, or accept a surrender thereof, (iii) consent to any assignment of or subletting under any Major Lease not in accordance with its terms, (iv) cancel, terminate, abridge or otherwise modify any guaranty of any Major Lease or the terms thereof, (v) accept prepayments or installments of Rents for a period of more than one (1) month in advance or (vi) further assign the whole or any part of the Leases or the Rents. In addition, Mortgagor shall not (A) lease all or any part of the Mortgaged Property, (B) cancel, terminate, abridge or otherwise modify the terms of any Lease, or accept a surrender thereof, (C) consent to any assignment of or subletting under any Lease not in accordance with its terms or (D) cancel, terminate, abridge or otherwise modify any guaranty of any Lease or the terms thereof unless such actions are exercised for a commercially reasonable purpose in arms-length transactions for market rate terms.

(d) Notwithstanding the provisions of Section 8(c), Mortgagor, as the lessor thereunder, may enter into proposed lease renewals and new leases without the prior written consent of Mortgagee if such proposed Lease or extension: (i) is not for greater than or equal to 10,000 square feet of the net rentable area of the Mortgaged Property, or greater than or equal to five percent (5%) of the total net rentable area of the Mortgaged Property; (ii) shall have an initial term of not less than three (3) years or greater than ten (10) years; (iii) shall provide for rental rates comparable to existing local market rates and shall be an arms-length transaction; (iv) shall not contain any options for renewal or expansion by the tenant thereunder at rental rates which are either below comparable market levels or less than the rental rates paid by the tenant during the initial lease term; (v) shall be to a tenant which is experienced, creditworthy and reputable; (vi) shall provide that it is subordinate to this Second Mortgage and that the tenant thereunder agrees to attorn to Mortgagee; and (vii) shall comply with the provisions of subparagraph (b), above. Mortgagor may enter into a proposed lease which does not satisfy all of the conditions set forth in clauses (i) through (vii) immediately above, provided Mortgagee consents in writing to such proposed lease, such consent not to be unreasonably withheld or delayed. Mortgagor expressly understands that any and all proposed leases are included in the definition of "Lease" or "Leases" as such terms may be used throughout this Second Mortgage.

(e) Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the



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value of the Leases as security for the Chicago Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; (vi) shall deliver to Mortgagee, upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee, provided that Mortgagor shall not be required to deliver such certificates more frequently than two (2) times in any calendar year; and (vii) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.

(f) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks, or otherwise held in compliance with applicable law, as may be reasonably satisfactory to Mortgagee. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Mortgagee subject to the terms of the Leases.

9. **Maintenance and Use of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property that is destroyed by any casualty, or becomes damaged, worn or dilapidated or that is affected by any proceeding of the character referred to in Section 7 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning

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provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or to any portion thereof or (iii) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of management. Mortgagor will not install or permit to be installed on the Premises any underground storage tank.

## 10. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Chicago Loan, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Chicago Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Chicago Borrower default in the repayment of the Chicago Debt, Mortgagee can recover the Chicago Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) Notwithstanding anything to the contrary contained in this Second Mortgage, and subject to the provisions of the First Mortgage, Mortgagee will not unreasonably withhold its consent to a conveyance of the entire Mortgaged Property by Mortgagor to a single purpose entity (any such entity complying with the terms of this clause (b) is herein a "Premises Transferee") complying with the terms of this clause (b) and the terms of Section 12 hereof which shall be indirectly and directly owned by persons and/or entities of good character and experienced in owning premises similar to the Mortgaged Property (and Mortgagee receives evidence therefor acceptable to Mortgagee) and otherwise acceptable to Mortgagee in its sole discretion, provided, that Mortgagor shall, as a condition to such consent, satisfy the Transfer Conditions (as hereinafter defined). The term "Transfer Conditions" shall mean each and everyone of the following: (a) the Premises Transferee shall assume the Mortgagor's obligations under this Second Mortgage, the First Mortgage, the First Mortgage Note, all contracts to which Mortgagor is a party, and all documents executed and/or otherwise delivered in connection with the First Mortgage, the First Mortgage Note (collectively, the "First Mortgage Loan Documents") and related obligations of Mortgagor, in form and substance satisfactory to Mortgagee, which assumption shall not act to release Mortgagor, (b) the Premises Transferee shall simultaneously with the purchase of the Premises purchase the Holiday Inn located at 1501 Sherman Avenue, Chicago, Illinois (the "Chicago Property") and assume the obligations under the Chicago Mortgage (as hereinafter defined), the Chicago Note, all contracts to which Chicago Borrower is

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a party, and all other Chicago Loan Documents and related obligations of Chicago Borrower, in form and substance satisfactory to Mortgagee which assumption shall not act to release the Chicago Borrower, (c) Mortgagor shall provide to Mortgagee a true and complete copy of all documentation effecting or otherwise related to the transfer, including, without limitation, the organizational documents of the Premises Transferee and the direct and indirect partners, members and principals (as applicable) of the Premises Transferee, which documentation shall comply with the requirements of Section 12 hereof and otherwise be in form and substance acceptable to Mortgagee, (d) there is no Event of Default or default at the time of such conveyance, (e) there shall be no further direct or indirect transfer or conveyance of the Mortgaged Property, (f) Mortgagor shall give sixty (60) days prior written notice of the proposed conveyance to Mortgagee, which notice shall specify the details of the proposed conveyance, the anticipated date of such conveyance, the name (and shareholders, partners or other indirect or direct beneficial owners thereof, if applicable) and address of such Premises Transferee, (g) Mortgagor and such Premises Transferee shall provide Mortgagee with any additional information, materials and assurances regarding such conveyance and/or the Premises Transferee and the New Guarantor (as hereinafter defined) as Mortgagee shall reasonably require, including, without limitation, assignments and assumptions of all contracts to which Mortgagor is a party and consent thereto by the other parties to such contracts, financial statements, proof of formation, good standing, authority and opinions of counsel as to such matters as Mortgagee shall require, all satisfactory to Mortgagee, (h) the New Guarantor shall deliver to Mortgagee executed guaranties and indemnities in substantially the form of the guaranties and indemnities executed by Guarantor (as hereinafter defined) in connection with the Chicago Loan, each in form and substance satisfactory to Mortgagee, (i) Mortgagor and the Premises Transferee shall provide such amendments to this Second Mortgage and the other Chicago Loan Documents, affidavits, estoppels, UCC-1 financing statements and title insurance endorsements as shall be reasonably required by Mortgagee in order to assure Mortgagee the continuing benefit of the Chicago Loan Documents, (j) Mortgagor shall deliver to Mortgagee an affidavit and indemnification regarding Internal Revenue Code Sections 1445 and 1701, (k) Mortgagor shall promptly pay, or cause to be paid, all costs and expenses incurred by Mortgagee in respect of such transaction, including, without limitation, reasonable legal fees and disbursements, title insurance and search charges and the other reasonable expenses, if any, incurred by Mortgagee in respect of such conveyance and any transfer or other similar taxes payable in respect of such conveyance, (l) Mortgagor shall pay to Mortgagee an assumption fee equal to one percent (1%) of the then outstanding principal amount of the Chicago Debt, and (m) the holder of the First Mortgage shall consent to such transaction. The term "New Guarantor" shall mean direct or indirect principals of the Premises Transferee, each having a net worth, liquidity and financial condition acceptable to Mortgagee. In addition to the foregoing conditions, Mortgagee shall have no obligation to consent to any such conveyance unless the following conditions are satisfied: (x) Mortgagor shall deliver to Mortgagee such assurances (including, without limitation, opinions of counsel) that Mortgagee shall require that the Premises Transferee will not and could not be the subject of a substantive consolidation in any bankruptcy proceeding and (y) Mortgagee receives recommendations or other evidence in writing from the Rating Agencies (as hereinafter defined) that such conveyance will not result in a requalification, reduction or withdrawal of any rating assigned or to be

