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Cook County Recorder

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Prepared by, recording requested by,  
and after recording, return to:

Dorothea S. Costrini  
LeeAnn W. Aldridge  
Hunter, Maclean, Exley & Dunn, P.C.  
Post Office Box 9848  
Savannah, Georgia 31412

General Electric Capital BAF Corporation  
Loan Number: 0005532-001

**NON-DISTURBANCE, SUBORDINATION AND ATTORNMENMENT AGREEMENT**

THIS AGREEMENT, made as of this 25th day of July, 2001, between EVANSTON HOTEL ASSOCIATES, LLC, a Delaware corporation, whose address is 2626 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27608 (the "Borrower"), CAPSTAR WINSTON COMPANY, L.L.C., a Delaware limited liability company (the "Lessee"), and GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION, a Delaware corporation (the "Lender").

RECITALS

1. The Lender has extended a loan to the Borrower in the amount of up to \$12,300,000 (the "Loan") pursuant to that certain loan agreement dated the date hereof between the Borrower and the Lender (the "Loan Agreement") and evidenced by the promissory note executed by the Borrower and payable to the Lender (such note, together with any extensions, renewals, and amendments thereto, and hereinafter referred to as the "Note") and secured by deeds of trust, mortgages, and deeds to secure debt (collectively, the "Mortgage"), Assignments of Rents and Leases (collectively, the "Assignment of Rents"), and Security Agreements, all as referred to in Schedule 1 attached hereto and incorporated herein by reference. The Note, the Loan Agreement, the Mortgage, the Assignment of Rents, the Security Agreement and any and all other loan documents now or hereafter either securing or evidencing the Loan evidenced by the Loan Agreement and the Note and all modifications, extensions, consolidations, replacements and renewals of such loan documents are referred to collectively as the "Loan Documents."

2. The Lessee is the tenant under the lease agreement between the Borrower and the Lessee, dated as of January 24, 2000 (hereinafter, together with any amendments or modifications consented to by the Lender, are individually and collectively referred to as the "Lease").

3. In connection with the credit being extended pursuant to the terms of the Loan Agreement, the Lender has requested the Lessee and the Borrower to execute this Agreement, and in order to induce the Lender to make the Loan, the Lessee and the Borrower have agreed to the terms set out herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

FIRST: The Lease shall be subject and subordinate to the Mortgage and to all renewals, modifications, or extensions thereof.

SECOND: So long as Lessee is not in default (beyond any period in the Lease given Lessee to secure such default) in the payment of rent (specifically including but not limited to percentage

**BOX 338-CT1**

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rent) or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Lessee's part to be performed, and except as expressly set forth herein. Lessee's possession of the premises described in the Lease and Lessee's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, shall not be diminished or interfered with by Lender and Lessee's occupancy of said premises shall not be disturbed by Lender for any reason whatsoever during the term of the lease or any extensions or renewals thereof.

**THIRD:** If the interests of Borrower shall be transferred to and owned by Lender by reason of foreclosure, deed in lieu of foreclosure, or other proceedings brought by it or by any other manner, and Lender succeeds to the interest of the Borrower under the Lease, Lessee shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option thereof in the Lease, with the same force and effect as if Lender were the lessor under the Lease, and Lessee does hereby attorn to Lender as its lessor, said attornment to be effective and self-operative without the execution of any further instruments on the part of either of the parties hereto immediately upon Lender succeeding to the interest of the lessor under the Lease; provided, however, that Lessee shall be under no obligation to pay rent to Lender as lessor, pursuant to this Agreement until Lessee receives written notice from Lender that it has succeeded to the interest of lessor under the Lease. The respective rights and obligations of Lessee and Lender upon said attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein, subject to the terms and provisions of this Agreement; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein, subject to the terms and provisions of this Agreement.

**FOURTH:** Lessee certifies that: (a) the Lease is presently in full force and effect; (b) no rent under the Lease has been paid more than thirty (30) days in advance of its due date, other than any overpayments of percentage rent that may be adjusted as provided in the Lease; (c) that Lessee, as of this date, has no charge, lien or claim of offset under the Lease, or otherwise, against the rents or other amounts due or to become due thereunder; (d) the Lessee is the owner of the "Tenant's" or "Lessee's" interest in the Lease and has not transferred or assigned the Leases or sublet the premises demised thereby; and (e) to the best knowledge of the Lessee, neither the Lessee nor the Lessor is in any way in default under the Lease.

