

SUBORDINATION AGREEMENT

3200

This Subordination Agreement is made as of the 10th day of October, 1985, by and among: AMERICANA HOTELS AND REALTY CORPORATION, a corporation organized and existing under the laws of the State of Maryland and having its principal place of business at 532 South Michigan Avenue, Chicago, Illinois 60605 (Attn: President) (herein, together with its successors and assigns, "First Party"); CENTRAL HOTEL COMPANY and PICK-HARRISON CORPORATION, both corporations organized and existing under the laws of the State of Illinois and both having their principal place of business at 532 South Michigan Avenue, Chicago, Illinois 60605 (Attn: President) (herein each one of and both of such corporations, separately and together, individually and collectively, together with their respective successors and assigns, are referred to as the "Borrower"); and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association with offices located at 231 South LaSalle Street, Chicago, Illinois 60697 (Attn: Delbert W. Jones) (herein, together with its successors and assigns, "Second Party").

1985 OCT 10 PM 2:42

COOK COUNTY, ILLINOIS
FILED RECORD

WITNESSETH

WHEREAS, Borrower has jointly and severally made and delivered to First Party the following: a certain Mortgage Note dated May 20, 1983 in the original principal amount of \$6,400,000.00, as amended by a certain First Amendment to Mortgage Note dated as of May 20, 1983 (collectively, as the same may hereafter be amended, modified or restated, and together with any and all notes given in replacement or substitution therefor, the "First Party Note") with a presently outstanding principal balance of \$6,400,000.00; that certain Mortgage and Security Agreement dated May 20, 1983 and recorded on May 20, 1983, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 26614549, as amended by a certain First Amendment to Mortgage and Security Agreement dated as of May 20, 1983 and recorded on October 10, 1985, in the Office of the Recorder of Deeds of Cook County, Illinois (collectively, as the same may hereafter be amended, modified or restated, and together with any and all substitutions or replacements therefor, the "First Party Mortgage"), which First Party Mortgage secures the First Party Note. The First Party Note and the First Party Mortgage are sometimes referred to collectively herein as the "First Party Loan Documents". First Party is the owner and holder of the First Party Loan Documents. For purposes hereof, the term "First Party Liabilities" means and includes any and all of the following: all advances, loans or disbursements at any time made pursuant to, all liabilities, indebtedness or obligations of any kind arising under, evidenced by or secured by, and all amounts of any kind (including, without limitation, principal and interest) which may at any time be outstanding or become due or owing under or with respect to, any one or more of the First Party Loan Documents, or which may now or at any time hereafter be secured by the First Party Mortgage; and, any and all other liabilities, obligations and indebtedness, howsoever created, arising or evidenced, direct or indirect, absolute or contingent, recourse or "non-recourse", now or hereafter existing or due or to become due or owing, by the Borrower

85230905

85 230 905

CD 125-51-01

to First Party under or with respect to any one or more of the Hawaii Loan Documents (defined hereinafter). For all purposes of this Agreement, the term "First Party Collateral" means and includes: the Land (defined hereinafter) and any and all buildings, improvements, fixtures, equipment, and real or personal property or rights of any and every kind now or hereafter located or used on, about, in or in connection with the Land or any business now or hereafter conducted thereon, thereat or in connection therewith (including, without limitation, all property, rights and claims of any kind whatsoever in or to the property commonly known as the Congress Hotel or the Americana Congress Hotel); all property, things and rights of any and every kind whatsoever which are described in Exhibit B attached hereto; and any and all rents, receipts, profits, income, issues, and proceeds of any or all of the foregoing. For all purposes of this Agreement, "Hawaii Hotel Documents" shall mean the following: (1) Agreement to Provide a Letter of Credit and to Establish Certain Escrow and Pledge Accounts, as amended, dated as of December 30, 1982; (2) Agreement Concerning Certain Available Cash, as amended, dated as of December 30, 1982; and (3) Agreement to Restructure Loan, dated as of December 28, 1983.