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assigned in connection with any Securitization (as hereinafter defined) of, or relative to, the Chicago Loan. The term "Rating Agencies" as used herein shall mean each of Standard & Poor's Ratings Group, a division of the McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Duff and Phelps Credit Rating Co. and Fitch Investors Service, L.P., or any other nationally-recognized statistical rating agency which has been approved by Mortgagee. The term "Securitization" as used herein shall mean the placing of the Chicago Loan, or a participation interest therein, in a pool of loans, participation interests and/or notes secured by or dependent on the cash flow of mortgage loans, which will constitute security for a rated securities offering;

(c) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section 10 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, Guarantor (as hereinafter defined), or any partner or member of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance, pledge, encumbrance or other transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation; (iv) if Mortgagor, any Guarantor or any partner or member of Mortgagor or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, joint venturer or the transfer of any ownership interest of any general partner, managing partner or joint venturer or the transfer, assignment, encumbrance or pledge of any ownership interest of any general partner, managing partner or joint venturer; (v) if Mortgagor or any Guarantor or any partner or member of Mortgagor or any Guarantor is a limited partnership, the voluntary or involuntary sale, conveyance, transfer or pledge of any limited partnership interests or the creation or issuance of new limited partnership interests, by which an aggregate of more than 25% of such limited partnership interests are held by parties who are not currently limited partners; or (vi) if Mortgagor or any Guarantor or any partner or member of Mortgagor or any Guarantor is a limited liability company, the voluntary or involuntary sale, conveyance or transfer of a member's interest.

(d) Notwithstanding the provisions of Section 10(c), any Guarantor may pledge its economic interest as an equity owner of a member of Mortgagor (but not any right to vote such pledged interests or to become a substituted shareholder, partner or member thereof) (the "Pledged Interests"), in connection with a loan which is to be subordinate to the First Mortgage Loan and the Chicago Loan (the "Subordinate Loan") subject to Mortgagee's reasonable consent and provided that the holder of the First Mortgage consents thereto and provided further that:

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- (i) no default or Event of Default has occurred and is continuing under the Chicago Loan Documents;
- (ii) the identity of the proposed pledgee (a "Subordinate Lender") is reasonably satisfactory to Mortgagee;
- (iii) the aggregate amount of all Subordinate Loans shall not exceed \$1,500,000.00 and the other terms of the Subordinate Loan shall be satisfactory to Mortgagee;
- (iv) Mortgagor shall deliver to Mortgagee a fully executed original Subordination and Standstill Agreement entered into among Mortgagee and Subordinate Lender (the "Subordination Agreement"), whereby the Subordinate Loan and the rights of the holder of the Subordinate Loan shall be subject and subordinate to the lien and security interest of this Second Mortgage and the payment of the indebtedness secured hereby. The Subordination Agreement shall (i) be prepared by Mortgagee's counsel, (ii) be acceptable to Mortgagee in all respects, (iii) executed by the entity whose interests are being pledged, acknowledging that Mortgagor's pledge to Mortgagee is superior to Mortgagor's pledge to Subordinate Lender and (iv) provide, among other things, that (A) no payments shall be made with respect to the Subordinate Loan prior to the indefeasible repayment in full of the Chicago Debt, except to the extent that funds are disbursed to Mortgagor from the Borrower Remainder Subaccount," as set forth in a cash management agreement by and between the Chicago Borrower and the Mortgagee of even date herewith (the "Chicago Cash Management Agreement"), (B) the Subordinate Loan shall be subject and subordinate to any further loan or loans made by Mortgagee to Mortgagor and to any instruments securing same, (C) the holder of the Subordinate Loan may not exercise its remedies thereunder or under any document executed in respect thereto until the Mortgagor's obligations under the Chicago Loan Documents have been satisfied in full, and (D) provide for such other provisions that Mortgagee typically requires in similar subordination and standstill agreements. Mortgagor understands and agrees that the Subordination Agreement will in material and significant ways "deeply" subordinate and restrict the rights of the holder of the Subordinate Chicago Loan;
- (v) Mortgagor shall deliver to Mortgagee true and complete copies of all loan documents evidencing or securing the Subordinate Loan; and
- (vi) Mortgagor shall deliver evidence in writing from the applicable Rating Agencies to the effect that the pledging of the Pledged Interests will not result in a downgrading, withdrawal or qualification of the rating for any securities issued in connection with a Securitization.

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(e) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Chicago Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any indirect or direct interest in Mortgagor in violation of the terms hereof without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any indirect or direct interest in Borrower in violation of the terms hereof regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

(f) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any indirect or direct interest in Borrower in violation of the terms hereof shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property made in contravention of this Section 10 shall be null and void and of no force and effect.

(g) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

11. **Representations and Covenants Concerning Loan.** Mortgagor represents, warrants and covenants as follows:

(a) The Chicago Note, this Second Mortgage and the other Chicago Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Chicago Note, this Second Mortgage or any of the other Chicago Loan Documents, or the exercise of any right thereunder, render this Second Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(b) All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Mortgaged Property as a hotel (collectively, the "Licenses"), have been obtained and are in full force and effect (including, without limitation, any applicable liquor license). The Mortgagor shall keep and maintain all licenses necessary for the operation of the Mortgaged Property as a hotel. The Mortgaged Property is free of material damage and is in good repair, and there is no proceeding pending for the total or partial condemnation of, or affecting, the Mortgaged Property.



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(c) All of the Improvements which were included in determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Mortgaged Property except those which are insured against by title insurance. All of the Improvements comply with all material requirements of any applicable zoning and subdivision laws and ordinances.

(d) The Mortgaged Property is not subject to any Leases other than the Leases described in the rent roll delivered to Mortgagee in connection with this Second Mortgage. No person has any possessory interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder.