**FIFTH:** If Lender shall succeed to the interest of Borrower under the Lease, Lender shall be bound to Lessee under all terms, covenants and conditions of the Lease, and Lessee shall, from and after Lender's successions to the interest of Borrower under the Lease, have the same remedies against Lender for the breach of an agreement contained in the Lease that Lessee might have had under the Lease against Borrower if Lender had not succeeded to the interest of Borrower; provided further, however, that Lender shall not be :

- (a) liable for any act or omission of any prior landlord (including the Borrower); or
- (b) subject to any offsets or defenses which the Lessee might have against any prior landlord (including the Borrower); or
- (c) liable for the return of any security deposits not delivered to Lender; or
- (d) bound by any rent or additional rent which Lessee might have paid for more than thirty (30) days in advance of its due date to any prior landlord (including Borrower), other than any overpayments of percentage rent that may be adjusted as provided in the Lease; or

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- (e) bound by any amendment or modification of the Lease made without Lender's consent; or
- (f) obligated to construct or finish the construction or to renovate or finish the renovation of the premises described in the Lease, unless it expressly assumes such obligation after it succeeds to the interest of the lessor under the Lease.

SIXTH: The Lease now is, and shall at all times continue to be, subject and subordinate in each and every respect, to the Mortgage and to any and all renewals, modifications and extensions thereof, but any and all such renewals, modifications and extensions shall nevertheless be subject to and entitled to the benefits of the terms of this Agreement. Notwithstanding anything to the contrary contained in Section 15.4 of the Lease and for so long as the Loan is outstanding, Lessee agrees that Borrower shall be entitled to so much of the Award (as defined in the Lease) as may be required to pay 125% of the Allocated Loan Amount (as defined in the Loan Agreement) for the related Property (as defined in the Mortgage), and Lessee's right to receive any portion of the Award shall not arise until such amount is paid in full.

SEVENTH: Lessee will notify Lender, by reputable overnight courier delivery, of any default of Borrower which would entitle Lessee to cancel the Lease or abate the rent payable thereunder, and agrees that notwithstanding any provision of the Lease, no notice of cancellation thereof, nor any abatement shall be effective until Lender has received the notice aforesaid and has failed within 30 days of the date thereof to cure such default or if the default cannot be cured within 30 days has failed to commence and to diligently prosecute the cure of Lessor's default which gave rise to such right of cancellation or abatement. The address of the Lender for notice is General Electric Capital Business Asset Funding Corporation, Franchise Finance Department, 10900 Northeast Fourth Street, Suite 500, Bellevue, Washington 98004.

EIGHTH: The Lease may not be assigned or sublet to the Lessee without the Lender's prior written consent, except as the Lessee may be permitted to do so without the consent of the Borrower under the terms of the Lease. A franchisor of any hotel operated by the Borrower on the premises demised under the Lease may not be replaced by the Lessee without the Lender's prior written consent. Any furniture, fixtures, and equipment acquired for use in the hotel located on the property described in the Lease shall be acquired in the name of (and owned by) the landlord, rather than the Lessee. Notwithstanding the provisions of Section 34.1 of the Lease, Tenant hereby consents and agrees to the lien of the Mortgage and the other Loan Documents as it relates to the Property (as defined in the Mortgage).

NINTH. Without the prior written consent of Lender, Lessee shall not (a) modify or alter the terms of the Lease so as to reduce the rent or other sums payable by Lessee thereunder, increase the economic obligations of Lessor thereunder, or shorten the term of the Lease; (b) pay the base rent or any other sums becoming due under the terms of the Lease more than one month in advance; (c) accept Borrower's waiver of or release from the performance of any obligations under the Lease; (d) assign the Lease or sublet the Leased Premises, except as permitted under the Lease; or (e) assign the Lease as collateral security or mortgage or otherwise encumber its leasehold interest; (f) make any structural changes to the Leased Premises, except as permitted pursuant to the Capital Budget as defined in the Lease; or (g) agree with Lessor to terminate the Lease.

TENTH: Should Lender advise Lessee that Borrower is in default in the indebtedness to Lender and request that payment of all future rentals be made directly to Lender, Lessee shall make all future rental payments under the Lease directly to Lender until instructed otherwise by Lender in writing. Lessee shall not be liable to Borrower for any rental payments actually paid to Lender pursuant to this Section.