WHEREAS, the First Party Mortgage encumbers and creates a lien on, inter alia, the real estate described on Exhibit A attached hereto (the "Land");

WHEREAS, Borrower and Second Party have entered into a Credit and Loan Agreement dated as of October 7, 1985 (which, as it may from time to time be amended, modified or restated, and together with all substitutions therefor or replacements thereof, is referred to as the "Loan Agreement") pursuant to which Second Party has agreed, on the terms and conditions set out therein, to advance certain sums and on or after October 7, 1985 to issue one or more letters of credit (collectively, together with any and all replacements and substitutions therefor, the "Letters of Credit" and individually the "Letter of Credit") for the account of Borrower or Americana Hotels Corporation ("AHC"), a Delaware corporation, or at the direction of Borrower, and in connection therewith Borrower has jointly and severally made and delivered to Second Party (i) a promissory note dated as of October 7, 1985 (which, as it may from time to time be amended, modified, restated, extended or renewed, and together with all substitutions therefor and replacements thereof, is referred to herein as the "Second Party Note") in the face principal amount of \$8,112,440.00, (ii) a Mortgage, Assignment of Leases, Rents and Option Rights, Security Agreement and Financing Statement (which, as it may from time to time be amended, modified, restated, extended or renewed, and together with all substitutions therefor and replacements thereof, is referred to herein as the "Second Party Mortgage") dated as of October 7, 1985 encumbering the Land and other collateral, which Second Party Mortgage secures (inter alia) the Second Party Note and the obligations of Borrower under the Loan Agreement, and (iii) other Second Party Loan Documents (defined below). Borrower's obligations under the Second Party Loan Documents are guaranteed by AHC pursuant to a certain Guaranty of Payment (which, as it may from time to time be amended, modified, restated, extended or renewed, and together with all substitutions therefor and replacements

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 5 2 3 0 9 0 5

thereof, is referred to herein as the "Second Party Loan Guaranty") dated as of October 7, 1985, which Second Party Loan Guaranty is secured by a certain Pledge Agreement (which, as it may from time to time be amended, modified, restated, extended or renewed, and together with all substitutions therefor and replacements thereof, is referred to herein as the "Pledge Agreement") dated as of October 7, 1985. For purposes hereof, the term "Second Party Loan Documents" means and includes, individually and collectively, the Loan Agreement, the Second Party Note, the Second Party Mortgage, the Second Party Loan Guaranty, the Letters of Credit (and any applications and agreements relating thereto), the Pledge Agreement, and any and all other instruments or documents which at any time evidence or secure any or all of the Second Party Liabilities (defined below), as such instruments or documents may from time to time be modified, amended, restated, renewed or extended, and together with all substitutions therefor and replacements thereof. For purposes hereof, the term "Second Party Prior Loan Documents" means and includes, individually and collectively, the Loan Agreement, the Second Party Note, the Second Party Mortgage and the Letters of Credit (and any applications and agreements relating thereto), as such documents or instruments may from time to time be modified, amended, restated, renewed or extended, and together with all substitutions therefor and replacements thereof. For purposes hereof, the term "Second Party Liabilities" means and includes any and all of the following: any and all obligations of Borrower, AHC or any other applicant or account party under or with respect to the Letters of Credit or any application or agreement relating thereto, and all advances, payments, loans or disbursements at any time made pursuant to any or all of the Letters of Credit; and, any and all indebtedness of any kind arising under, and all amounts of any kind (including, without limitation, principal, interest, and costs of collection or enforcement) which may at any time be outstanding or become due or owing under or with respect to, any one or more of the Loan Agreement, the Second Party Note, the Second Party Mortgage, the Letters of Credit, or any or all of the other Second Party Loan Documents. For purposes hereof, the term "Second Party Collateral" means and includes the Land, all improvements and fixtures at any time situated upon the Land, the property, rights and things described on Exhibit B attached hereto, and all other collateral of any kind whatsoever at any time existing under, encumbered by or securing any one or more of the Second Party Mortgage and the other Second Party Loan Documents.