(e) The survey of the Mortgaged Property delivered to Mortgagee in connection with this Second Mortgage, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Mortgaged Property is situated, is certified to the Mortgagee, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Mortgaged Property or the title thereto.

(f) The Mortgaged Property is and shall at all times remain in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property.

(g) There has not been and shall never be committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under any of the Chicago Loan Documents.

(h) The Property Management Agreement, dated January 1, 1994 between Pacific Tai, Inc. (predecessor-in-interest to Mortgagor) and SB Yen's Management Group, Inc. ("Manager") (as assigned to Mortgagor, the "Management Agreement"), pursuant to which Manager operates the Mortgaged Property as a hotel, is in full force and effect and there is no default, breach or violation existing thereunder by any party thereto and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of

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notice or both, would constitute a default, breach or violation by any party thereunder. The fee due under the Management Agreement, and the terms and provisions of the Management Agreement, are subordinate to this Second Mortgage and Manager shall attorn to Mortgagee. Mortgagor shall not terminate, cancel, modify, renew or extend the Management Agreement, or enter into any agreement relating to the management or operation of the Mortgaged Property with Manager or any other party without the express written consent of Mortgagee, which consent shall not be unreasonably withheld. If at any time Mortgagee consents to the appointment of a new manager, such new manager and Mortgagor shall, as a condition of Mortgagee's consent, execute a Consent and Agreement of Manager in the form then used by Mortgagee.

(i) The Best Western Franchise Agreement dated September 10, 1994 between Pacific Tai, Inc., as franchisee, and Best Western International, Inc., as franchisor (as assigned to Mortgagor, the "Franchisor") (as assigned to Mortgagor, the "Franchise Agreement"), pursuant to which Mortgagor has the right to operate the hotel located on the Mortgaged Property under the name Best Western and under a hotel system (including a reservation system) controlled by Franchisor, is in full force and effect and there is no default, breach or violation existing thereunder by any party thereto and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation by any party thereunder.

(j) Neither the execution and delivery of the Chicago Loan Documents, the Mortgagor's performance thereunder, the recordation of this Second Mortgage, nor the exercise of any remedies by Mortgagee, will adversely affect Mortgagor's rights under the Franchise Agreement, the Management Agreement or any of the Licenses.

(k) No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by the Mortgagor in connection with the Chicago Loan, other than any such parties which have been paid in full in connection with the Chicago Loan on or before the date hereof.

(l) There are no leases applicable to any portion of the Mortgaged Property.

(m) No portion of the Mortgaged Property is operated so as to require a liquor or any similar type of license, except such licenses as have been obtained by Mortgagor.

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

(a) Mortgagor does not own and will not own any asset or property other than (i) the Mortgaged Property, and (ii) incidental personal property necessary for the ownership or operation of the Mortgaged Property.

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(b) Mortgagor will not engage in any business other than the ownership, management and operation of the Mortgaged Property and Mortgagor will conduct and operate its business as presently conducted and operated.

(c) Mortgagor will not enter into any contract or agreement with any affiliate of the Mortgagor, any constituent party of Mortgagor, any guarantor (a "Guarantor") of the Chicago Debt or any part thereof or any affiliate of any constituent party or Guarantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Except as set forth in the First Mortgage Loan Documents, Mortgagor has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Chicago Debt, (ii) unsecured trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, and (iii) debt incurred in the financing of equipment and other personal property used on the Premises.

(e) Mortgagor has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any Guarantor or any affiliate of any constituent party or Guarantor), and shall not acquire obligations or securities of its affiliates.

(f) Mortgagor is and will remain solvent and Mortgagor will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(g) Mortgagor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Mortgagor will not, nor will Mortgagor permit any constituent party or Guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, trust or other organizational documents of Mortgagor or such constituent party or Guarantor without the prior written consent of Mortgagee.

(h) Mortgagor will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and Mortgagor will file its own tax returns unless required otherwise by applicable law. Mortgagor shall maintain its books, records, resolutions and agreements as official records.

(i) Mortgagor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate of any constituent party or Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division

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or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(j) Mortgagor will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Neither Mortgagor nor any constituent party will seek the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Mortgagor.

(l) Mortgagor will not commingle the funds and other assets of Mortgagor with those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party of Guarantor, or any other person.

(m) Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

(n) Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person.

(o) If Mortgagor is a limited partnership or a limited liability company, the general partner or managing member shall be a corporation whose sole asset is its interest in Mortgagor and the general partner or managing member will at all times comply, and will cause Mortgagor to comply, with each of the representations, warranties, and covenants contained in this Section 12 as if such representation, warranty or covenant was made directly by such general partner or managing member.

### 13. Estoppel Certificates and No Default Affidavits.

(a) After request by Mortgagee, Mortgagor shall within ten (10) days furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Chicago Note, (ii) the unpaid principal amount of the Chicago Note, (iii) the rate of interest of the Chicago Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Chicago Debt, if any, (vi) that the Chicago Note, this Second Mortgage and the other Chicago Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification; and (vii) reaffirming all representations and warranties of Mortgagor set forth herein and in the other Chicago Loan Documents as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes.

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(b) Mortgagor shall deliver to Mortgagee upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee provided that Mortgagor shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

14. **Controlling Agreement.** It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section 14 (and the similar paragraph contained in the Chicago Note) shall control every other covenant and agreement in this Second Mortgage and the other Chicago Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Chicago Note or under any of the other Chicago Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Chicago Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Chicago Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Chicago Note and all other Chicago Debt (or, if the Chicago Note and all other Chicago Debt have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Chicago Note and the other Chicago Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Chicago Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Chicago Debt until payment in full so that the rate or amount of interest on account of the Chicago Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Chicago Debt for so long as the Chicago Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Chicago Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

15. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Second Mortgage which deducts the Chicago Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Chicago Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a

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defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Chicago Debt immediately due and payable.

16. **No Credits on Account of the Chicago Debt.** Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Chicago Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Second Mortgage or the Chicago Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Chicago Debt immediately due and payable.

17. **Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Chicago Note or this Second Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

18. **Books and Records.**

(a) The financial statements heretofore furnished to Mortgagee are, as of the dates specified therein, complete and correct and fairly present the financial condition of the Mortgagor and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with generally accepted accounting principles. Mortgagor does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Mortgagor and reasonably likely to have a materially adverse effect on the Mortgaged Property or the operation thereof as a hotel, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operation or business of Mortgagor from that set forth in said financial statements.

