

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<i>In re:</i> PITTSBURGH ATHLETIC ASSOCIATION, <i>et al</i> ¹ Debtors,	Jointly Administered at: Case No. 17-22222-JAD Bankruptcy Case Nos: 17-22222-JAD, and 17-22223-JAD
PITTSBURGH ATHLETIC ASSOCIATION LAND COMPANY, Plaintiff, v. OAKLAND FIFTH AVENUE HOTEL ASSOCIATES, LP, Defendant.	Chapter 11 Doc. No. 1 Adversary No.

**ADVERSARY COMPLAINT TO (1) AVOID AND RECOVER FRAUDULENT
TRANSFERS PURSUANT TO 11 U.S.C. §§548, 550 & 544 AND THE PENNSYLVANIA
UNIFORM FRAUDULENT TRANSFER ACT; AND, IN THE ALTERNATIVE, (2)
AVOID A PREFERENTIAL PRE-PETITION TRANSFER PURSUANT TO 11 U.S.C.
§§547 & 550**

Pittsburgh Athletic Association Land Company by and through their undersigned counsel, files this Adversary Complaint To (1) Avoid and Recover Pre-Petition Fraudulent Transfers Pursuant to 11 U.S.C. §§548, 550 & 544 and the Pennsylvania Uniform Fraudulent Transfer Act (“**PUFTA**”); and, in the alternative, (2) Avoid And Recover A Preferential Pre-Petition Transfer Pursuant To 11 U.S.C. §§547 & 550, averring as follows:

JURISDICTION

1. This action is a civil action arising under the United States Bankruptcy Code, 11 U.S.C. § 101, et. seq. (the “**Bankruptcy Code**”), within the meaning of 28 U.S.C. § 1334(b). It is properly brought as an adversary proceeding pursuant to Bankruptcy Rule 7001(1).

¹ The Debtors have the following case pending Pittsburgh Athletic Association, Case No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Case No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD.

2. This court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334.

3. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(E) and (F).

4. Venue of this adversary proceeding is proper in this District pursuant to 28 U.S.C. §1409(a).

5. The statutory basis under the Bankruptcy Code for the relief requested of in this Complaint is 11 U.S.C. §§ 105, 544, 547, 550 and Rule 7065 of the Federal Rules of Bankruptcy Procedure.

THE PARTIES

6. Pittsburgh Athletic Association Land Company (the “**PAA-LC**”, “**Debtor**” or “**Plaintiff**”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a mailing address of 4215 Fifth Avenue, Pittsburgh, Pennsylvania 15213.

7. Defendant, Oakland Fifth Avenue Hotel Associates, LP (“**OFAHA**”) is a creditor of the Debtors as set forth herein and is a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania with an address of 333 Baldwin Road, Suite 200, Pittsburgh, Pennsylvania 15205.

GENERAL ALLEGATIONS AND BACKGROUND

8. On May 30, 2017 (the “**Petition Date**”) the Plaintiff, alongside its affiliated debtor, Pittsburgh Athletic Association (“**PAA**” and together with PAA-LC, the “**Debtors**”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania (the “**Bankruptcy Court**”).

9. The Plaintiff has continued in the management and operation of its business and properties as debtor-in-possession pursuant to 11 U.S.C. §1107(a) and 1108.

10. Plaintiff is the owner of (1) certain land and improvements thereon at 4215 Fifth Avenue in the City of Pittsburgh, Allegheny County, Commonwealth of Pennsylvania, being designated as Lot 1 in the Pittsburgh Athletic Association Plan of Lots, as the same was recorded

with the Department of Real Estate of Allegheny County, Pennsylvania, on December 23, 2008, at Plan Book Volume 264, page 70, bearing tax parcel identification number 27-R-138 (the “**Club Parcel**”); and (2) certain land between Bigelow Boulevard and Lytton Avenue adjacent to the Club Parcel being designated as Lot 2 in the Pittsburgh Athletic Association Plan of Lots, bearing tax parcel identification number 27-R-110 (the “**Hotel Parcel**”, together with the Club Parcel, the “**Property**”).

11. Plaintiff was insolvent during the ninety (90) day period preceding the Petition Date and further is presumed to have been insolvent during that period pursuant to 11 U.S.C. §547(f).

12. The Defendant is a creditor of the Plaintiff.

A. OFAHA’s Insider Knowledge of Debtors’ Financial Condition Prior to Transactions

13. The Debtors had been experiencing financial difficulties for several years preceding the Petition Date.

14. In or about mid-2013, in an effort to explore alternatives for raising capital or securing financing to address their financial difficulties, the Debtors’ Boards of Directors (collectively, the “**Board**”) approached Mr. James Noland, a lifelong member of the PAA.

15. Mr. Noland has extensive experience in lending to and raising financing for commercial real estate projects and is the founder of PenTrust Real Estate Advisory Services, Inc.

16. The Board approached Mr. Noland for financing and provided Mr. Noland with insider knowledge as to the extent of the Debtors’ financial condition. The Board trusted Mr. Noland and his experience.

17. Upon information and belief, Mr. Noland, in conjunction with other parties, created OFAHA. Mr. Noland and OFAHA took advantage of his insider knowledge of the Debtors’ finances and the Debtors’ trust when negotiating the Pre-Petition Loans, the Lease and the Springing Mortgage on OFAHA’s behalf.

B. OFAHA Pre-Petition Loans

18. Prior to the Petition Date, OFAHA made loans and advances to the Plaintiff (“**OFAHA Loan A**”) as evidenced by (i) A Loan Agreement dated May 20, 2014, to be effective June 3, 2014, as amended by that certain First Amendment to Loan Agreement and Release dated March 12, 2015 and that certain Subordination Agreement dated March 12, 2015 (“**OFAHA Loan Agreement A**”); and (ii) a Term Note dated May 20, 2014, to be effective June 3, 2014 in the original principal amount of \$575,000.00 (“**OFAHA Note A**”).

19. OFAHA Loan A is secured by, *inter alia*, the following documents executed by PAALC in favor of OFAHA: (i) an Open-End Mortgage and Security Agreement dated May 20, 2014, to be effective June 3, 2014, and recorded on June 4, 2014 with the Department of Real Estate of Allegheny County, Pennsylvania at Instrument No. 2014-36193 (“**OFAHA Mortgage A**”); and (ii) Assignment of Leases and Rents dated May 20, 2014, to be effective June 3, 2014 and recorded on June 4, 2014, with the Department of Real Estate of Allegheny County, Pennsylvania at Instrument No. 2014-14161 (“**OFAHA Assignment A**”).

20. OFAHA Loan A is further secured by a Security Agreement dated May 20, 2014, to be effective June 3, 2014, from PAALC in favor of OFAHA (“**OFAHA Security Agreement A**”). To perfect its security interests granted under the Oakland Security Agreement A, OFAHA filed a UCC-1 financing statement on June 4, 2014, with the Department of Real Estate of Allegheny County, Pennsylvania at Instrument No. 2014-77988 and with the Secretary of the Department of State for the Commonwealth of Pennsylvania on June 9, 2014, at File No. 2014061106337 (collectively referred to as the “**OFAHA Financing Statements A**”).

21. In addition to OFAHA Loan A, OFAHA made additional loans and advances to the Plaintiff pursuant to the following agreements executed and delivered by Debtors, PAALC, with, to or in favor of OFAHA (“**OFAHA Loan B**”): a Loan Agreement dated March 10, 2015, to be effective March 12, 2015 (“**OFAHA Loan Agreement B**”); and a Delayed Draw Term Note dated March 10, 2015, to be effective March 12, 2015, in the original principal amount of \$1,372,744.00 (“**OFAHA Note B**”).

22. OFAHA Note B is secured by, *inter alia*, the following: (1) an Open-End Mortgage and Security Agreement dated March 10, 2015, to be effective March 12, 2015, whereby PAALC granted OFAHA a mortgage on the Property, subject to the AVB Subordination Agreement, and recorded on March 13, 2015 with the Department of Real Estate of Allegheny County, Pennsylvania at Instrument No. 2015-16689 (the “**OFAHA Mortgage B**”); and an Assignment of Leases and Rents dated March 10, 2015, to be effective March 12, 2015 and recorded with the Department of Real Estate of Allegheny County, Pennsylvania at Instrument No. 2015-6331 (“**OFAHA Assignment B**”).

23. OFAHA Note B is additionally secured by, *inter alia*, a Security Agreement dated March 10, 2015, to be effective March 12, 2015 (“**OFAHA Security Agreement B**”). To perfect the interests granted to it by PAALC pursuant to the OFAHA Mortgage B and the OFAHA Security Agreement B, OFAHA filed a UCC-1 Financing Statement on March 13, 2015 with the Department of Real Estate of Allegheny County, Pennsylvania at Instrument No. 2015-78988 and with the Secretary of the Department of State of the Commonwealth of Pennsylvania on March 16, 2015 at File No. 2015031804193 (collectively referred to as the “**OFAHA Financing Statements B**”).