WHEREAS, the Second Party is willing to issue the Letters of Credit and to make the loan referred to in the Loan Agreement only if (i) the Second Party Loan Documents securing the Second Party Liabilities create a lien, charge and security interest upon the Land and the other Second Party Collateral which (subject to the Subordination Limit defined hereinbelow) is superior and prior to any and all liens and security interests created by the First Party Mortgage or any other First Party Loan Documents and if the First Party Liabilities are made junior and subordinate to the Second Party Liabilities, all as and to the extent provided for hereinafter, and (ii) First Party and Borrower execute and deliver this Agreement and permit it to be duly recorded; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

WHEREAS, Borrower's obtaining such financing from Second Party will benefit First Party in that it will benefit certain properties in which First Party has an interest, will enable First Party to obtain certain other things of value from AHC and will benefit First Party in other respects which First Party believes have a value to First Party at least equal to the value of First Party's subordination and other agreements set out herein, and First Party's board of directors, on July 26, 1985 at a meeting duly convened pursuant to proper notice at which a quorum was present, adopted a resolution (a copy of which has heretofore been furnished by First Party to Second Party) to that effect and to the effect that First Party's execution and delivery of this Agreement is in the best interests of First Party;

NOW, THEREFORE, to induce the Second Party to advance funds under and issue letters of credit pursuant to the Loan Agreement, and with the intention that Second Party rely on this Agreement, that Second Party and the Second Party Collateral benefit from this Agreement and that First Party and Borrower and their respective successors and assigns (and the First Party Collateral) be bound hereby, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Subordination of Liens and Security Interests.

(a) Subject to the Subordination Limit set forth in Section 2(b) below, the Second Party Mortgage, and any and all liens and security interests of any kind whatsoever which presently exist or which may arise at any time hereafter thereunder, and all the terms and covenants and rights of Second Party thereunder, are hereby made prior and superior to the First Party Mortgage, and any and all liens and security interests of any kind whatsoever which presently exist or which may arise at any time hereafter thereunder or under any of the First Party Loan Documents and to all the terms and covenants and rights of First Party thereunder and to any right, title or interest of First Party in and to the First Party Collateral, all with the same effect as if, with the actual knowledge of First Party, the Second Party Prior Loan Documents had been executed and delivered, and the Second Party Mortgage had been duly placed of record, and all Uniform Commercial Code filings or other acts of lien or security interest perfection had been duly completed, and all sums or obligations secured by the Second Party Mortgage (including any and all increases therein) had been fully disbursed or incurred, prior to the execution of any of the First Party Loan Documents and the recording of the First Party Mortgage and the taking of any other acts of lien or security interest perfection and prior to the date on which any amounts or obligations evidenced or secured by any of the First Party Loan Documents were disbursed or incurred.

(b) Subject to the Subordination Limit set forth in Section 2(b) below, as to the First Party Collateral the First Party Mortgage and any and all liens and security interests of any kind whatsoever which presently exist or which may arise at any time hereafter thereunder or under

any other First Party Loan Documents, and all the terms and covenants and rights of First Party thereunder, are hereby made junior, secondary and subordinate to the Second Party Mortgage and to any and all liens and security interests of any kind whatsoever which presently exist or which may arise at any time hereafter thereunder or under any other Second Party Prior Loan Documents and to all the terms and covenants and rights of Second Party thereunder and to any right, title or interest of Second Party in and to the First Party Collateral, all with the same effect as if, with the actual knowledge of First Party, the First Party Loan Documents had been executed and the First Party Mortgage had been recorded and all Uniform Commercial Code filings or other acts of lien or security interest perfection had been duly completed, and all sums or obligations evidenced or secured by the First Party Loan Documents had been disbursed or incurred, after the execution of the Second Party Prior Loan Documents and the due recording of the Second Party Mortgage and the taking of any and all other acts of lien or security interest perfection, and after all sums or obligations secured by the Second Party Mortgage had been fully disbursed or incurred.

2. Subordination of Loan and Indebtedness; Additional Advances; Subordination Limit.

(a) Without limiting the provisions of the preceding Section 1, but subject to the Subordination Limit set forth hereinbelow, to the extent that the direct or indirect source thereof or of the payment or satisfaction thereof or collateral therefor is any or all of the First Party Collateral: the First Party Liabilities, the First Party Loan Documents, and the indebtedness, liens and security interests thereof, are and shall be expressly subject and subordinate in all respects to the Second Party Liabilities, the Second Party Prior Loan Documents, the indebtedness, liens and security interests thereof, and to any and all advances made on or with respect to the Second Party Liabilities, in whatever amounts and whenever made, with interest thereon, and to any expenses, charges and fees incurred thereby or in connection therewith, including (without limitation) any and all of such advances, interest, charges and fees which may increase the indebtedness evidenced and secured by the Second Party Prior Loan Documents above the face principal amount of the Second Party Note.