(b) Mortgagor will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Mortgaged Property and will furnish, or cause to be furnished, to Mortgagee on or before forty-five (45) days after the end of each calendar quarter the following items, each certified by Mortgagor as being true and correct: (i) a written statement (rent roll) dated as of the last day of each such calendar quarter identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, and identifying any defaults or payment delinquencies thereunder, a report of occupancy for the subject quarter including an average daily rate, and any and all franchise inspection reports received by Mortgagor during the subject quarter; (ii) monthly and year to date operating statements prepared for each calendar month during each such calendar quarter, noting Net Operating Income, Gross Income from Operations, and Hotel Operating Expenses (all as hereinafter defined), and including an itemization of actual (not pro forma) capital expenditures and other information necessary and sufficient under the Uniform System of Accounts for Hotels,

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current edition, to fairly represent the financial position and results of operation of the Mortgaged Property during such calendar month, all in form satisfactory to Mortgagee; (iii) a property balance sheet for each such calendar quarter; (iv) a comparison of the budgeted total income and total expenses and the actual total income and total expenses for each calendar quarter and year to date together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such quarterly periods and year to date; (v) a calculation reflecting the DSCR (as defined in the Chicago Note) as of the last day of each such calendar quarter; and (vi) monthly occupancy statements, including average daily rate. Mortgagor shall furnish monthly each of the items listed in the immediately preceding sentence within thirty (30) days after the end of such month. All monthly operating statements shall be prepared based upon the Uniform System of Accounts for Hotels, current edition. Within one hundred twenty (120) days following the end of each calendar year, Mortgagor shall furnish statements of its financial affairs and condition including a balance sheet and a statement of profit and loss for the Mortgagor in such detail as Mortgagee may request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year, which statements shall be prepared by Mortgagor and audited by a "Big Six" accounting firm or other independent certified public accountant acceptable to Mortgagee. Mortgagor's annual financial statements shall be accompanied by a certificate executed by the Designated Officer (as defined in the Chicago Note) stating that each such annual financial statement presents fairly the financial condition of the Mortgaged Property being reported upon audited by a "Big Six" accounting firm or other independent certified public accountant acceptable to Mortgagee. Each such annual financial statement shall be prepared in accordance with the Uniform System of Accounts for Hotels, current edition. At any time and from time to time Mortgagor shall deliver to Mortgagee or its agents such other financial data as Mortgagee or its agents shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property.

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(c) For the purposes of this Second Mortgage, the following terms shall have the following meanings:

(i) The term "Net Operating Income" shall mean the amount obtained by subtracting Hotel Operating Expenses from Gross Income from Operations.

(ii) The term "Gross Income from Operations" shall mean all income, computed in accordance with the Uniform System of Accounts for Hotels, current edition, derived for each full or partial month during the Term from the ownership and operation of the Mortgaged Property from whatever source, including, but not limited to, all guest room revenues, all food, beverage and merchandise sales receipts, all interest income, if any, Rents, utility charges, escalations, forfeited security deposits, service fees or charges, license fees, parking fees, rent concessions or credits, and any business interruption insurance proceeds but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Mortgagor to any government or governmental agency, refunds and uncollectible accounts, sales of furniture, fixtures and equipment,

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proceeds of casualty insurance and condemnation awards, and interest on credit accounts. Gross income shall not be diminished as a result of the Second Mortgage or the creation of any intervening estate or interest in the Mortgaged Property or any part thereof.

(iii) The term "Hotel Operating Expenses" shall mean the total of all expenditures of whatever kind relating to the operation, maintenance and management of the Mortgaged Property that are incurred on a regular monthly or other periodic basis, including, without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, taxes and assessments, advertising expenses, management fees, franchise fees, contributions to the Replacement Escrow Fund, payroll and related taxes, computer processing charges, operational equipment or other lease payments as approved by Mortgagee, and other similar costs, but excluding depreciation, debt service and capital expenditures, all calculated on a monthly basis in accordance with the Uniform System of Accounts for Hotels, current edition.

19. Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

20. Further Acts, Etc.

(a) Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby deeded, mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Second Mortgage or for filing, registering or recording this Second Mortgage or for facilitating the sale of the Chicago Loan and the Chicago Loan Document, as described in Section 20(b) below. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of or the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in

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equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this paragraph.

(b) Mortgagor acknowledges that Mortgagee and its successors and assigns may (i) sell this Second Mortgage, the Chicago Note and other Chicago Loan Documents to one or more investors as a whole loan, (ii) participate the Chicago Loan secured by this Second Mortgage to one or more investors, (iii) deposit this Second Mortgage, the Chicago Note and other Chicago Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, or (iv) otherwise sell the Chicago Loan or interest therein to investors (the transactions referred to in clauses (i) through (iv) are hereinafter each referred to as "Secondary Market Transaction"). Mortgagor shall cooperate with Mortgagee in effecting any such Secondary Market Transaction and shall cooperate to implement all requirements imposed by any Rating Agency involved in any Secondary Market Transaction. Mortgagor, however, shall not be required to modify any documents evidencing or securing the Chicago Loan which would modify (A) the interest rate payable under the Chicago Note, (B) the stated maturity of the Chicago Note, (C) the amortization of principal of the Chicago Note, (D) the non-recourse provisions of the Chicago Loan or (E) any other material economic term of the Chicago Loan. Mortgagor shall provide such information, legal opinions and documents relating to Mortgagor, Guarantor, if any, the Mortgaged Property and any tenants of the Improvements as Mortgagee may reasonably request in connection with such Secondary Market Transaction. In addition, Mortgagor shall make available to Mortgagee all information concerning its business and operations that Mortgagee may reasonably request. Mortgagee shall be permitted to share all such information with the investment banking firms, Rating Agencies, accounting firms, law firms and other third-party advisory firms involved with the Chicago Loan and the Chicago Loan Documents or the applicable Secondary Market Transaction. It is understood that the information provided by Mortgagor to Mortgagee may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus various investors may also see some or all of the information. Mortgagee and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Mortgagor and Mortgagor indemnifies Mortgagee as to any losses, claims, damages or liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such information or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, or in light of the circumstances under which they were made, not misleading. Mortgagee may publicize the existence of the Chicago Loan in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development.

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

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

22. **Reporting Requirements.** Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or the death, insolvency or bankruptcy filing of any Guarantor.