24. Additionally, OFAHA executed a Subordination Agreement dated March 10, 2015, to be effective March 12, 2015 and recorded on March 13, 2015 with the Department of Real Estate of Allegheny County at Instrument No. 2015-16690, whereby OFAHA agreed that any of its liens and security interests under the OFAHA Loan A Documents would be subordinated to any of its liens and security interests under the OFAHA Loan B Documents (“**OFAHA Subordination Agreement**”).

C. The Ground Lease and Springing Mortgage

25. Upon information and belief, on or about January 30, 2015, the Plaintiff, as Landlord, and the Defendant, as Tenant, entered into a “Ground Lease Agreement” (the “**Lease**”) for the Hotel Parcel. A true and correct copy of the Lease is attached hereto as **Exhibit “A”**.

26. Pursuant to the terms of the Lease, the Defendant desired to lease the Hotel Parcel from the Defendant and Defendant intended to “initially construct on the [Hotel Parcel], one or more structures containing approximately eleven (11) stories above-ground and one (1) story below-ground to be operated as a first-class hotel with approximately 190 rooms, 180 parking spaces, and related or accessory facilities and retail uses, including without limitation one or more restaurants, lounges, or other food and beverage venues” (the “**Leasehold Improvements**”). *See* Exhibit “A”, page 1.

27. On March 1, 2017 (the “**Commencement Date**” as defined in the Lease), Plaintiff’s interest in the Hotel Parcel and the Leasehold Improvements transferred to Defendant.

28. The initial term of the Lease was to run for ninety-nine (99) years from the Commencement Date.

29. Allegedly to induce the Defendant into entering into the Lease, and as security for the Defendant’s interests in the Leasehold Improvements under the Lease “in the case of a future Landlord [Plaintiff] Insolvency”, Plaintiff was required to grant to Defendant a mortgage in conjunction with the execution of the Lease substantially in the form of the Exhibit “E” to the Lease. *See*, Exhibit “A”, Section 19 and Exhibit “E” to the Lease.

30. More than two years after executing the Lease, on April 10, 2017, Plaintiff executed and delivered to Defendant an Open-End Mortgage and Security Agreement on the Hotel Parcel and the Leasehold Improvements (the “**Springing Mortgage**”). The Springing Mortgage is nearly identical to the form mortgage attached to the Lease as Exhibit “E” and was recorded on April 12, 2017 with the Allegheny County Department of Real Estate at Instrument Number 2017-25855. A true and correct copy of the Springing Mortgage is attached hereto as **Exhibit “B”**.

31. The Lease contains several provisions that address the Plaintiff filing for bankruptcy, including the following:

Section 18.3. Landlord's Defaults. If Landlord defaults in the performance of its obligations under this Lease....[n]otwithstanding anything contained herein to the contrary, the rejection of this Lease by Landlord or its trustee under the United States Bankruptcy Code, as amended, shall constitute a Landlord default under this Lease.

Section 19. Tenant as Fee Mortgagee. In order to secure the interests of Tenant under this Lease *in the event of a future Landlord Insolvency*, on the Commencement Date Landlord shall grant Tenant a mortgage interest in the Premises by execution of a mortgage in the form attached hereto as Exhibit E. Such mortgage shall be subordinate to each Fee Mortgage granted strictly in accordance with this Lease, including Section 16 hereof. (emphasis added).

32. The Springing Mortgage, as well as the form mortgage attached to the Lease as Exhibit "E", contain provisions that specifically contemplate Plaintiff's bankruptcy, including the following:

NOW THEREFORE, in consideration of the Lease and the Mortgagee's construction of the Leasehold Improvements and as security for the Mortgagor's performance of its obligations under the Lease...in the event of the rejection or early termination of the Lease other than in accordance with the terms and conditions thereof, including but not limited to, in connection with the bankruptcy of the Landlord under the United States Bankruptcy Code, as amended from time to time ("Bankruptcy Rejection"), the Mortgagor has granted, conveyed, bargained, sold, aliened, enfeoffed, released, confirmed and mortgaged, and by these presents does hereby....unto the Mortgagee, its successors and assigns, all of its right, title and interest in and to the Land. (Springing Mortgage, page 1).

AND at all times until the Lease has either expired upon the expiration of the Term...other than by a Bankruptcy Rejection, the Mortgagor covenants, promises and agrees with the Mortgagee as follows[.] (Springing Mortgage, page 3).

Section 1.01 The Mortgagor shall not allow, permit, cause, suffer, or consent to, voluntarily or involuntarily, a Bankruptcy Rejection. [...]

Section 6.01 Upon the occurrence of a Bankruptcy Rejection or early termination of the Lease, other than in accordance with the terms and conditions thereof (each, an "Event of Default"), the entire Value of the Leasehold Improvements (the "Debt") shall become automatically immediately due and payable without notice or demand, unless otherwise waived by the Mortgagee in writing.

Section 8.04 The Mortgagor shall promptly pay upon request all expenses and costs incurred by the Mortgagee, including reasonable attorneys' fees....in connection with any action, proceeding, litigation or claim instituted or asserted by or against the Mortgagee or in which the Mortgagee

becomes engaged, including without limitation bankruptcy, reorganization, arrangements, receivership or similar proceedings[.]

33. The Plaintiff did not receive any value, let alone new or reasonably equivalent value for the Springing Mortgage.

34. The Plaintiff did not receive reasonably equivalent value for the Lease.

COUNT I

Avoidance of the Springing Mortgage as a Fraudulent Transfer Pursuant to 11 U.S.C. §548(a)(1)(A)&(B); §548(a)(1)(B); §544(b); and 12 Pa.C.S.A §5104 and §5105

35. The averments of paragraphs 1 through 34 of this Complaint are incorporated by reference as if set forth at length.

36. The Springing Mortgage constitutes a fraudulent transfer under 11 U.S.C. §548 which provides, in part, that a transfer made within two years of the Petition Date may be avoided if the transfer (A) was made or such obligation incurred by the debtor with the actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or obligation was incurred, indebted; or (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

37. The Springing Mortgage was requested by Defendant over two years after the Lease was entered into with the actual intent to hinder, delay or defraud Plaintiff's other creditors as can be evidenced by the following:

- a. the Springing Mortgage was granted within 90 days of the Petition Date;
- b. the Springing Mortgage was granted while the Plaintiff was insolvent; and
- c. Plaintiff did not receive any value, let alone reasonably equivalent value for the Springing Mortgage.

38. The Springing Mortgage also constitutes a fraudulent transfer under the Pennsylvania Uniform Fraudulent Transfer Act ("PUFTA") which provides that a "transfer made or obligation incurred by a debtor is fraudulent...if the debtor made the transfer or incurred the

obligation: (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation” and the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. 12 Pa.C.S.A §§5104 & 5105.

39. Pursuant to 11 U.S.C. §544(b), the Plaintiff trustee may avoid any transfers of interests in property that are voidable under applicable law, such as state fraudulent conveyances law.

40. For the reasons set forth in the foregoing paragraphs of this Complaint, the Springing Mortgage constitutes a fraudulent transfer under 11 U.S.C. §548(a)(1)(A) & (B) as well under PUFTA, 12 Pa.C.S.A §5104 and 11 U.S.C. §544(b).

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in favor of the Plaintiff and permit the Plaintiff to avoid the Springing Mortgage and recover the lien for the benefit of Plaintiff’s estate.

COUNT II (in the alternative to Count I)
Avoidance of Springing Mortgage As Preferential Transfer Pursuant To 11 U.S.C. §547

41. The averments of paragraphs 1 through 40 of this Complaint are incorporated herein by reference as if set forth at length.

42. Should this Court determine that the Plaintiff received value for the grant of the Springing Mortgage, the Springing Mortgage should still be avoided as a preferential transfer under 11 U.S.C. §547.

43. During the ninety (90) day period immediately preceding the Petition Date, on April 10, 2017, Plaintiff granted Defendant the Springing Mortgage.

44. The Springing Mortgage constitutes a transfer of Plaintiff’s interest in the Hotel Parcel and the Leasehold Improvements to or for the benefit of the Defendant.

45. The Defendant is a creditor of the Plaintiff.

46. Any potential amounts owed by Plaintiff to Defendant under the Lease constitutes an antecedent debt.

47. At the time the Springing Mortgage was granted, the Plaintiff was insolvent or presumed insolvent.

48. Plaintiff did not receive new value in exchange for the grant of the Springing Mortgage.

49. The Springing Mortgage enables the Defendant to receive more than it would have received if (a) the Plaintiff's case had been a Chapter 7 liquidation case; (b) the Springing Mortgage had not been granted; and (c) the Defendant or other creditor for whose benefit any payments were made pursuant to the Springing Mortgage received payment of its claims against the Plaintiff to the extent provided for by the provisions of the Bankruptcy Code.

50. For the aforementioned reasons, Plaintiff is entitled to avoid the Springing Mortgage as a preferential transfer under 11 U.S.C. §547(b).

WHEREFORE, should this Court determine that the Plaintiff received value for the grant of the Springing Mortgage, the Plaintiff respectfully prays for entry of an order and judgment against the Defendant under 11 U.S.C. §547, that the Springing Mortgage is avoided and for such further relief as the Court may deem just and proper.