(b) For all purposes of this Agreement, the term "Subordination Limit" means the unconditional and irrevocable receipt, recovery and realization (not subject to full or partial return, rescission or repayment) by Second Party of \$7,100,000.00 in cash in payment and satisfaction of, and for application against, the Second Party Liabilities solely and exclusively from the Second Party Collateral under the Second Party Mortgage; and, without limiting the generality of the preceding portion of this sentence, no recoveries by Second Party on or under the Second Party Loan Guaranty, the Pledge Agreement or any other Second Party Collateral other than that under the Second Party Mortgage shall be subject to, treated as recoveries credited against, or reduce the remaining amount of the Subordination Limit.

(c) To the extent (if any) that First Party's consent thereto is required, First Party hereby consents to the execution and delivery by Borrower and (to the extent applicable) AHC of the Second Party Loan Documents.

3. Payments.

(a) In furtherance of (but not in limitation or restriction of) the above subordinations, to the extent that the direct or indirect source of the payment or satisfaction thereof is any or all of the First Party Collateral: any and all payments of any and all of the First Party Liabilities are hereby postponed and subordinated to the payment and satisfaction of the Second Party Liabilities, and First Party and Borrower agree that until all of the Second Party Liabilities have been paid and satisfied in full, Borrower will not pay or cause to be paid to First Party, and First Party will not accept or receive, any payment or other distribution of any kind whatsoever under or with respect to any of the First Party Liabilities if the direct or indirect source thereof is any or all of the First Party Collateral, nor shall any of the First Party Collateral be applied to the purchase or other acquisition, retirement or satisfaction of all or any part of the First Party Liabilities, except and until after Second Party has unconditionally and irrevocably received, recovered and realized (not subject to full or partial return, rescission or repayment), for application to the Second Party Liabilities, an amount in cash equal to the Subordination Limit solely and exclusively from the Second Party Collateral under the Second Party Mortgage (and not from any other source such as, without limitation, the Second Party Loan Guaranty or the Pledge Agreement).

(b) First Party agrees to mark the First Party Note, and Borrower agrees to mark its books and records, so as clearly to indicate that the First Party Liabilities are subordinated in accordance with the terms of this Agreement, and to cause to be clearly inserted in any promissory note or other document or instrument which at any time hereafter creates or evidences any of the First Party Liabilities a statement to the effect that the payment thereof is subordinated in accordance with the terms of this Agreement. Each of First Party and Borrower will execute such further documents or instruments and take such further action as the Second Party may from time to time reasonably request to carry out the intent or purpose of this Agreement.

4. Bankruptcy, etc. of Borrower. In the event of any dissolution, winding up, liquidation, readjustment, reorganization or other similar proceeding relating to Borrower or to its creditors, as such, or to any of its property (whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment for the benefit of creditors, or any other marshalling of the assets or liabilities of Borrower, or any sale of all or substantially all of the assets of Borrower, or otherwise), the Second Party Liabilities shall first be paid and satisfied until the Second Party shall have received and realized a net amount equal to the Subordination Limit solely and exclusively from the Second Mortgage and the collateral

UNOFFICIAL COPY

8 5 2 3 0 9 0 5

encumbered thereby (and not from any other source, including without limitation, the Second Party Loan Guaranty or the Pledge Agreement) before the First Party shall be entitled to receive or to retain any payment or distribution in respect of the First Party Liabilities, and, in order to implement the foregoing:

(a) All payments and distributions of any kind or character in respect of the First Party Liabilities to which the First Party would be entitled if the First Party Liabilities were not subordinated pursuant to this Agreement shall be made directly to the Second Party until the Second Party shall have received and realized a net amount equal to the Subordination Limit solely and exclusively from the Second Mortgage and the collateral encumbered thereby (and not from any other source, including without limitation, the Second Party Loan Guaranty or the Pledge Agreement).