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ELEVENTH: Notwithstanding anything in the Lease to the contrary, Lessee agrees that any option or right of first refusal that it may have to purchase the Leased Premises shall not apply to a sale by foreclosure or a deed in lieu of foreclosure, and shall automatically be void and of no further force and effect following such sale by foreclosure or a deed in lieu of foreclosure. Lessee shall execute promptly whatever documents Lender may request from time to time in order to confirm the foregoing.

TWELFTH: Lessee agrees that it shall provide Lender with copies of the financial statements provided to Borrower pursuant to the Lease.

THIRTEENTH: Lessee acknowledges that all of the interest of Borrower in and to the Lease has been assigned to Lender pursuant to the Mortgage and the Assignment of Rents.

FOURTEENTH: This Agreement and the Lease may not be modified except by an agreement in writing signed by the parties hereto.

FIFTEENTH: In no event shall Lender or any successor or assignee of Lender (collectively, the "Subsequent Landlord") have any personal liability for the obligations of Borrower under the Lease and should the Subsequent Landlord succeed to the interests of the Borrower under the Lease, Lessee shall look only to the estate and property of any such Subsequent Landlord in the related Property for the satisfaction of Lessee's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Subsequent Landlord as landlord under the Lease, and no other property or assets of any Subsequent Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Lessee's remedies under or with respect to the Lease; provided, however, that the Lessee may exercise any other right or remedy provided thereby or by law in the event of any failure by Subsequent Landlord to perform any such material obligation.

SIXTEENTH: The law of the state in which the real property subject to the Mortgage is located shall govern the interpretation of this Agreement.

SEVENTEENTH: This Agreement is binding upon, and inures to the benefit of, any successors and assigns to the parties hereto. There are no other agreements, either written or oral, with respect to the matters described herein.

EIGHTEENTH: This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in manner and form sufficient to bind them, as of the day and year first above written.

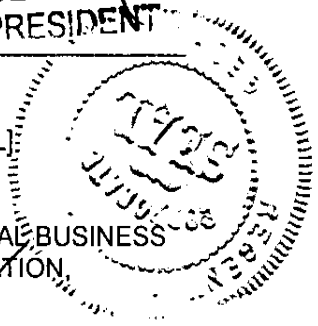
EVANSTON HOTEL ASSOCIATES, LLC,  
a Delaware limited liability company

By its managing member,  
Regent Hotel Development II, LLC,  
a Georgia limited liability company

By its sole member,  
Regent Partners, Inc.,  
a Georgia corporation

By: *Terry L. Woolard*  
**TERRY L. WOOLARD**  
Title: **EXECUTIVE VICE PRESIDENT**

[SEAL]



GENERAL ELECTRIC CAPITAL BUSINESS  
ASSET FUNDING CORPORATION,  
a Delaware corporation

By: *Greg Veceli*  
Title: *Sr. Vice President*

[SEAL]

CAPSTAR WINSTON COMPANY, L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[SEAL]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in manner and form sufficient to bind them, as of the day and year first above written.

EVANSTON HOTEL ASSOCIATES, LLC,  
a Delaware limited liability company

By its managing member,  
Regent Hotel Development II, LLC,  
a Georgia limited liability company

By its sole member,  
Regent Partners, Inc.,  
a Georgia corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

[SEAL]

GENERAL ELECTRIC CAPITAL BUSINESS  
ASSET FUNDING CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

[SEAL]

CAPSTAR WINSTON COMPANY, L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_

Title: Christopher L. Bennett, VP, Legal Secretary

[SEAL]

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STATE OF Georgia

COUNTY OF Fulton

ss.

## ACKNOWLEDGMENT

PERSONALLY before me, the undersigned, a Notary Public in and for said State, appeared Terry L. Woolard, to me well-known and known by me [or proven upon the basis of credible evidence] to be the Executive Vice President of Regent Partners, Inc., a Georgia corporation, the sole member of Regent Hotel Development II, LLC, the managing member of Evanston Hotel Associates, LLC, a Delaware limited liability company, the company that executed the within instrument, and known to me to be the person whose signature appears on the within instrument on behalf of such company therein named, and acknowledged to me that he executed such instrument as his own free act and deed and that such company executed the within instrument as its own free act and deed, pursuant to its operating agreement or the consent of its members for the uses and purposes set forth therein.

WITNESS my hand and official seal this 23<sup>rd</sup> day of July, 2001.