COUNT III

Avoidance of the Lease as a Fraudulent Transfer Pursuant to 11 U.S.C. §548(a)(1)(A)&(B); §548(a)(1)(B); §544(b); 12 Pa.C.S.A. §5104(a)(1)-(2) and §5105

51. The averments of paragraphs 1 through 50 of this Complaint are incorporated herein by reference as if set forth at length.

52. **The Lease constitutes a fraudulent transfer under 11 U.S.C. §548 and PUFTA because** because (1) the transfer was made with the actual intent to hinder, delay or defraud Plaintiff's other creditors; (2) the Plaintiff did not receive a reasonably equivalent value for the transfer provided for in the Lease; (3) the Plaintiff was insolvent at the time of the transfer and Defendant was aware of Plaintiff's financial condition; (4) the transfer involved substantially

all of Plaintiff's assets; (5) the transfer under the Lease occurred within two years of the Petition Date; and (6) the action is being filed within four years of the transfer under the Lease.

53. The Lease may be avoided by this Court under 11 U.S.C. §544(b) (trustee may avoid any transfers of interests in property by a debtor that is voidable under applicable law, such as state fraudulent conveyances law).

WHEREFORE, Plaintiff, respectfully requests that this Honorable Court enter an Order allowing Plaintiff to avoid the Lease.

COUNT IV
Recovery of Springing Mortgage Lien Pursuant To 11 U.S.C. §550

54. The averments of paragraphs 1 through 53 of this Complaint are incorporated herein by reference as if set forth at length.

55. The Defendant is the initial transferee under the Springing Mortgage.

56. The Plaintiff is entitled to avoid the Springing Mortgage under 11 U.S.C. §§544, 547 and 548.

57. As the Defendant is the immediate transferee under the Mortgage, the Plaintiff is entitled to recover for the estate the lien granted by the Springing Mortgage.

WHEREFORE, the Plaintiff respectfully prays for entry of an order and judgment be entered against the Defendant that the lien granted by the Springing Mortgage is recoverable by the Plaintiff for the benefit of the Plaintiff's estate, and for such further relief as the Court may deem just and proper.

COUNT VI
Recovery of Lease Pursuant To 11 U.S.C. §550

58. The averments of paragraphs 1 through 57 of this Complaint are incorporated herein by reference as if set forth at length.

59. The Defendant is the initial and immediate transferee under the Lease.

60. The Plaintiff is entitled to avoid the Lease under 11 U.S.C. §§548 and 544.

61. As the Defendant is the initial and immediate transferee under the Lease, Plaintiff is entitled to recover for the estate any interest in property or property transferred pursuant to the Lease..

WHEREFORE, the Plaintiff respectfully prays for entry of an order and judgment be entered against the Defendant any property interest and any property transferred to the Defendant under the Lease is recoverable by the Plaintiff for the benefit of Plaintiff's estate, and for such further relief as the Court may deem just and proper

Dated: November 30, 2017

Respectfully Submitted,

TUCKER ARENSBERG, P.C.

/s/Jordan S. Blask

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION, *et al*¹

Debtors,

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Jointly Administered at:
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Chapter 11

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24. Additionally, OFAHA executed a Subordination Agreement dated March 10, 2015, to be effective March 12, 2015 and recorded on March 13, 2015 with the Department of Real Estate of Allegheny County at Instrument No. 2015-16690, whereby OFAHA agreed that any of its liens and security interests under the OFAHA Loan A Documents would be subordinated to any of its liens and security interests under the OFAHA Loan B Documents (“**OFAHA Subordination Agreement**”).

C. The Ground Lease and Springing Mortgage

25. Upon information and belief, on or about January 30, 2015, the Plaintiff, as Landlord, and the Defendant, as Tenant, entered into a “Ground Lease Agreement” (the “**Lease**”) for the Hotel Parcel. A true and correct copy of the Lease is attached hereto as **Exhibit “A”**.

26. Pursuant to the terms of the Lease, the Defendant desired to lease the Hotel Parcel from the Defendant and Defendant intended to “initially construct on the [Hotel Parcel], one or more structures containing approximately eleven (11) stories above-ground and one (1) story below-ground to be operated as a first-class hotel with approximately 190 rooms, 180 parking spaces, and related or accessory facilities and retail uses, including without limitation one or more restaurants, lounges, or other food and beverage venues” (the “**Leasehold Improvements**”). *See* Exhibit “A”, page 1.

27. On March 1, 2017 (the “**Commencement Date**” as defined in the Lease), Plaintiff’s interest in the Hotel Parcel and the Leasehold Improvements transferred to Defendant.

28. The initial term of the Lease was to run for ninety-nine (99) years from the Commencement Date.

29. Allegedly to induce the Defendant into entering into the Lease, and as security for the Defendant’s interests in the Leasehold Improvements under the Lease “in the case of a future Landlord [Plaintiff] Insolvency”, Plaintiff was required to grant to Defendant a mortgage in conjunction with the execution of the Lease substantially in the form of the Exhibit “E” to the Lease. *See*, Exhibit “A”, Section 19 and Exhibit “E” to the Lease.

30. More than two years after executing the Lease, on April 10, 2017, Plaintiff executed and delivered to Defendant an Open-End Mortgage and Security Agreement on the Hotel Parcel and the Leasehold Improvements (the “**Springing Mortgage**”). The Springing Mortgage is nearly identical to the form mortgage attached to the Lease as Exhibit “E” and was recorded on April 12, 2017 with the Allegheny County Department of Real Estate at Instrument Number 2017-25855. A true and correct copy of the Springing Mortgage is attached hereto as **Exhibit “B”**.

31. The Lease contains several provisions that address the Plaintiff filing for bankruptcy, including the following:

Section 18.3. Landlord's Defaults. If Landlord defaults in the performance of its obligations under this Lease....[n]otwithstanding anything contained herein to the contrary, the rejection of this Lease by Landlord or its trustee under the United States Bankruptcy Code, as amended, shall constitute a Landlord default under this Lease.

Section 19. Tenant as Fee Mortgagee. In order to secure the interests of Tenant under this Lease *in the event of a future Landlord Insolvency*, on the Commencement Date Landlord shall grant Tenant a mortgage interest in the Premises by execution of a mortgage in the form attached hereto as Exhibit E. Such mortgage shall be subordinate to each Fee Mortgage granted strictly in accordance with this Lease, including Section 16 hereof. (emphasis added).

32. The Springing Mortgage, as well as the form mortgage attached to the Lease as Exhibit "E", contain provisions that specifically contemplate Plaintiff's bankruptcy, including the following:

NOW THEREFORE, in consideration of the Lease and the Mortgagee's construction of the Leasehold Improvements and as security for the Mortgagor's performance of its obligations under the Lease...in the event of the rejection or early termination of the Lease other than in accordance with the terms and conditions thereof, including but not limited to, in connection with the bankruptcy of the Landlord under the United States Bankruptcy Code, as amended from time to time ("Bankruptcy Rejection"), the Mortgagor has granted, conveyed, bargained, sold, aliened, enfeoffed, released, confirmed and mortgaged, and by these presents does hereby....unto the Mortgagee, its successors and assigns, all of its right, title and interest in and to the Land. (Springing Mortgage, page 1).

AND at all times until the Lease has either expired upon the expiration of the Term...other than by a Bankruptcy Rejection, the Mortgagor covenants, promises and agrees with the Mortgagee as follows[.] (Springing Mortgage, page 3).

Section 1.01 The Mortgagor shall not allow, permit, cause, suffer, or consent to, voluntarily or involuntarily, a Bankruptcy Rejection. [...]

Section 6.01 Upon the occurrence of a Bankruptcy Rejection or early termination of the Lease, other than in accordance with the terms and conditions thereof (each, an "Event of Default"), the entire Value of the Leasehold Improvements (the "Debt") shall become automatically immediately due and payable without notice or demand, unless otherwise waived by the Mortgagee in writing.

Section 8.04 The Mortgagor shall promptly pay upon request all expenses and costs incurred by the Mortgagee, including reasonable attorneys' fees....in connection with any action, proceeding, litigation or claim instituted or asserted by or against the Mortgagee or in which the Mortgagee

becomes engaged, including without limitation bankruptcy, reorganization, arrangements, receivership or similar proceedings[.]

33. The Plaintiff did not receive any value, let alone new or reasonably equivalent value for the Springing Mortgage.

34. The Plaintiff did not receive reasonably equivalent value for the Lease.

COUNT I

Avoidance of the Springing Mortgage as a Fraudulent Transfer Pursuant to 11 U.S.C. §548(a)(1)(A)&(B); §548(a)(1)(B); §544(b); and 12 Pa.C.S.A §5104 and §5105

35. The averments of paragraphs 1 through 34 of this Complaint are incorporated by reference as if set forth at length.

36. The Springing Mortgage constitutes a fraudulent transfer under 11 U.S.C. §548 which provides, in part, that a transfer made within two years of the Petition Date may be avoided if the transfer (A) was made or such obligation incurred by the debtor with the actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or obligation was incurred, indebted; or (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

37. The Springing Mortgage was requested by Defendant over two years after the Lease was entered into with the actual intent to hinder, delay or defraud Plaintiff's other creditors as can be evidenced by the following:

- a. the Springing Mortgage was granted within 90 days of the Petition Date;
- b. the Springing Mortgage was granted while the Plaintiff was insolvent; and
- c. Plaintiff did not receive any value, let alone reasonably equivalent value for the Springing Mortgage.