(b) The First Party shall promptly file a claim or claims, in the form required in such proceedings, for the full outstanding amount of the First Party Liabilities, and shall use its best efforts to cause said claim or claims to be approved and all payments and other distributions in respect thereof to be made directly to the Second Party until the Second Party shall have received and realized a net amount equal to the Subordination Limit solely and exclusively from the Second Mortgage and the collateral encumbered thereby (and not from any other source, including without limitation, the Second Party Loan Guaranty or the Pledge Agreement).

(c) The First Party hereby irrevocably agrees that the Second Party may, in its sole discretion, in the name of the First Party or otherwise, demand, sue for, collect, receive and receipt for any and all such payments or distributions, and file, prove, and vote or consent in any such proceedings with respect to, any and all claims of the First Party relating to the First Party Liabilities until the Second Party shall have received and realized a net amount equal to the Subordination Limit solely and exclusively from the Second Mortgage and the collateral encumbered thereby (and not from any other source, including without limitation, the Second Party Loan Guaranty or the Pledge Agreement).

5. Postponement of First Party Remedies.

(a) First Party agrees that, until the First Party Remedy Postponement Date, it will not directly or indirectly do any of the following for, as a result of, because of, or on the basis of a non-monetary default under any or all of the First Party Loan Documents or any other agreement or document secured by the First Party Mortgage: institute, commence, join in, prosecute or participate in any legal proceeding, case, action or litigation of any kind whatsoever concerning or relating to all or any of the First Party Collateral which seeks to foreclose upon, obtain possession of, or appoint a receiver for (otherwise than in a bankruptcy proceeding), all or any of the First Party Collateral or institute, commence, join in, prosecute or

participate in any other case or proceeding similar in nature to a foreclosure proceeding, or take possession of, appoint a receiver for, or accept a deed, bill of sale or other conveyance or assignment of, any of the First Party Collateral.

(b) First Party agrees that, until the First Party Remedy Postponement Date, it will not directly or indirectly do any of the following for, as a result of, because of, or on the basis of a monetary default under any or all of the First Party Loan Documents or any other obligation secured by the First Party Mortgage: declare any default under or with respect to, or accelerate the maturity of, any of the First Party Loan Documents (unless the Second Party shall theretofore have instituted court proceedings to foreclose upon the Second Party Mortgage); commence or join in any proceedings seeking to foreclose upon, under, or with respect to any of the First Party Loan Documents or any of the First Party Collateral (unless the Second Party shall theretofore have instituted court proceedings to foreclose upon the Second Party Mortgage); commence, join in commencing, or consent to the commencement of, any bankruptcy, reorganization or insolvency case or proceeding with respect to Borrower (unless the Second Party shall theretofore have commenced, joined in commencing or consented to the commencement of, the same case or proceeding).

(c) For purposes hereof, the "First Party Remedy Postponement Date" means the first to occur of: (i) such time as all of the Second Party Liabilities have been paid and satisfied in full, (ii) such time as the Subordination Limit shall have been reached and the Second Party shall have unconditionally and irrevocably received, recovered and realized (not subject to full or partial return, rescission or repayment) an amount in cash equal to the Subordination Limit in payment and satisfaction of the Second Party Liabilities solely and exclusively from the First Party Collateral (and not from any other source, including without limitation, the Second Party Loan Guaranty or the Pledge Agreement), (iii) for purposes of subsection 5(b) above and the occurrence of a monetary default under the First Party Loan Documents, the date which is the second anniversary of the date of this Agreement, and (iv) for purposes of subsection 5(a) above and the occurrence of a non-monetary default under the First Party Loan Documents, the 183rd calendar day after the date of this Agreement.

6. Insurance and Condemnation Proceeds. Until the Subordination Limit shall have been reached and the Second Party shall have received and realized an amount equal to the Subordination Limit solely and exclusively from the Second Mortgage and the collateral encumbered thereby (and not from any other source, including without limitation, the Second Party Loan Guaranty or the Pledge Agreement), First Party does hereby subordinate to and in favor of Second Party:

(a) All of First Party's right, title, interest or claim, if any, in and to the proceeds of all policies of insurance covering the Real Estate and other collateral under the Second Party Mortgage for application upon the indebtedness secured by or other

disposition thereof in accordance with the provisions of the Second Party Mortgage; and

(b) All of First Party's right, title and interest or claim, if any, in and to all awards or other compensation made for any taking of all or any part of the Real Estate or other collateral subject to the Second Party Mortgage to be applied upon the indebtedness secured by or disposed of in accordance with the provisions of the Second Party Mortgage.