Christine A. Rector  
Notary Public

My commission expires: July 1, 2003

[SEAL]

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County Clerk's Office


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STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF KING      )

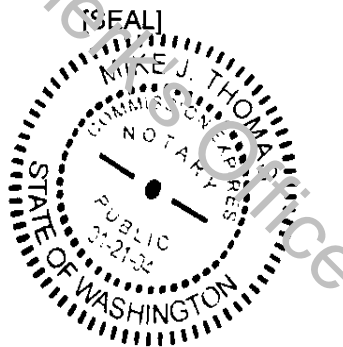
## ACKNOWLEDGMENT

On this 19<sup>th</sup> day of July 2001, before me, a Notary Public in and for the State of Washington, personally appeared Greg Vecchi, of GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION, a Delaware corporation, and to be the person who executed this instrument, and being duly sworn, stated that he was authorized to execute the instrument on behalf of such corporation pursuant to its by-laws or a resolution of its board of directors and that he acknowledged it as such officer of such corporation to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument. He is personally known to me or has produced his driver's license or personally known as identification.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

  
\_\_\_\_\_  
Mike Thomas  
(Print Name)

NOTARY PUBLIC in and for the State of  
Washington, residing at  
Bothell, WA  
My appointment expires 1/21/2004



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STATE OF

COUNTY OF

*Maryland*  
*Prince George's*

ss.

## ACKNOWLEDGMENT

PERSONALLY before me, the undersigned, a Notary Public in and for said State, appeared July 19, 2001, to me well-known and known by me [or proven upon the basis of credible evidence] to be the VP, Legal + Secretary of Capstar Winston Company, L.L.C., a Delaware limited liability company, the company that executed the within instrument, and known to me to be the person whose signature appears on the within instrument on behalf of such company therein named, and acknowledged to me that he executed such instrument as his own free act and deed and that such company executed the within instrument as its own free act and deed, pursuant to its operating agreement or the consent of its members for the uses and purposes set forth therein.

WITNESS my hand and official seal this 19<sup>th</sup> day of July 2001.

*Daphne R. Talbert*  
Notary Public

My commission expires

*Jan 02, 2002*

[SEAL]

DAHPNE R. TALBERT  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires January 2, 2002

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## EXHIBIT A

(A)

PARCEL 1:

LOT 5 IN CHURCH MAPLE RESUBDIVISION, BEING A RESUBDIVISION OF PART OF DEMPSTER'S SUBDIVISION OF BLOCK 66 OF THE VILLAGE OF EVANSTON, COOK COUNTY, ILLINOIS; PART OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT OF WAY (FORMERLY CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD RIGHT OF WAY); PART OF BLOCK 18 IN THE VILLAGE OF EVANSTON; ALL OF BLOCKS 2 AND 3 IN CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22 IN THE COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS; AND PART OF VACATED CLARK STREET AND EAST RAILROAD AVENUE; BEING IN THE NORTHWEST 1/4 AND THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 2, 1999 AS DOCUMENT 99528041, ALL IN COOK COUNTY, ILLINOIS.

(B):

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED JUNE 5, 2000 AND RECORDED JUNE 13, 2000 AS DOCUMENT 00432325 FROM THE CITY OF EVANSTON, ILLINOIS TO EVANSTON HOTEL ASSOCIATES, LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR THE FOLLOWING DESCRIBED EASEMENTS MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF:

(I) AND EASEMENT FOR PEDESTRIAN ACCESS, INGRESS AND EGRESS OVER AND ACROSS A PORTION OF THE CITY PROPERTY DESCRIBED IN EXHIBIT "A" ATTACHED TO SAID INSTRUMENT ("THE PEDESTRIAN EASEMENT AREA), (II) AN EASEMENT FOR PEDESTRIAN AND VEHICULAR ACCESS, INGRESS AND EGRESS OVER AND ACROSS A PORTION OF THE CITY PROPERTY DESCRIBED ON EXHIBIT "B" ATTACHED TO SAID INSTRUMENT ("THE ACCESS EASEMENT AREA"), (III) AN EASEMENT FOR PEDESTRIAN AND VEHICULAR ACCESS, INGRESS AND EGRESS OVER AND ACROSS A PORTION OF THE CITY PROPERTY DESCRIBED ON EXHIBIT "C" ATTACHED TO SAID INSTRUMENT ("THE DROP-OFF LANE EASEMENT AREA"), (IV) AN EASEMENT FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF A PORTE COCHERE OVERHANG OVER AND ABOVE A PORTION OF THE CITY PROPERTY DESCRIBED ON EXHIBIT "D" ATTACHED TO SAID INSTRUMENT ("THE PORTE COCHERE EASEMENT AREA") OVER THE PORTIONS OF LAND DESCRIBED IN SAID INSTRUMENT.