38. The Springing Mortgage also constitutes a fraudulent transfer under the Pennsylvania Uniform Fraudulent Transfer Act ("PUFTA") which provides that a "transfer made or obligation incurred by a debtor is fraudulent...if the debtor made the transfer or incurred the

obligation: (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation” and the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. 12 Pa.C.S.A §§5104 & 5105.

39. Pursuant to 11 U.S.C. §544(b), the Plaintiff trustee may avoid any transfers of interests in property that are voidable under applicable law, such as state fraudulent conveyances law.

40. For the reasons set forth in the foregoing paragraphs of this Complaint, the Springing Mortgage constitutes a fraudulent transfer under 11 U.S.C. §548(a)(1)(A) & (B) as well under PUFTA, 12 Pa.C.S.A §5104 and 11 U.S.C. §544(b).

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in favor of the Plaintiff and permit the Plaintiff to avoid the Springing Mortgage and recover the lien for the benefit of Plaintiff’s estate.

COUNT II (in the alternative to Count I)
Avoidance of Springing Mortgage As Preferential Transfer Pursuant To 11 U.S.C. §547

41. The averments of paragraphs 1 through 40 of this Complaint are incorporated herein by reference as if set forth at length.

42. Should this Court determine that the Plaintiff received value for the grant of the Springing Mortgage, the Springing Mortgage should still be avoided as a preferential transfer under 11 U.S.C. §547.

43. During the ninety (90) day period immediately preceding the Petition Date, on April 10, 2017, Plaintiff granted Defendant the Springing Mortgage.

44. The Springing Mortgage constitutes a transfer of Plaintiff’s interest in the Hotel Parcel and the Leasehold Improvements to or for the benefit of the Defendant.

45. The Defendant is a creditor of the Plaintiff.

46. Any potential amounts owed by Plaintiff to Defendant under the Lease constitutes an antecedent debt.

47. At the time the Springing Mortgage was granted, the Plaintiff was insolvent or presumed insolvent.

48. Plaintiff did not receive new value in exchange for the grant of the Springing Mortgage.

49. The Springing Mortgage enables the Defendant to receive more than it would have received if (a) the Plaintiff's case had been a Chapter 7 liquidation case; (b) the Springing Mortgage had not been granted; and (c) the Defendant or other creditor for whose benefit any payments were made pursuant to the Springing Mortgage received payment of its claims against the Plaintiff to the extent provided for by the provisions of the Bankruptcy Code.

50. For the aforementioned reasons, Plaintiff is entitled to avoid the Springing Mortgage as a preferential transfer under 11 U.S.C. §547(b).

WHEREFORE, should this Court determine that the Plaintiff received value for the grant of the Springing Mortgage, the Plaintiff respectfully prays for entry of an order and judgment against the Defendant under 11 U.S.C. §547, that the Springing Mortgage is avoided and for such further relief as the Court may deem just and proper.

COUNT III

Avoidance of the Lease as a Fraudulent Transfer Pursuant to 11 U.S.C. §548(a)(1)(A)&(B); §548(a)(1)(B); §544(b); 12 Pa.C.S.A. §5104(a)(1)-(2) and §5105

51. The averments of paragraphs 1 through 50 of this Complaint are incorporated herein by reference as if set forth at length.

52. The Lease constitutes a fraudulent transfer under 11 U.S.C. §548 and PUFTA because (1) the transfer was made with the actual intent to hinder, delay or defraud Plaintiff's other creditors; (2) the Plaintiff did not receive a reasonably equivalent value for the transfer provided for in the Lease; (3) the Plaintiff was insolvent at the time of the transfer and Defendant was aware of Plaintiff's financial condition; (4) the transfer involved substantially all of

Plaintiff's assets; (5) the transfer under the Lease occurred within two years of the Petition Date; and (6) the action is being filed within four years of the transfer under the Lease.

53. The Lease may be avoided by this Court under 11 U.S.C. §544(b) (trustee may avoid any transfers of interests in property by a debtor that is voidable under applicable law, such as state fraudulent conveyances law).

WHEREFORE, Plaintiff, respectfully requests that this Honorable Court enter an Order allowing Plaintiff to avoid the Lease.

COUNT IV
Recovery of Springing Mortgage Lien Pursuant To 11 U.S.C. §550

54. The averments of paragraphs 1 through 53 of this Complaint are incorporated herein by reference as if set forth at length.

55. The Defendant is the initial transferee under the Springing Mortgage.

56. The Plaintiff is entitled to avoid the Springing Mortgage under 11 U.S.C. §§544, 547 and 548.

57. As the Defendant is the immediate transferee under the Mortgage, the Plaintiff is entitled to recover for the estate the lien granted by the Springing Mortgage.

WHEREFORE, the Plaintiff respectfully prays for entry of an order and judgment be entered against the Defendant that the lien granted by the Springing Mortgage is recoverable by the Plaintiff for the benefit of the Plaintiff's estate, and for such further relief as the Court may deem just and proper.

COUNT VI
Recovery of Lease Pursuant To 11 U.S.C. §550

58. The averments of paragraphs 1 through 57 of this Complaint are incorporated herein by reference as if set forth at length.

59. The Defendant is the initial and immediate transferee under the Lease.

60. The Plaintiff is entitled to avoid the Lease under 11 U.S.C. §§548 and 544.

61. As the Defendant is the initial and immediate transferee under the Lease, Plaintiff is entitled to recover for the estate any interest in property or property transferred pursuant to the Lease..

WHEREFORE, the Plaintiff respectfully prays for entry of an order and judgment be entered against the Defendant any property interest and any property transferred to the Defendant under the Lease is recoverable by the Plaintiff for the benefit of Plaintiff's estate, and for such further relief as the Court may deem just and proper

Dated: November 30, 2017

Respectfully Submitted,

TUCKER ARENSBERG, P.C.

/s/Jordan S. Blask

Jordan S. Blask, Esq. (Pa. I.D. 308511)
Sloane B. O'Donnell, Esq. (Pa. I.D. 321295)
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sodonnell@tuckerlaw.com

Counsel for the Debtors



Allegheny County
Jerry Tyskiewicz
Department of Real Estate
Pittsburgh, PA 15219

Instrument Number: 2017-25855

BK-M VL-47764 PG-261

Recorded On: April 12, 2017

As-Mortgage

Parties: PITTSBURGH ATHLETIC ASN LAND CO

To OAKLAND FIFTH AVE HOTEL ASSOCIATES L P

of Pages: 20

Comment:

***** THIS IS NOT A BILL *****

Mortgage	162.00
	0
	0
Total:	162.00

I hereby certify that the within and foregoing was recorded in the Department of Real Estate in Allegheny County, PA

****DO NOT REMOVE-THIS PAGE IS PART OF THE RECORDED DOCUMENT****

File Information:

Record and Return To:

Document Number: 2017-25855
Receipt Number: 3231283
Recorded Date/Time: April 12, 2017 03:22:43P
Book-Vol/Pg: BK-M VL-47764 PG-261
User / Station: A Matthews - Cash Super 04

CLARK HILL
WILL CALL
PITTSBURGH PA 15219



Jerry Tyskiewicz, Director
Rich Fitzgerald, County Executive

OPEN-END MORTGAGE AND SECURITY AGREEMENT

This Mortgage secures future advances.

WILL CALL (9)
Clark Hill

Open-End Mortgage and Security Agreement ("Mortgage") is made this 10th day of April, 2017, by PITTSBURGH ATHLETIC ASSOCIATION LAND COMPANY, a Pennsylvania corporation, with an address of 4215 5th Avenue, Pittsburgh, PA 15213 (the "Mortgagor"), to OAKLAND FIFTH AVENUE HOTEL ASSOCIATES LP, a Pennsylvania limited partnership, with an office at 333 Baldwin Road, Suite 200, Pittsburgh, PA 15205 (the "Mortgagee").

WITNESSETH:

WHEREAS, the Mortgagor holds fee simple title to that certain real property located in the City of Pittsburgh, Allegheny County, Pennsylvania, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Land");

WHEREAS, in and by that certain Ground Lease Agreement, dated as of January 30, 2015, by and between the Mortgagor and the Mortgagee, as amended by that certain First Amendment to Ground Lease Agreement, dated as of December 13, 2016 (collectively, the "Lease"), the Mortgagor has leased the Land to the Mortgagee and the Mortgagee intends to construct the Project (as defined in the Lease);

WHEREAS, in order to induce the Mortgagee to enter into the Lease and to make the substantial investment of construction of the Project and potential other future improvements upon the Land (collectively, "Leasehold Improvements") in accordance with the Lease, the Mortgagor has agreed to enter into this Mortgage; and

WHEREAS, capitalized terms used in this Mortgage which are defined in the Lease shall have the meanings assigned to them therein unless otherwise defined in this Mortgage.