7. No Additional Liens. First Party shall not acquire, by subrogation, contract or otherwise, any lien, charge or security interest of any kind upon any estate, right or interest in the Land or other First Party Collateral (including but not limited to any which may arise with respect to real estate taxes, assessments or other governmental charges) which is or may be prior in right to the Second Party Mortgage or any other Second Party Loan Documents, unless, within sixty (60) days following written notice to Second Party from First Party of its intention to acquire the same, Second Party shall fail or refuse to purchase or acquire by subrogation or otherwise such prior lien, estate, right or interest, or shall fail within such period to commence and thereafter proceed diligently to purchase or acquire same.

8. Leases. First Party hereby agrees that, without the consent or approval of First Party, until the Second Party Liabilities are paid and satisfied in full, Borrower may extend or renew any and all presently existing leases, licenses, or occupancy agreements of or upon all or any part of the Land or other Second Party Collateral, pursuant to existing extension or renewal rights therein, and may also enter into any and all substitutions or replacements therefor which provide for a rental equal to or greater than that provided for in the corresponding presently existing lease, license or occupancy agreement.

9. Subordination Not Affected by Certain Acts. The Second Party may, without affecting the subordination herein provided and without notice to Borrower or First Party or any other person, do all or any of the following: (i) release any security for the Second Party Liabilities (including, without limitation, that provided by the Second Party Mortgage; but the provisions of this clause (i) shall not be deemed to authorize Second Party to release any lien or security interest held by First Party under the First Party Mortgage) or retain or obtain a security interest in other property to secure any or all of the obligations of the Borrower to the Second Party; (ii) release, obtain or retain the primary or secondary obligation of any guarantor or endorser or any other person with respect to the Second Party Liabilities; (iii) extend, renew, alter, exchange, substitute or modify any of the Second Party Loan Documents or release, compromise, alter or exchange any obligation held by it as security for the Second Party Liabilities. None of such actions shall affect the subordination herein provided, and First Party expressly waives any right, including any defense in the nature of a suretyship defense, otherwise arising out of any such action. The Second Party's rights hereunder shall not be prejudiced by any action omitted or undertaken by it with respect to the

Second Party Liabilities or any security therefor, and the First Party hereby waives: (a) notice of the existence or creation or non-payment of all or any of the Second Party Liabilities; and (b) all diligence in collection of, enforcement of, protection of or realization upon, the Second Party Liabilities or any security therefor.

10. Certain Notices.

(a) First Party agrees that, contemporaneously with its giving to Borrower or AHC any notice of default, acceleration, nonperformance or noncompliance, or any demand for payment or performance, under or with respect to any of the First Party Loan Documents or any other agreement, document or instrument directly or indirectly evidencing, creating, securing or guaranteeing any indebtedness or obligation of Borrower to First Party, or its instituting any case, proceeding or litigation against Borrower or AHC or any property secured or encumbered by any of the Second Party Loan Documents, First Party will deliver to Second Party a copy of such notice or demand or of the complaint in such case, proceeding or litigation.

(b) Second Party agrees that, contemporaneously with its giving to Borrower any notice of default or acceleration under any of the Second Party Loan Documents, or of its instituting any case, proceeding or litigation thereunder against Borrower or any property secured by the Second Party Mortgage, Second Party will deliver to First Party a copy of such notice or of the complaint in such case, proceeding or litigation; provided, however, that under no circumstances whatsoever will Second Party's failure to deliver any such notice or complaint to First Party limit, restrict, impair, diminish or affect in any way the subordinations provided for in this Agreement or any other right or remedy of Second Party, or any agreement or obligation of First Party, set out in or provided for under this Agreement.