PARCEL 3:

A TEMPORARY NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED JUNE 5, 2000 AND RECORDED JUNE 13, 2000 AS DOCUMENT 00432325 FROM THE CITY OF EVANSTON, ILLINOIS TO EVANSTON HOTEL ASSOCIATES, LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR A TEMPORARY EASEMENT FOR THE USE OF THE PORTION OF THE CITY PROPERTY DESCRIBED ON EXHIBIT "E" ATTACHED TO SAID INSTRUMENT AS A CONSTRUCTION STAGING AREA ("THE CONSTRUCTION STAGING EASEMENT AREA") OVER THE PORTIONS OF LAND DESCRIBED IN SAID INSTRUMENT AND MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

(C)

THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED AS THE RIGHT OF POSSESSION FOR THE TERM OR TERMS DESCRIBED HEREIN SUBJECT TO ANY PROVISIONS CONTAINED IN THE LEASE WHICH LIMIT

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THE RIGHT OF POSSESSION AS TO PARCEL 4 OF THE LAND DESCRIBED BELOW CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: THE CITY OF EVANSTON, AS LESSOR, AND AHC EVANSTON LLC, A LIMITED LIABILITY COMPANY, AS LESSEE, DATED JANUARY 26, 2000, A MEMORANDUM OF WHICH LEASE WAS RECORDED JUNE 13, 2000 AS DOCUMENT 00432327, WHICH LEASE DEMISES THE FOLLOWING PORTIONS OF THE LAND: THE NUMBER OF UNASSIGNED AND UNRESERVED AUTOMOBILE PARKING SPACES REQUIRED TO COMPLY WITH THE CITY OF EVANSTON'S ZONING ORDINANCE, AS THAT ORDINANCE MAY BE MODIFIED FROM TIME TO TIME AND AS FURTHER DEFINED IN SAID LEASE TOGETHER WITH THE RIGHT TO USE IN COMMON {A} THE COMMON LOBBIES, CORRIDORS, STAIRWAYS, STAIRWELLS, ESCALATORS AND ELEVATORS OF THE GARAGE IN COMMON WITH OTHERS AND {B} COMMON WALKWAYS, PARKING AREAS AND DRIVEWAYS NECESSARY FOR COMMON INGRESS AND EGRESSES TO THE GARAGE FOR A TERM OF YEARS BEGINNING ON THE DAY THE HOTEL OPENS FOR BUSINESS AND ENDING ON THE FORTIETH (40TH) ANNIVERSARY OF THE COMMENCEMENT DATE. NOTE: THE LEASE DESCRIBED HEREIN CONTAINS ONE OPTION TO RENEW THE LEASE FOR AN ADDITIONAL 59 YEARS.

ASSIGNMENT OF SAID LEASE FROM AHC EVANSTON LLC, A DELAWARE LIMITED LIABILITY COMPANY TO EVANSTON HOTEL ASSOCIATES, LLC, A DELAWARE LIMITED LIABILITY COMPANY AS EVIDENCED BY THE MEMORANDUM OF LEASE RECORDED JUNE 13, 2000 AS DOCUMENT 00432327.

PARCEL 4:  
(MAPLE AVENUE GARAGE)

LOT 4 IN CHURCH MAPLE RESUBDIVISION BEING A RESUBDIVISION OF PART OF DEMPSTER'S SUBDIVISION OF BLOCK 66 OF THE VILLAGE OF EVANSTON, COOK COUNTY, ILLINOIS; PART OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT OF WAY (FORMERLY CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD RIGHT OF WAY); PART OF BLOCK 18 IN THE VILLAGE OF EVANSTON; ALL OF BLOCKS 2 AND 3 IN CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22 IN THE COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS; AND PART OF VACATED CLARK STREET AND EAST RAILROAD AVENUE; BEING IN THE NORTHWEST 1/4 AND THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 2, 1999 AS DOCUMENT 99528041, ALL IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS : 1818 MAPLE AVENUE, EVANSTON, ILLINOIS.

PERMANENT INDEX NUMBERS:

11-18-117-004-0000

11-18-117-005-0000

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