NOW THEREFORE, in consideration of the Lease and the Mortgagee's construction of the Leasehold Improvements and as security for the Mortgagor's performance of its obligations under the Lease in accordance with the terms and conditions thereof and the Mortgagee's loss of the Value (as hereinafter defined) of the Leasehold Improvements in the event of the rejection or early termination of the Lease other than in accordance with the terms and conditions thereof, including but not limited to, in connection with the bankruptcy of the Landlord under the United States Bankruptcy Code, as amended from time to time ("Bankruptcy Rejection"), the Mortgagor has granted, conveyed, bargained, sold, aliened, enfeoffed, released, confirmed and mortgaged, and by these presents does hereby grant, convey, bargain, sell, alien, enfeoff, release, confirm and mortgage unto the Mortgagee, its successors and assigns, all of its right, title and interest in and to the Land.

TOGETHER with the tenements, hereditaments, appurtenances and all the estates and rights of the Mortgagor in and to the Land.

TOGETHER with all right, title and interest of the Mortgagor in and to all streets, roads and public places, opened or proposed, adjoining the Land, and all easements and rights of way, public or private, now or hereafter used in connection with the Land.

TOGETHER with all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Land to the extent of the interest of the Mortgagor therein, now or hereafter acquired.

TOGETHER with all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or used in connection with the Land.

TOGETHER with all right, title and interest of the Mortgagor to all buildings, structures and improvements (the "Improvements") of every kind and description now or hereafter erected or placed on the Land.

TOGETHER with all fixtures, fittings, appliances, apparatus, equipment, machinery, chattels, building materials and articles of personal property of every kind and character, together with the renewals, replacements and substitutions thereof, additions and accessions thereto (hereinafter collectively called the "Fixtures"), now or at any time hereafter affixed to or attached to or placed upon or used in any way in connection with the complete and comfortable use, enjoyment or occupancy for operation and maintenance of the Improvements (excepting any personal property owned by any tenant or unit owner occupying any of the Improvements and used by such tenant or unit owner in the use or occupancy of the space occupied by it to the extent the same does not become the property of the Mortgagor under the lease or other agreement with such tenant or unit owner or pursuant to applicable Law), all of which now or hereafter so affixed, placed or used are intended to be subject to the Lien of this Mortgage as if part of the real estate, and all cash and noncash proceeds thereof.

TOGETHER with all right, title and interest of the Mortgagor in and to any and all deposits made under any conditional bill of sale, chattel mortgage or security interest (other than that created hereby) to which any Fixtures are or shall be subject, and all deposits made thereunder, together with the benefit of any payments now or hereafter made thereon.

TOGETHER with all right, title and interest of the Mortgagor as lessee under any and all leases relating to any Fixtures, together with any options to purchase the Fixtures which are subject to such leases and together with the benefit of any payments now or hereafter made thereon.

TOGETHER with the reversions, remainders, easements, rents, issues and profits arising or issuing from the Land and from the Improvements thereon including, but not limited to, the rents, issues and profits arising or issuing from all leases and subleases now or hereafter entered into covering all or any part of said Land and for the Improvements, all of which leases, subleases, rents, issues and profits (other than with respect to the Lease) are hereby assigned and, if requested by the Mortgagee, shall be caused to be further assigned to the Mortgagee by the Mortgagor. The foregoing assignment shall include, without limitation, cash or securities deposited under leases (other than with respect to the Lease) to secure performance by lessees of their obligations

thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more installments of rent coming due prior to the expiration of such terms. The Mortgagee, or any officer of the Mortgagee, is hereby irrevocably appointed attorney-in-fact for the Mortgagor to collect such rents, issues and profits after default by the Mortgagor, such power being coupled with an interest. The Mortgagor will execute and deliver to the Mortgagee on demand such assignments and instruments as the Mortgagee may require to implement, confirm, maintain and continue the assignment hereunder.

TOGETHER with any and all awards, damages, payments and other compensation and any and all claims therefor and rights thereto which may result from taking or injury by virtue of the exercise of the power of eminent domain of or to, or any damage, injury or destruction in any manner caused to, the Land, the Improvements, or any part thereof, or from any change of grade or vacation of any street abutting thereon, all of which awards, damages, payments, compensation, claims and rights are hereby assigned, transferred and set over to the Mortgagee to the fullest extent that the Mortgagor may under the Law so do. The Mortgagee is hereby irrevocably appointed attorney-in-fact for the Mortgagor to settle for, collect and receive any such awards, damages, payments and compensation from the authorities making the same, to appear in and prosecute any proceeding therefor, and to give receipts and acquittances therefor.

TOGETHER with all of the Mortgagor's right, title and interest in and to all contracts and agreements relative to the construction, management, use and occupancy of the Improvements.

TOGETHER with all right, title and interest of the Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor with respect to any of the foregoing.

TOGETHER with all proceeds of the conversion, voluntary or involuntary, of any or all of the foregoing into cash or liquidated claims including, without limitation, proceeds of insurance and condemnation awards.

ALL of which property and rights therein hereinabove described or mentioned being hereinafter collectively called, the "Mortgaged Premises".

TO HAVE AND TO HOLD the Mortgaged Premises unto the Mortgagee, its successors and assigns, forever.

SUBJECT AND SUBORDINATE, HOWEVER, to any lien granted by the Mortgagor to any holder of a Fee Mortgage granted in strict accordance with the Lease, including without limitation Section 16 thereof.

AND at all times until the Lease has either expired upon the expiration of the Term or has been rightfully terminated in accordance with the terms and conditions thereof, other than by a Bankruptcy Rejection, the Mortgagor covenants, promises and agrees with the Mortgagee as follows:

ARTICLE 1

Covenants As To Performance and Title

SECTION 1.01 The Mortgagor shall not allow, permit, cause, suffer, or consent to, voluntarily or involuntarily, a Bankruptcy Rejection. The Mortgagor shall pay to the Mortgagee, without offset, counterclaim or defense, the entire Value of the Leasehold Improvements prior to the expiration of the Term of the Lease; provided, however, that in the event the Lease either has expired upon the expiration of the Term or has been rightfully terminated in accordance with the terms and conditions thereof, other than by a Bankruptcy Rejection, and provided further that a Bankruptcy Rejection shall not have occurred, the Mortgagor shall not be required to pay to the Mortgagee the entire Value of the Leasehold Improvements pursuant this Section 1.01.

SECTION 1.02 As used herein the term "Value" with respect to the Leasehold Improvements shall mean the then current fair market value of the Leasehold Improvements, as determined by an MAI-certified appraiser (or should the MAI designation of the Appraisal Institute no longer exist, a reasonable equivalent thereof) retained by Mortgagee.

SECTION 1.03 The Mortgagor warrants (i) that it has good and marketable title to the Land, in fee simple, subject only to matters, if any, approved in writing by the Mortgagee, and (ii) that this Mortgage is a Lien on and security interest in and to the Mortgaged Premises subject to no other Lien except such matters as may be permitted in writing by the Mortgagee. The Mortgagor shall preserve such title as herein described and will forever warrant and defend the validity and priority of the Lien hereof against the claims of all Persons whomsoever.

ARTICLE 2

Mortgagor Covenants

SECTION 2.01 Throughout the term of this Mortgage, the Mortgagor, at its sole cost and expense, shall promptly comply with all present and future Laws of all Governmental Authorities.

SECTION 2.02 The Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Premises, non-compliance with which may affect the security of this Mortgage, or which may impose any duty or obligation upon the Mortgagor or any lessee or other occupant of the Mortgaged Premises or any part thereof, and the Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Premises.

SECTION 2.03 The Mortgagor will pay, or bond, or cause to be paid or bonded, from time to time as the same shall become due, all claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a Lien on the Mortgaged Premises or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom. The Mortgagor will do or cause to be done everything necessary so that the

Lien and priority hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

SECTION 2.04 The Mortgagor will not, without the prior written consent of the Mortgagee, create or suffer to be created any security interest under the UCC or any other Lien in favor of any Person other than the Mortgagee, or create or suffer any reservation of title by any such other Person, with respect to any Fixtures, nor shall any such Fixtures or property be the subject matter of any lease or other transaction whereby the ownership or any beneficial interest in any of such property is held by any Person other than the Mortgagor (or the Mortgagee as provided herein), other than in accordance with the Lease.

SECTION 2.05 Except as otherwise permitted herein, the Mortgagor will not create or permit to accrue upon all or any part of the Mortgaged Premises any debt or Lien except the Lien of this Mortgage, and shall promptly cause to be paid and discharged, any Lien whatsoever which by any present or future Law may be or become superior to, or on a parity with this Mortgage, either in Lien or in distribution out of the proceeds of any judicial sale of the Mortgaged Premises, or any part thereof, and any Lien not permitted by this Article 2.