23. **Events of Default.** The Chicago Debt shall become immediately due and payable at the option of Mortgagee upon the happening of any one or more of the following events of default (each an "Event of Default"):

- (a) if any portion of the Chicago Debt is not paid on or before the fifth day after the date on which such payment is due;
- (b) subject to Mortgagor's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when the same are due and payable (unless sums equaling the amount of Taxes and Other Charges then due and payable have been delivered to Mortgagee in accordance with Section 6 hereof);
- (c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Mortgagee upon request;
- (d) if, except as expressly permitted hereby, Mortgagor transfers or encumbers any portion of the Mortgaged Property or any indirect or direct interest in Mortgaged Property is transferred or encumbered without Mortgagee's prior written consent;
- (e) if any representation or warranty of Mortgagor, or of any Guarantor, made herein or in any other Chicago Loan Document or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;
- (f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

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(g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) if Mortgagor shall be in default under any other mortgage, deed of trust or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Second Mortgage;

(i) subject to Mortgagor's right to contest as provided herein, if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien and such lien is not removed of record within thirty (30) days of the filing or recording of such lien (except a lien for local real estate taxes and assessments not then due and payable);

(j) if Mortgagor fails to cure properly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property within thirty (30) days after Mortgagor first receives notice of any such violations;

(k) except as permitted in this Second Mortgage, the alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Mortgagee;

(l) if Mortgagor shall continue to be in default under any term, covenant, or provision of the Chicago Note or any of the other Chicago Loan Documents, beyond applicable cure periods contained in those documents;

(m) if Mortgagor fails to cure a default under any other term, covenant or provision of this Second Mortgage within thirty (30) days after Mortgagor first receives notice of any such default; provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional sixty (60) days to cure such default provided that Mortgagor diligently and continuously pursues such cure;

(n) if without Mortgagee's prior written consent, (i) the hotel manager for the Mortgaged Property under the Management Agreement (or any successor management agreement) is terminated, resigns or is removed, or (ii) the ownership, management or control of such hotel manager is transferred to another person or entity other than the general partner or managing member, if any, of Mortgagor, or (iii) there is any material change in the Management Agreement (or any successor management agreement);

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(o) if a default has occurred and continues beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the hotel manager to terminate or cancel the Management Agreement (or any successor management agreement);

(p) if without Mortgagee's prior consent, there is any material change in the Franchise Agreement (or any successor franchise agreement);

(q) if a default has occurred and continues beyond any applicable cure period under the Franchise Agreement (or any successor franchise agreement) if such default permits the franchisor to terminate or cancel the Franchise Agreement (or any successor franchise agreement);

(r) if Mortgagor ceases to do business as a hotel on the Mortgaged Property or terminates such business for any reason whatsoever (other than temporary cessation in connection with any repair or renovation thereof undertaken with the consent of Mortgagee);

(s) if Mortgagor is in default beyond the expiration of any applicable notice or cure period in respect of any other debt of Mortgagor to Mortgagee; or

(t) if an Event of Default occurs under and as defined in that certain Mortgage, Assignment of Leases and Rents and Security Agreement (the "Chicago Mortgage") dated the date hereof by Chicago Borrower in favor of Mortgagee affecting the Chicago Property, or under any other document executed or delivered in connection with the loan (the "Chicago Loan") in the original principal amount of \$7,600,000.00 made by Mortgagee to the Chicago Borrower secured by the Chicago Loan Documents.

24. **Late Payment Charge.** If any portion of the Chicago Debt is not paid on or before the date on which such payment is due, Chicago Borrower shall pay to Mortgagee upon demand an amount equal to the lesser of three percent (3%) of such unpaid portion of the Chicago Debt or the maximum amount permitted by applicable law in order to defray a portion of the expenses incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Second Mortgage.

25. **Mortgagee's Right To Cure Defaults.** Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Second Mortgage or collect the Chicago Debt, and the cost and

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expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Chicago Note) for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Chicago Debt, shall be secured by this Second Mortgage and the other Chicago Loan Documents and shall be due and payable to Mortgagee upon demand.

## 26. Additional Remedies

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

(i) declare the entire Chicago Debt to be immediately due and payable;

(ii) institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Second Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Second Mortgage for the portion of the Chicago Debt then due and payable, subject to the continuing lien of this Second Mortgage for the balance of the Chicago Debt not then due;

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

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

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

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

(viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereof; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Mortgaged Property to the payment of Chicago Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

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

(x) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code including without limitation the right to receive and/or establish a lock box for all Rents proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Mortgaged Property

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

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

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

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

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

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

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

(h) Mortgagee may resort to any remedies and the security given by the Chicago Note, this Second Mortgage or the Chicago Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Chicago Note, this Second Mortgage or any of the other Chicago Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Chicago Note, this Second Mortgage or any of the other Chicago Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Chicago Note, this Second Mortgage or the other Chicago Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Chicago Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Chicago Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising the rights and remedies under this Section 26 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Chicago Debt and shall be secured by this Second Mortgage.

(i) The interests and rights of Mortgagee under the Chicago Note, this Second Mortgage or in any of the other Chicago Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Chicago Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, Guarantor or surety of any of the Chicago Debt.

27. **Right of Entry.** In addition to any other rights or remedies granted under this Second Mortgage, Mortgagee, and its agents, during the Term, shall have the right to enter and inspect the Mortgaged Property during normal business hours. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed

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reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Chicago Note and this Second Mortgage and shall bear interest thereafter until paid at the Default Rate.

## 28. Security Agreement

(a) This Second Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Second Mortgage has granted and hereby grants to Mortgagee, as security for the Chicago Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted. This Second Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. As such, this Second Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Second Mortgage.

(b) If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Chicago Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If

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Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements. Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Chicago Note, this Second Mortgage and any of the other Chicago Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Second Mortgage.

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

**30. Waiver of Setoff and Counterclaim.** All amounts due under this Second Mortgage, the Chicago Note and the other Chicago Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Mortgagor hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding in which Mortgagee is a participant, or arising out of or in any way connected with this Second Mortgage, the Chicago Note, any of the other Chicago Loan Documents, or the Chicago Debt.

**31. Contest of Certain Claims.** Notwithstanding the provisions of Section 5 and Section 23 hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within five (5) days of obtaining knowledge thereof, (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same, (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety reasonably satisfactory to Mortgagee, in the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof, (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith, (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default.

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under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

32. **Recovery of Sums Required to be Paid.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Chicago Debt as the same become due, without regard to whether or not the balance of the Chicago Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

33. **Marshalling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Second Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Second Mortgage and on behalf of all persons to the extent permitted by applicable law.

34. **Hazardous Substances.** Mortgagor hereby represents and warrants to Mortgagee that, to the best of Mortgagor's knowledge, after due inquiry and investigation except as disclosed in the Phase I environmental report (the "Environmental Reports") delivered to Mortgagee in connection with this Second Mortgage: (a) the Mortgaged Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state super-lien and environmental clean-up statutes and all rules and regulations adopted in respect to the foregoing laws whether presently in force or coming into being and/or effectiveness hereafter (collectively, "Environmental Laws"); (b) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or