ARTICLE 3 Leases

SECTION 3.01 At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to any award in condemnation or insurance proceeds), to any and all leases of all or any part of the Mortgaged Premises upon the execution by the Mortgagee of a written unilateral declaration to that effect, and recording thereof, at any time hereafter, in the official records of Allegheny County, Pennsylvania.

SECTION 3.02 Every contract, written or oral, which the Mortgagor shall make with any broker or leasing agent with respect to the leasing or sale of the Mortgaged Premises or any part thereof, unless approved in writing by the Mortgagee prior to its execution, shall provide that the rights of such broker or agent to the commissions or other compensation payable thereunder shall be subject, subordinate and inferior to the rights of the Mortgagee, so that in the event of a sale of the Mortgaged Premises pursuant to the exercise by the Mortgagee of the rights and remedies of the Mortgagee hereunder, as the case may be, the Mortgagee or the purchaser at such sale will be exonerated and discharged from all liability for the payment of any such commission or compensation.

SECTION 3.03 The Mortgagor will perform faithfully the lessor's covenants under any existing or future lease affecting the Mortgaged Premises, or any part thereof, and neither do, nor neglect to do, nor permit to be done or left undone, anything, other than pursuing the enforcement of the terms of such leases in the exercise of the lessor's remedies thereunder following default on the part of any tenant in the performance of its prescribed obligations, which may cause the modification or termination of any said lease, or of the obligations of any tenant or any Person claiming through such tenant, or which may diminish or impair the value of any lease, or the rents provided for therein, or the interest of the lessor or of the Mortgagee therein or thereunder. The Mortgagor will not create or permit a Lien which may be or become

superior to any lease affecting the Mortgaged Premises, or any part thereof without the prior written consent of the Mortgagee.

ARTICLE 4
Notices

SECTION 4.01 All notices, requests, demands, directions and other communications under the provisions of this Mortgage must be in writing (including telexed or telecopied communication) unless otherwise expressly permitted under this Mortgage and must be sent by first-class or first-class express mail, private overnight or next Business Day courier or by telex or telecopy with confirmation in writing mailed first class, in all cases with charges prepaid, and any such properly given notice will be effective when received. All notices will be sent to the applicable party at the addresses stated below or in accordance with the last unrevoked written direction from such party to the other parties.

If to the Mortgagor: c/o Pittsburgh Athletic Association
4215 5th Avenue
Pittsburgh, PA 15213
Attention: General Manager

and copy to: Meyer, Unkovic & Scott LLP
1300 Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
Attention: Robert E. Dauer, Jr., Esq.

If to the Mortgagee: Oakland Fifth Avenue Hotel Associates LP
333 Baldwin Road, Suite 200
Pittsburgh, PA 15205
Attention: Lytton Avenue Associates LLC, c/o James Noland

and a copy to: Oakland Fifth Avenue Hotel Associates LP
11410 Common Oaks Drive
Raleigh, NC 27614
ATTN: Concord Sierra Oakland Fifth LLC, c/o Julie Richter

and a copy to: Clark Hill PLC
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, Pennsylvania 15219-1425
Attention: Joshua M. Farber, Esq.

SECTION 4.02 Except as provided in Section 12.01 hereof, if at any time during the term of this Mortgage more than one Person shall be the owner of the Mortgaged Premises, then any notices, demands or requests given by the Mortgagee to any one of such Persons shall be deemed to have been duly given to the Mortgagor for all purposes under this Mortgage, and any notices, demands or requests given by any one of such Persons owning the Mortgaged Premises

to the Mortgagee shall be deemed to have been duly given by the Mortgagor for all purposes under this Mortgage, it being the intention that each Person owning the Mortgaged Premises irrevocably designates all other such Persons as his, her or its agent for the purpose of giving and receiving all notices, demands and requests required to be given or received under the provisions of this Mortgage.

ARTICLE 5

Lease

SECTION 5.01 This Mortgage is subject in all respects to the terms and provisions of the Lease, as now in force and as hereafter amended, supplemented or modified, which is incorporated herein by reference. The performance by the Mortgagor of all of its obligations under the Lease pursuant to the terms and conditions thereof and all Value of the Leasehold Improvements shall be secured hereby. Under the Lease, the Value of the Leasehold Improvements may change from time to time hereafter, but any such Value at the time of a Bankruptcy Rejection shall be secured hereby as if made on the date hereof.

ARTICLE 6

Events of Default and Remedies

SECTION 6.01 Upon the occurrence of a Bankruptcy Rejection or early termination of the Lease other than in accordance with the terms and conditions thereof (each, an "Event of Default"), the entire Value of the Leasehold Improvements (the "Debt") shall become automatically immediately due and payable without notice or demand, unless otherwise expressly waived by Mortgagee in writing. In any such event, the Mortgagee may forthwith, and without further delay undertake any one or more of the following:

(a) Foreclosure. Institute an action of mortgage foreclosure, or take such other action as the Law may allow, at law or in equity, for the enforcement thereof and realization on the mortgage security or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire unpaid principal balance of the Debt, with interest, at the Lease Interest Rate from the date of default, together with all other sums secured by this Mortgage, all costs of suit, interest at the Lease Interest Rate on any judgment obtained by the Mortgagee from and after the date of any Sheriff's Sale of the Mortgaged Premises (which may be sold, subject to all applicable Laws, in one parcel or in such parcels, manner or order as the Mortgagee shall elect) until actual payment is made by the Sheriff of the full amount due the Mortgagee, and a reasonable attorneys' commission for collection, without further stay, any Law, usage or custom to the contrary notwithstanding;

(b) Entry. The Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Mortgaged Premises, and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom without liability for trespass, damages or otherwise and the Mortgagor agrees to surrender possession to the Mortgagee on demand after the happening of any Event of Default; and having and holding the same, may use, operate, manage and control the Mortgaged Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, the Mortgagee, at the expense of the Mortgaged Premises, from time to time,

either by purchase, repairs or construction, may maintain and restore the Mortgaged Premises, whereof it shall become possessed as aforesaid, may complete the renovation of the buildings, structures and improvements and in the course of such completion may make such changes in the contemplated or completed buildings, structures and improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of the Mortgaged Premises, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may deem advisable; and in every such case the Mortgagee shall have the right to manage and operate the Mortgaged Premises and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; and the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Premises and every part thereof, and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Premises or any part thereof, as well as just and reasonable compensation for the services of the Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees properly engaged and employed by the Mortgagee, the Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the Debt, whether on account of principal or interest or otherwise as the Mortgagee, in its sole discretion may elect and second, to the payment of any other sums required to be paid by the Mortgagor under this Mortgage. **FOR SUCH PURPOSES THE MORTGAGOR HEREBY AUTHORIZES ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR THE MORTGAGOR TO SIGN AN AGREEMENT FOR ENTERING AN AMICABLE ACTION OF EJECTMENT FOR POSSESSION OF THE MORTGAGED PREMISES, AND TO CONFESS JUDGMENT THEREIN AGAINST THE MORTGAGOR IN FAVOR OF THE MORTGAGEE, WHEREUPON A WRIT MAY FORTHWITH ISSUE FOR THE IMMEDIATE POSSESSION OF THE MORTGAGED PREMISES, WITHOUT ANY PRIOR WRIT OR PROCEEDING WHATSOEVER; AND FOR SO DOING THIS MORTGAGE OR A COPY HEREOF VERIFIED BY AFFIDAVIT SHALL BE A SUFFICIENT WARRANT.**

(c) Receivership. Have a receiver appointed to enter into possession of the Mortgaged Premises, collect the earnings, revenues, rents, issues, profits and income therefrom and apply the same as the court may direct. The Mortgagee shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of the Mortgagor or any other Person who may be legally or equitably liable to pay moneys secured hereby and the Mortgagor and each such Person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should the Mortgagee or any receiver collect earnings, revenues, rents, issues, profits or income from the Mortgaged Premises, the moneys so collected shall not be substituted for payment of the Debt and can only be used to cure the default, with the prior written consent of the Mortgagee, when such moneys have been applied to payments of the principal, and interest thereon, and only after a sufficient amount of time has passed so as to prevent the disgorgement or forfeiture of such moneys by the Mortgagee pursuant to any state or federal insolvency or bankruptcy Law. The Mortgagee shall be liable to account only for earnings, revenues, rents, issues, profits and income actually received by the Mortgagee.

(d) **Sale of Personal Property.** The Mortgagee shall have such rights and remedies in respect of so much of the Mortgaged Premises as may, under applicable Law, be personal property, or any part thereof, as are provided by the UCC and such other rights and remedies in respect thereof which it may have at Law or in equity or under this Mortgage, including without limitation the right to take possession of the Mortgaged Premises wherever located and to sell all or any portion thereof at public or private sale, without prior notice to the Mortgagor, except as otherwise required by Law (and if notice is required by Law, after ten (10) days prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as the Mortgagee in its sole discretion may determine. The Mortgagee shall apply the proceeds of any such sale first to the payment of the reasonable costs and expenses incurred by the Mortgagee in connection with such sale or collection, including reasonable attorney's fees and legal expenses, second to the payment of the Debt, whether on account of principal or interest or otherwise as the Mortgagee in its sole discretion may elect, and then to pay the balance, if any, as required by Law. Upon the occurrence of any Event of Default, the Mortgagor, upon demand by the Mortgagee, shall promptly assemble any equipment and fixtures included in the Mortgaged Premises and make them available to the Mortgagee at a place to be designated by the Mortgagee, which shall be reasonably convenient to the Mortgagee and the Mortgagor.