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action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants including without limitation, petroleum, tremolite, anthophyllite, actinolite or polychlorinated biphenyls and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively, "Hazardous Substances"); (c) no Hazardous Substances are or have been (including the period prior to Mortgagor's acquisition of the Mortgaged Property) discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property other than in compliance with all Environmental Laws; (d) no Hazardous Substances are present on or under any nearby real property which could migrate to or otherwise affect the Mortgaged Property; and (e) no underground storage tanks exist on any of the Mortgaged Property. So long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor (i) shall keep or cause the Mortgaged Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws, (ii) shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on or near the Mortgaged Property and/or if Mortgagor shall become aware that the Mortgaged Property is in direct or indirect violation of any Environmental Laws and/or if Mortgagor shall become aware of any condition on or near the Mortgaged Property which shall pose a threat to the health, safety or welfare of humans, and (iii) Mortgagor shall remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law (or as shall be required by Mortgagee in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified consultant engaged by Mortgagee ("Mortgagee's Consultant")), promptly after Mortgagor becomes aware of same, at Mortgagor's sole expense. Notwithstanding anything to the contrary in this paragraph, the Mortgagor may use and store immaterial amounts of Hazardous Substances at the Mortgaged Property if such use or storage is in connection with the ordinary cleaning and maintenance of the Mortgaged Property so long as such use and storage (A) does not violate any applicable Environmental Laws and (B) is not the subject of any specific recommendations in the Environmental Reports. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure. The obligations and liabilities of Mortgagor under this Section 34 shall survive any termination, satisfaction, or assignment of this Second Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

35. **Asbestos.** Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry and investigation, no asbestos or any substance or material containing asbestos ("**Asbestos**") is located on the Mortgaged Property except as may have been disclosed in the Environmental Reports delivered to Mortgagee in connection with this Second Mortgage. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, Asbestos and shall remove any Asbestos promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with,

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all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. The obligations and liabilities of Mortgagor under this Section 35 shall survive any termination, satisfaction, or assignment of this Second Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

**36. Environmental Monitoring.** Mortgagor shall give prompt written notices to Mortgagee of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Mortgaged Property, (b) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance or Asbestos, and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Mortgagor shall permit Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law or Hazardous Substance, and Mortgagor shall pay all attorneys' fees and disbursements incurred by Mortgagee in connection therewith. Upon Mortgagee's request, at any time and from time to time while this Second Mortgage is in effect but not more frequently than once per calendar year, unless Mortgagee has determined (in the exercise of its good faith judgment) that reasonable cause exists for the performance of an environmental inspection or audit of the Mortgaged Property, Mortgagor shall provide at Mortgagor's sole expense, (i) an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on, in or near the Mortgaged Property, and (ii) an inspection or audit of the Mortgaged Property prepared by a duly qualified engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Mortgaged Property; provided, however, any such inspection or audit requested by Mortgagee, during the Term, in excess of one (1) inspection during each five (5) year period commencing upon the date hereof, shall be performed at Mortgagee's expense unless an Event of Default exists or Mortgagee has determined (in the exercise of its good faith and judgment) that reasonable cause exists for the performance of an environmental inspection or audit. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit may be added to the Chicago Debt and shall bear interest thereafter until paid at the Default Rate. In the event that any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at

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Mortgagor's expense upon request of Mortgagee. In the event that any investigation, site monitoring, containment cleanup, removal, restoration, or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "Remedial Work"), Mortgagor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or any such shorter period of time as may be required under applicable law.) All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Chicago Debt and shall bear interest thereafter until paid at the Default Rate.

### 37. Handicapped Access.

(a) Mortgagor agrees that the Mortgaged Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 (if applicable), all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee.

(c) Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

38. Indemnification. In addition to any other indemnifications provided herein or in the other Chicago Loan Documents, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against

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Mortgagee by reason of (a) ownership of this Second Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Second Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any Remedial Work, attorney and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Mortgaged Property to comply with any Access Laws; (k) any representation or warranty made in the Chicago Note, this Second Mortgage or any of the other Chicago Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with the Chicago Loan, any Lease or other transaction involving the Mortgaged Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto; and (m) the claims of any lessee of any or any portion of the Mortgaged Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease. Any amounts payable to Mortgagee by reason of the application of this paragraph shall be secured by this Second Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this Section 38 shall survive and termination, satisfaction, or assignment of this Second Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

**39. Notices.** Any notice, demand, statement, request or consent made hereunder shall be in writing, addressed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor, Mortgagee, as the case may be, shall designate in writing, and shall be deemed to be received by the addressee on (i) the day such notice is personally delivered to such addressee, (ii) the third (3rd) day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, (iii) the day following the day on which such notice is delivered to a nationally recognized overnight courier delivery service, or (iv) the day facsimile transmission is confirmed after transmission of such notice by telecopy to the telecopier number set forth below or such

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other telecopier number as Mortgagor or Mortgagee, as the case may be, shall designate in writing

If to Mortgagor: Evanston Northshore Hotel Partners, L.L.C.  
c/o SB Yen's Management Group, Inc.  
920 York Road  
Hinsdale, Illinois 60521  
Attention: Su-Mei Yen  
Telecopier: (630) 325-9511

with a copy to: J. Joseph Little, Esq.  
75 East Wacker Drive, 2d Floor  
Chicago, Illinois 60601  
Telecopier: (312) 368-1615

if to Mortgagee: Credit Suisse First Boston  
Mortgage Capital LLC  
Eleven Madison Avenue  
New York, New York 10010  
Attention: Blair A. West  
Telecopier: (212) 325-8160

and with a copy to: Sullivan & Worcester LLP  
767 Third Avenue  
New York, New York 10017  
Attention: Alan Pieskow, Esq.  
Telecopier: (212) 758-2151

#### 40. Authority.

(a) Mortgagor (and the undersigned representative of Mortgagor, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Second Mortgage, and to deed, mortgage, give, grant, bargain, sell, alien, enclose, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Second Mortgage on Mortgagor's part to be performed.

(b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations

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41. **Waiver of Notice.** Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Second Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Second Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor

42. **Remedies of Mortgagor.** In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Chicago Note, this Second Mortgage or any of the other Chicago Loan Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

43. **Sole Discretion of Mortgagee.** Wherever pursuant to this Second Mortgage, Mortgagee exercises any right given to it to consent or not consent or approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to consent or not consent, to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

44. **Non-Waiver.** The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Second Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantor to take any action to foreclose this Second Mortgage or otherwise enforce any of the provisions hereof or of the Chicago Note, or the other Chicago Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Chicago Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Chicago Note, this Second Mortgage or any of the other Chicago Loan Documents. Mortgagee may resort for the payment of the Chicago Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may elect. Mortgagee may take action to recover the Chicago Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Second Mortgage. The rights and remedies of Mortgagee under this Second Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

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45. **No Oral Change.** This Second Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

46. **Liability.** If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property, this Second Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

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

48. **Headings, Etc.** The headings and captions of various paragraphs of this Second Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

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

50. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Second Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Chicago Note," the word "Chicago Note" shall mean "the Chicago Note and any other evidence of indebtedness secured by this Second Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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

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52. **Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Second Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Second Mortgage.

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

54. **Recourse Provisions.** The recourse provisions set forth in Section 13 of the Chicago Note are incorporated herein as if fully set forth herein.

55. [RESERVED]

56. **Cash Management Agreement.** On or before the date hereof Mortgagor covenants and agrees to enter into one or more servicing account agreements and lockbox servicing agreements acceptable to Mortgagee between Mortgagor, Mortgagee and one or more certain financial institutions (together with any modification, amendment, substitution or replacement thereof, hereinafter collectively referred to as the "Cash Management Agreement") which shall provide, among other things, that all Rents and other sums collected from, or arising with respect to, the Mortgaged Property be deposited in the accounts established in connection with such Cash Management Agreement and that such amounts shall be disbursed in accordance with Section 8 and Section 9 of the Chicago Note. The Mortgagor shall pay all costs and expenses required under the Cash Management Agreement. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then held pursuant to the Cash Management Agreement to the payment of the Chicago Debt in any order in its sole discretion. Until expended or applied, amounts held pursuant to the Cash Management Agreement shall constitute additional security for the Chicago Debt.

57. **Miscellaneous.**

(a) Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a



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subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including, without limitation, attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

(b) Mortgagor covenants and agrees that during the Term, unless Mortgagee shall have previously consented in writing, (a) Mortgagor will take no action that would cause it to become an "employee benefit plan" as defined in 29 C.F.R. Section 2510.3-101, or "assets of a governmental plan" subject to regulation under the state statutes, and (b) Mortgagor will not sell, assign or transfer the Mortgaged Property, or any portion thereof or interest therein, to any transferee that does not execute and deliver to Mortgagee its written assumption of the obligations of this covenant. Mortgagor further covenants and agrees to protect, defend, indemnify and hold Mortgagee harmless from and against all loss, cost, damage and expense (including without limitation, all attorneys' fees and excise taxes, costs of correcting any prohibited transaction or obtaining an appropriate exemption) that Mortgagee may incur as a result of Mortgagor's breach of this covenant. This covenant and indemnity shall survive the extinguishment of the lien of this Second Mortgage by foreclosure or action in lieu thereof, furthermore, the foregoing indemnity shall supersede any limitations on Mortgagor's liability under any of the Chicago Loan Documents.

(c) If there is more than one party comprising Mortgagor then the obligations and liabilities of each party under this Second Mortgage shall be joint and several.

(d) The Chicago Loan Documents and this Second Mortgage contain the entire agreement between Mortgagor and Mortgagee relating to or connected with the Chicago Loan. Any other agreements relating to or connected with the Chicago Loan not expressly set forth in the Chicago Loan Documents and this Second Mortgage are null and void and superseded in their entirety by the provisions of the Chicago Loan Documents and this Second Mortgage.

(e) Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and

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agreements or the representations and warranties set forth in this paragraph. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Chicago Loan Documents is a potential result, shall, at the election of Mortgagee, constitute an Event of Default hereunder without notice or opportunity to cure.

(f) Mortgagor acknowledges that, with respect to the Chicago Loan, Mortgagor is relying solely on its own judgment and advisors in entering into the Chicago Loan without relying in any manner on any statements, representations or recommendations of Mortgagee or any parent, subsidiary or affiliate of Mortgagee. Mortgagor acknowledges that Mortgagee engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of the Mortgagor or its affiliates. Mortgagor acknowledges that it is represented by competent counsel and has consulted counsel before executing the Chicago Loan Documents.

(g) Mortgagor covenants and agrees to pay Mortgagee upon receipt of written notice from Mortgagee, all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Mortgagee in connection with (i) the preparation, negotiation, execution and delivery of this Second Mortgage and the other Chicago Loan Documents; (ii) Mortgagor's performance of and compliance with Mortgagor's respective agreements and covenants contained in this Second Mortgage and the other Chicago Loan Documents on its part to be performed or complied with after the date hereof; (iii) Mortgagee's performance and compliance with all agreements and conditions contained in this Second Mortgage and the other Chicago Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Second Mortgage and the other Chicago Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Mortgagee pursuant to this Second Mortgage and the other Chicago Loan Documents.

(h) THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

58. Certain Hotel Covenants Mortgagor further covenants and agrees with Mortgagee as follows:

(a) Mortgagor shall cause the hotel located on the Mortgaged Property to be operated pursuant to the Franchise Agreement and the Management Agreement.

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(b) Mortgagor shall:

(i) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Franchise Agreement and the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder;

(ii) promptly notify Mortgagee of any default under the Franchise Agreement or the Management Agreement of which it is aware;

(iii) promptly deliver to Mortgagee a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Franchise Agreement or the Management Agreement; and

(iv) promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the franchisor under the Franchise Agreement and the manager under the Management Agreement.

(c) Mortgagor shall not, without Mortgagee's prior consent:

(i) surrender, terminate or cancel the Franchise Agreement or the Management Agreement;

(ii) reduce or consent to the reduction of the term of the Franchise Agreement or the Management Agreement;

(iii) increase or consent to the increase of the amount of any charges under the Franchise Agreement or the Management Agreement; or otherwise pay to the hotel manager annual management fees exceeding 4% of the Gross Income from Operations relating to such annual period; or

(iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Franchise Agreement or the Management Agreement in any material respect.

(d) Mortgagor shall not, without Mortgagee's prior consent, enter into transactions with any affiliate, including without limitation any arrangement providing for the managing of the hotel on the Mortgaged Property, the rendering or receipt of services or the purchase or sale of inventory, except any such transaction in the ordinary course of business of Mortgagor if the monetary or business consideration arising therefrom would be substantially as advantageous to Mortgagor as the monetary or business consideration that would obtain in a comparable transaction with a person not an affiliate of Mortgagor.

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(e) (i) Mortgagor agrees that at any time after an Event of Default, at the request of Mortgagee, Mortgagor shall immediately replace the then management company with a management company designated by Mortgagee pursuant to a management acceptable to Mortgagee in all respects.

(ii) If (x) the Manager (or any successor hotel manager) shall be in default under the Management Agreement (or any successor management agreement hereafter in effect) or (y) a DSCR Lockbox Ratio Failure (as defined in the Chicago Note) shall occur, then, Mortgagee shall have the right to require the Mortgagor to, within thirty (30) days after Mortgagee's written request, enter into a new management agreement regarding the Mortgaged Property (which agreement shall be in form and substance acceptable to Mortgagee), with a new hotel manager satisfactory to Mortgagee in all respects and such new hotel manager shall execute and deliver to Mortgagee a Consent and Agreement of Manager in the form then required by Mortgagee.

(iii) Mortgagee agrees that the Manager (and any successor hotel manager) under the Management Agreement (or any successor management agreement hereafter in effect) shall not receive any management fee (such withheld management fee shall hereinafter be referred to as the "Deferred Management Fee") during the period (the "Management Fee Deferral Period") commencing on the occurrence of a DSCR Manager Ratio Failure (as defined in the Chicago Note), until such time thereafter that Mortgagee notifies Mortgagor that the DSCR (as defined in the Chicago Note) for the Mortgaged Property, determined as of the end of any calendar quarter for the immediately preceding twelve (12) month period, is greater than 1.22x. So long as no Management Fee Deferral Period is continuing, (a) the Manager may receive the current management fees due under its Management Agreement and (b) to the extent of Excess Cash Flow (as defined in the Chicago Note), the Manager may receive the Deferred Management Fee.