(e) **Sale of the Mortgaged Premises.** The Mortgagee may sell any of the Mortgaged Premises, not specifically designated as personal property and subject to subparagraph (4) above, in such a manner as it deems appropriate and in accordance with any applicable Law. The Mortgagee shall apply the proceeds of any such sale first to the payment of the reasonable costs and expenses incurred by the Mortgagee in connection with such sale or collection, including reasonable attorneys' fees and legal expenses, second to the payment of the Debt, whether on account of principal or interest or otherwise as the Mortgagee in its sole discretion may elect, and then to pay the balance, if any, as required by Law.

(f) The Mortgagee may continue in possession of the Mortgaged Premises under the Lease for the remainder of the Term thereof pursuant to § 365(h)(1)(A)(ii) of the Bankruptcy Code. This provision shall run with the Land and shall be binding upon the Mortgagor, its successors and assigns, and each Person who obtains title to the Mortgaged Premises during the term of this Mortgage.

SECTION 6.02 Upon the occurrence of an Event of Default hereunder, the Mortgagee in pursuance of the foregoing remedies, or in addition thereto, (a) shall be entitled to resort to its several securities for the payment of the sums secured hereby in such order and manner as the Mortgagee may think fit without impairing the Mortgagee's Lien in, or rights to, any of such securities and without affecting the liability of any Person for the sums secured hereby, except to the extent that the Debt secured hereby shall have been reduced by the actual monetary consideration, if any, received by the Mortgagee from the proceeds of such security; (b) may, in the Mortgagee's sole discretion, release for such consideration, or none, as the Mortgagee may require, any portion of the Mortgaged Premises without, as to the remainder of the security, in anywise impairing or affecting the Lien of this Mortgage, or the priority thereof, or improving the position of any subordinate Lienholder with respect thereto, except to the extent that the Debt secured hereby shall have been reduced by the actual monetary consideration, if any, received by the Mortgagee for such release; and/or (c) may accept the assignment or pledge of any other

property in place thereof as the Mortgagee may require without being accountable for so doing to any other lienor.

SECTION 6.03 The Mortgagor hereby waives and releases (a) all errors, defects and imperfections in any proceedings instituted by the Mortgagee under this Mortgage, (b) all benefit that might accrue to the Mortgagor by virtue of any present or future Laws exempting the Mortgaged Premises, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, (c) all benefits that might accrue to the Mortgagor from requiring valuation or appraisal of any part of the Mortgaged Premises levied or sold on execution of any judgment recovered for the Debt secured hereby, and (d) all notices not herein elsewhere specifically required, of the Mortgagor's default or of the Mortgagee's exercise, or election to exercise, any option under this Mortgage. The Mortgagor further agrees to waive the issuance and service of process and enter its voluntary appearance in any action, suit or proceeding brought in connection with any Event of Default and if required by the Mortgagee, to consent to the appointment of a receiver or receivers of the Mortgaged Premises and of all the earnings, revenues, rents, issues, profits and income thereof. The Mortgagor will not at any time insist upon, or plead, or in any manner whatever, claim or take any benefit or advantage of any right under any statute heretofore or hereafter enacted to redeem the property so sold, or any part thereof, and the Mortgagor hereby expressly waives all benefit or advantage of any such Law or Laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such Law or Laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Premises marshaled upon any foreclosure hereof.

SECTION 6.04 In the event of any breach or threatened breach by the Mortgagor of any of the covenants, agreements, terms or conditions contained in this Mortgage, the Mortgagee shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though other remedies were not provided for in this Mortgage.

SECTION 6.05 No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Premises or upon any other property of the Mortgagor shall affect in any matter or to any extent, the Lien of this Mortgage upon the Mortgaged Premises or any part thereof, or any Liens, rights, powers or remedies of the Mortgagee hereunder, but such Liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

SECTION 6.06 In the event that the Mortgagee shall have the right to foreclose this Mortgage, the Mortgagor authorizes the Mortgagee at its option to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Premises, and the failure to make any such tenants parties to any such foreclosure proceeding and to foreclose their rights will not be asserted by the Mortgagor as a defense to any proceeding instituted by the Mortgagee to collect the Debt secured hereby or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Premises.

ARTICLE 7
Non-Waiver, Etc.

SECTION 7.01 Any failure by the Mortgagee to insist upon the strict performance by the Mortgagor of any of the terms, covenants, agreements, conditions and provisions hereof shall not be deemed to be a waiver of any of the terms, covenants, agreements, conditions, promises and provisions hereof, and the Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms, covenants, agreements, conditions, promises and provisions of this Mortgage to be performed by the Mortgagor. No covenant, agreement, provision, term or condition of this Mortgage to be performed or complied with by the Mortgagor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Mortgagee. Neither the Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor or of any other Person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the Debt, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Premises and the Mortgagee extending the time of payment or modifying the terms of this Mortgage without first having obtained the consent of the Mortgagor or such other Person, and in the latter event, the Mortgagor and all such other Persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Mortgaged Premises, the Mortgagee may release the obligation of anyone at any time liable for any of the Debt secured by this Mortgage or any part of the security held for the Debt and may extend the time of payment or otherwise modify the terms of this Mortgage, or both, without, as to the security or the remainder thereof, in anywise impairing or affecting the Lien of this Mortgage or the priority of such Lien, as security for the payment of the Debt as it may be so extended or modified, over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any lease affecting the Mortgaged Premises whether or not such lease be subordinate to this Mortgage. For the payment of the Debt secured hereby, the Mortgagee may resort to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

SECTION 7.02 If any term or provision of this Mortgage or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and shall be enforced to the fullest extent permitted by Law.

SECTION 7.03 Any act to be performed by the Mortgagor under this Mortgage shall be performed by the Mortgagor at the Mortgagor's sole cost and expense.

SECTION 7.04 If the Mortgagor fails (ii) to pay and discharge any Lien when and as required hereby, or (ii) to fully and timely perform any other obligation of the Mortgagor hereunder, the Mortgagee shall be under no obligation to take action to correct such failures. However, at its option, the Mortgagee may take such action and expend such sums as the Mortgagee reasonably deems necessary to correct such failures or any consequences thereof, but such action or payment by the Mortgagee shall not constitute a waiver by the Mortgagee of the performance of said act, and the Mortgagee may declare the Mortgagor's failure to perform such act an Event of Default notwithstanding the Mortgagee's having undertaken the performance of the act. The Mortgagor will repay to the Mortgagee promptly upon demand any amounts expended by the Mortgagee to correct such failure or any consequences thereof, and all expenses of the Mortgagee in taking such action, with interest at the Lease Interest Rate from the incurring of such expense or the making of such payment, as the case may be. The payment of such amounts to the Mortgagee shall be secured by this Mortgage.

ARTICLE 8 General Covenants

SECTION 8.01 The Mortgagor represents and warrants that this Mortgage constitutes a legal, valid and binding obligation of the Mortgagor, enforceable in accordance with its terms.

SECTION 8.02 The Mortgagor, within five (5) days upon request in person or within ten (10) days upon request by writing, will furnish a duly acknowledged written statement in form satisfactory to the Mortgagee setting forth the amount of the Debt then secured by this Mortgage, and stating either that no offsets or defenses exist against such Debt, or if such offsets or defenses are alleged to exist, the nature and extent thereof.

SECTION 8.03 In the event of any sale under this Mortgage by virtue of judicial proceedings, the Mortgaged Premises may be sold, subject to all applicable Laws, in one parcel and as an entirety or in such parcels, manner or order as the Mortgagee in its sole discretion may elect.

SECTION 8.04 The Mortgagor shall promptly pay upon request all expenses and costs incurred by the Mortgagee, including reasonable attorneys' fees, together with interest thereon at the Lease Interest Rate accruing after an Event of Default from the date of the payment thereof by the Mortgagee, in connection with any action, proceeding, litigation or claim instituted or asserted by or against the Mortgagee or in which the Mortgagee becomes engaged, including without limitation bankruptcy, reorganization, arrangements, receivership or similar proceedings, wherein it becomes necessary in the opinion of the Mortgagee to protect the Mortgagee's interest in the Mortgaged Premises or the security afforded hereby, or to defend or uphold the Lien of this Mortgage, or the validity or effectiveness of any assignment of any claim, award, payment, property damage insurance policy or any other right or property conveyed, encumbered or assigned by the Mortgagor to the Mortgagee hereunder, or the priority of any of the same, and all such expenses and costs, and said interest thereon, shall be added to and become part of the Debt and be secured in all respects hereby as if part of the Debt as of the date hereof; provided, however, that in any action to foreclose this Mortgage or to recover or collect the sums due hereunder the provisions of Law and of this Mortgage relative to the recovery of costs,

disbursements, commissions, allowances and attorneys' fees, shall prevail unaffected by this Section 8.04.