59. Appointment of Agent for Service of Process. Mortgagor hereby designates J. Joseph Little, Esq. ("Designee") as its agent and attorney-in-fact to accept service of process in any action or proceeding arising under or in connection with this Second Mortgage and the other Chicago Loan Documents. The foregoing designation is irrevocable and coupled with an interest. Process may be served upon the Designee by United States registered or certified mail, which service will be effective five (5) days after mailing, to the address of the Designee set forth below:

J. Joseph Little, Esq.  
75 East Wacker Drive, 2nd Floor  
Chicago, Illinois 60601

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## PART II

### STATE SPECIFIC PROVISIONS

#### 1. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Second Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (as amended from time to time, the "Act"), the provisions of the Act shall take precedence over the provisions of this Second Mortgage, but shall not invalidate or render unenforceable any other provision of this Second Mortgage that can be construed in a manner consistent with the Act.

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

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Second Mortgage, shall be added to the indebtedness secured by this Second Mortgage or by the judgment of foreclosure.

2. Time is of the Essence. It is specifically agreed that time is of the essence of this Second Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.

3. Covenants to Run With the Land. All the covenants hereof shall run with and touch and concern the land.

#### 4. Waiver of Statutory Rights.

(a) Mortgagor hereby voluntarily and knowingly releases and waives any and all rights to retain possession of the Mortgaged Property after the occurrence of an Event of Default hereunder and any and all rights of redemption from sale under any order or decree of foreclosure (whether full or partial), pursuant to rights therein granted, as allowed under Section 15-1601(b) of the Act, and all rights of reinstatement under Section 15-1602 of the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by or through Mortgagor, and on behalf of each and every person acquiring any interest in the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption and reinstatement of Mortgagor and all such other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law or replacement.

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statute. Mortgagor shall not invoke or utilize any such law or laws or otherwise hinder, delay, or impede the execution of any right, power, or remedy herein or otherwise granted or delegated to Mortgagee, but shall permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

(b) To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now or hereafter existing providing for (i) any appraisal before sale of any portion of the Mortgaged Property, (ii) any extension of the time for the enforcement of the collection of the indebtedness secured hereunder or the creation or extension of a period of redemption from any sale made in collecting such debt, and (iii) exemption of the Mortgaged Property from attachment, levy or sale under execution or exemption from civil process. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Second Mortgage before exercising any other remedy granted hereunder and Mortgagor, for Mortgagor and its successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created.

(c) Mortgagor acknowledges that the transaction of which this Second Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act).

5. Subordination of Property Manager's Lien and Real Estate Broker's Lien. Any property management agreement for the Mortgaged Property entered into hereafter by Mortgagor with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/1 et seq. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Mortgaged Property is located. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the lien of this Second Mortgage. Any agreement entered into hereafter by Mortgagor or any agent of Mortgagor with any "broker" (as defined in the Real Estate License Act of 1983, 225 ILCS 455/1 et seq.) that is an affiliate of Mortgagor for the purpose of selling, leasing or otherwise conveying an interest in the Mortgaged Property shall contain a "no lien" provision whereby such broker waives and releases any and all lien rights that such broker or anyone claiming by, through or under such broker may have pursuant to the Commercial Broker Lien Act, 770 ILCS 15/1 et seq. Mortgagor shall cause such broker to enter into a Subordination

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Agreement with Mortgagee, in recordable form, whereby such broker, on its own behalf and on behalf of any party claiming by, through or under such broker, subordinates present and future lien rights to the lien of this Second Mortgage.

6. Illinois Responsible Property Transfer Act. Mortgagor represents and warrants to Mortgagee that neither the execution, delivery or recording of this Second Mortgage nor the consummation of any transaction relating to this Second Mortgage requires the execution, delivery or filing of a disclosure statement under the provisions of the Illinois Responsible Property Transfer Act, 765 ILCS 90/1 et seq.

7. Use of Proceeds. Mortgagor represents and warrants that the proceeds of the Chicago Note secured by this Second Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(C) and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(C).

8. Total Indebtedness Secured. This Second Mortgage shall secure not only presently existing indebtedness, but also future advances, whether such advances are obligations or to be made at the option of Mortgagee or otherwise, to the same extent as if such future advances were made on the date of this Second Mortgage, although there may be no Chicago Debt outstanding at the time any advance is made. The lien of this Second Mortgage shall be valid as to all Chicago Debt, including future advances, from the time of its recording in the Recorder's Office of the county in which the Mortgaged Property is located. The total amount of the Chicago Debt that may be secured by this Second Mortgage may increase or decrease from time to time, but the total Chicago Debt secured at any one time shall not exceed Twenty-Five Million and NO/100 Dollars (\$25,000,000.00). This Second Mortgage shall be valid and have priority to the extent of the Chicago Debt over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

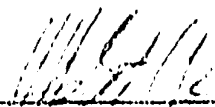
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IN WITNESS WHEREOF, Mortgagor has executed this instrument the day and year first above written.

CHICAGO NORTHSORE HOTEL  
PARTNERS, L.L.C., an Illinois limited liability  
company

By: Chicago HI Partners, Ltd., an Illinois  
corporation, its managing member

By:   
Hui-Hsien Bert Yen  
President

Property of Cook County Clerk's Office

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STATE OF NEW YORK )  
 ) ss.  
COUNTY OF NEW YORK )

I, CYNTHIA TAYLOR, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that HUI-HSIEN BERT YEN, who is personally known to me to be the President of Chicago HI Partners, Ltd., an Illinois corporation, the managing member of CHICAGO NORTHSORE HOTEL PARTNERS, L.L.C., an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 08 day of October, 1997.

Cynthia Taylor  
Notary Public  
CYNTHIA TAYLOR  
Notary Public, State of New York  
No. 31-49829430  
Qualified in New York County  
Commission Expires April 30, 1998

My commission expires:

April 30, 1998

(SEAL)

Notary of Cook County Clerk's Office

97755455

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## EXHIBIT A LEGAL DESCRIPTION

Lot 1 in the City of Chicago consolidation of Lots 5 to 10, both inclusive, in Block 29 of the Village of Chicago in the East ½ of the Southwest ¼ of Section 18, Township 41 North, Range 14 East of Third Principal Meridian in Cook County, Illinois.

Street Address: 1501 Sherman Avenue, Chicago, Illinois

Property Identification Number: 11-18-318-015

Property of Cook County Clerk's Office

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