SECTION 8.05 This Mortgage creates a security interest in the Fixtures and other personalty referred to above and, to the extent that any such Fixtures shall not be deemed to be part of the real estate, shall constitute a security agreement under the UCC. Neither a request made by the Mortgagee to the Mortgagor to execute any instrument or document to perfect or maintain the Mortgagee's security interest nor the failure of the Mortgagee to make such a request shall be construed as a release of such collateral or any part thereof from the Lien of and security interest granted by this Mortgage, it being understood and agreed that this covenant and any such security delivered to the Mortgagee are cumulative and given as additional security. The Mortgagor will execute and deliver to the Mortgagee on demand and, upon the occurrence of an Event of Default, hereby irrevocably appoints the Mortgagee or any officer of the Mortgagee the attorney-in-fact of the Mortgagor to execute, deliver and file, such financing statements and other instruments as the Mortgagee may reasonably require in order to perfect and maintain such security interest under the UCC upon the aforesaid collateral, such power being coupled with an interest.

SECTION 8.06 Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" or "Mortgagors" shall mean each of the parties executing this instrument, individually, collectively and jointly and severally, their successors and assigns or any subsequent owner or owners of the Mortgaged Premises, the word "Mortgagee" shall mean the party to whom this Mortgage is given or any subsequent holder or holders of this Mortgage; the singular shall include the plural and the plural the singular; the masculine or feminine or neuter gender shall each include the other genders.

SECTION 8.07 This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

SECTION 8.08 The captions of this Mortgage are for convenience and reference only and in no way define, limit or describe the scope or intent of this Mortgage nor in any way affect this Mortgage.

SECTION 8.09 This Mortgage shall be construed and enforced in accordance with the Laws of the Commonwealth of Pennsylvania, without regard to the principles of conflicts of laws thereof.

SECTION 8.10 The Mortgagor shall, at its sole cost and expense, promptly upon request of the Mortgagee do all acts and things including, but not limited to, the execution and delivery of any further deeds, conveyances, mortgages, assignments and further assurances, deemed necessary by the Mortgagee, to establish, confirm, maintain and continue the Lien created and intended to be created hereby, all assignments made or intended to be made pursuant hereto, and all other rights and benefits conferred or intended to be conferred on the Mortgagee hereby.

SECTION 8.11 The Mortgagor covenants and warrants that the execution and delivery of and the carrying out of the transactions contemplated by this Mortgage, the execution and

delivery of this Mortgage, and the performance and observance of the terms, covenants, agreements and provisions of all of the foregoing, will not conflict with or result in a breach of the terms or provisions of any existing Law.

SECTION 8.12 All of the terms and conditions of this Mortgage and the lien and security interest in and to the Mortgaged Premises granted by the Mortgagor to the Mortgagee by this Mortgage are made and shall be subject and subordinate to the provisions of any valid and enforceable first priority mortgage granted by the Mortgagor to any Person with respect to the Mortgaged Premises from time to time.

ARTICLE 9

Transfer of Mortgaged Premises

SECTION 9.01 The Mortgagor shall not, without the written consent of the Mortgagee, (a) transfer (whether by operation of Law or otherwise) the Mortgagor's interest in the Mortgaged Premises, or any part thereof, or (b) permit Liens inferior to the Lien of this Mortgage upon the Mortgaged Premises or any part thereof.

SECTION 9.02 If the Mortgagee is willing to consent to a transfer of the benefits of this Mortgage, the Mortgagee may impose conditions for such consent, including, without limitation, requirements that the purchaser meet the Mortgagee's then existing credit and other standards with respect to similar such loans, that the purchaser specifically assume the obligations to be performed by the Mortgagor under this Mortgage, that fees be paid to the Mortgagee at the time of the transfer, that new financing statements be filed, that purchaser agree to restrictions on further transfers, or that endorsements to existing policies or new hazard insurance policies be obtained.

ARTICLE 10

Open-End Mortgage/Future Advances

SECTION 10.01 This Mortgage is an Open-End Mortgage as defined in § 8143(f) of Title 42 of the Pennsylvania Consolidated Statutes and, as such, is entitled to the benefits of Senate Bill 693, 1989 session of the General Assembly of Pennsylvania, as codified at 42 PA. C.S.A. § 8143 *et. seq.* The parties to this Mortgage intend that, the Project shall be constructed and the Value of the Leasehold Improvements shall increase and change from time to time after this Mortgage is left for record with the Department of Real Estate of Allegheny County, Pennsylvania, whether such advances are made pursuant to an obligation of the Mortgagee or otherwise. The maximum amount of unpaid indebtedness of principal secured by this Mortgage (which shall consist of unpaid balances of advances made either before or after, or both before and after, this Mortgage is left for record), which may be outstanding at any time, is the lessor of (i) One Hundred and Fifty Million and 00/100 Dollars (\$150,000,000.00) or (ii) twice the amount of the Debt, plus accrued and unpaid interest thereon (if any). In addition to the Debt, this Mortgage secures unpaid balances of advances made, with respect to the Mortgaged Premises, for the payment of taxes, assessments, maintenance charges, insurance premiums or costs incurred for the protection of the Mortgaged Premises or the Lien of this Mortgage, expenses including, but not limited to, costs and attorneys' fees, incurred by the Mortgagee by reason of the occurrence of an Event of Default by the Mortgagor under this Mortgage.

PROVIDED ALWAYS, that if the Mortgagor shall keep, observe, perform and comply with all of the provisions of this Mortgage and the Lease, to be kept, observed, performed or complied with by the Mortgagor, then this Mortgage and the estate and interest hereby granted shall cease and have no further effect; and in such case, the Mortgagee, on demand of and at the sole cost and expense of the Mortgagor, shall promptly execute proper instruments in recordable form acknowledging satisfaction and discharge of this Mortgage and shall release or assign all of its right, title and interest of, in and to the Mortgaged Premises, including the assignment by the Mortgagor of all of its right, title and interest in all current or future leases (other than the Lease) covering all or any part of the Mortgaged Premises and in the rents thereunder, and shall deliver to the Mortgagor any other property then pledged to and held by the Mortgagee pursuant to the terms of this Mortgage.

ARTICLE 11

Waiver of Trial By Jury

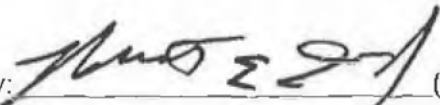
SECTION 11.01 THE MORTGAGOR HEREBY EXPRESSLY, KNOWINGLY AND VOLUNTARILY WAIVES ALL BENEFIT AND ADVANTAGE OF ANY RIGHT TO A TRIAL BY JURY, AND WILL NOT AT ANY TIME INSIST UPON, OR PLEAD OR IN ANY MANNER WHATSOEVER CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF A TRIAL BY JURY IN ANY ACTION ARISING IN CONNECTION WITH THIS MORTGAGE.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagor, intending to be legally bound hereby, has caused this Mortgage to be duly executed on the day and year first written above, intending the same to be a sealed instrument.

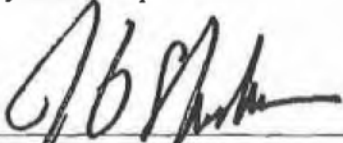
ATTEST/WITNESS:

PITTSBURGH ATHLETIC
ASSOCIATION LAND COMPANY,
a Pennsylvania corporation

By:  (SEAL)

Name: Robert E. Duvall Jr.

Title: Treas / Asst. Sec.

By:  (SEAL)

Name: JAMES A. SHEEHAN

Title: VICE PRESIDENT

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this, the 10th day of April 2017, before me, a Notary Public, the undersigned officer, personally appeared James A. Shadon who acknowledged himself/herself to be the Vice President of Pittsburgh Athletic Association Land Company, a Pennsylvania corporation (the "Company"), and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Company as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Mary Dancer Christie
Notary Public

My Commission Expires:

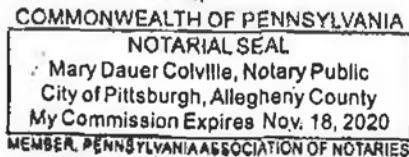


EXHIBIT A

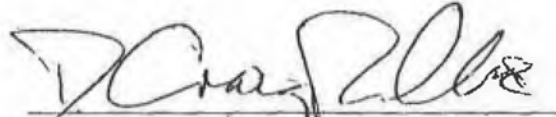
DESCRIPTION OF REAL PROPERTY

ALL that certain lot or piece of ground situate in the 4th Ward of the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, being designated as Lot 2R in the Revised Pittsburgh Athletic Association Plan of Lots, as the same was recorded with the Department of Real Estate of Allegheny County, Pennsylvania, on September 7, 2016, at Plan Book Volume 289, page 138.

BEING designated as Block & Lot No. 27-R-110 in the Deed Registry Office of the Allegheny County Department of Real Estate.

Certificate of Residence

I hereby certify that the precise address of Oakland Fifth Avenue Hotel Associates LP, the within named Mortgagee, is 333 Baldwin Road, Suite 200, Pittsburgh, PA 15205.



For Mortgagee