11. Borrower's Agreement. The Borrower hereby waives notice of acceptance of this Agreement by the Second Party, and agrees to be bound by the terms and provisions hereof, to make no payments or distributions contrary to the terms and provisions hereof, and to do (upon Second Party's written request) every other act and thing within its control that Second Party deems necessary or appropriate to carry out such terms and provisions which Second Party may reasonably request. In the event of any violation of any of the terms and provisions of this Agreement (and if Borrower has failed to cure such violation within 10 days of notice thereof from Second Party), or if any element of any of the subordination provided for in this Agreement shall be expressly repudiated by Borrower or First Party or shall be held unenforceable by any court asserting jurisdiction thereof, then, at the election of the Second Party, any and all obligations of the Borrower to the Second Party shall forthwith become due and payable and any and all agreements of the Second Party to make loans, advances, or other financial accommodations to the Borrower shall forthwith terminate, notwithstanding any provisions thereof to the contrary.

12. No Modifications. Borrower and First Party will not cause, permit or consent to any amendment (except for an

amendment or change which constitutes a full, final and complete release of record of the First Party Mortgage), modification, alteration, supplementation, restatement or change of any of the First Party Loan Documents, or any additional borrowings thereunder, without Second Party's prior express written consent in each case, except for amendments that do not and could not have any adverse affect on Second Party or the holder of any of the Second Party Loan Documents; and Borrower and First Party agree to give Second Party 21 days' prior written notice before entering into or consenting to any amendment, modification, supplementation, restatement or change of any kind of any of the First Party Loan Documents.

13. Right to Cure. Borrower and First Party agree that Second Party shall have the same right (but shall have no obligation whatsoever), in Second Party's sole discretion, to cure (or cause to be cured) any default under the First Party Loan Documents as the mortgagor or other obligor thereunder has, and First Party will accept any performance or cure tendered by or on behalf of Second Party on the same basis as if it had been tendered by the mortgagor or other obligor thereunder. If the First Party Loan Documents do not provide a cure period to the mortgagor, Second Party will nevertheless be given notice of any default and will be allowed thirty days from its receipt of notice of such default to cure such default.

14. General. This Agreement shall be binding upon the successors and assigns of Borrower, First Party and the Second Party (including as to First Party and Second Party, without limitation, subsequent holders of any or all of the First Party Loan Documents and Second Party Loan Documents, respectively) and shall inure to the benefit of the successors and assigns of the Second Party (including, without limitation, subsequent holders of any or all of the Second Party Loan Documents). No delay on the part of the Second Party in the exercise of any right or remedy hereunder or under the Second Party Loan Documents shall operate as a waiver of any right hereunder. This agreement shall be construed and governed by the internal laws of the State of Illinois and, to the fullest extent possible, shall be interpreted so as to be effective under applicable law. Notices or other communications hereunder shall be deemed given on the earlier of actual receipt or the second business day after the date when deposited in the United States mail, by registered or certified mail, postage prepaid, addressed as provided in the opening paragraph of this Agreement. If any provision shall be held prohibited or invalid under applicable law, such provision hereof shall be ineffective only to the extent of such prohibition or invalidity without invalidating any other provision of this agreement. All references herein to any instrument or document shall include all amendments, modifications, supplements, restatements, extensions and renewals thereof and all substitutions and replacements therefor. All section captions or headings in this Agreement are for

UNOFFICIAL COPY

8 5 2 3 0 7 0

convenience of reference only, and shall not be considered in construing, interpreting or applying this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered at Chicago, Illinois by their duly authorized officers as of the day and year first above written.

FIRST PARTY

AMERICANA HOTELS AND REALTY CORPORATION,
a Maryland corporation

By: Michael R. Huxley
Its: Vice President
Print Name: Michael R. Huxley

Attest:

C. F. Jennings Jr.
Its: Asst Secy
Print Name: C. F. Jennings Jr.

BORROWER

CENTRAL HOTEL COMPANY,
an Illinois corporation

By: J. David Nove
Its: OK. Vice President
Print Name: J. David Nove

Attest:

C. F. Jennings Jr.
Its: Asst Secy
Print Name: C. F. Jennings Jr.

PICK-HARRISON CORPORATION,
an Illinois corporation

By: J. David Nove
Its: OK. Vice President
Print Name: J. David Nove

Attest:

C. F. Jennings Jr.
Its: Asst Secy
Print Name: C. F. Jennings Jr.

UNOFFICIAL COPY

8 5 2 3 0 9 0

SECOND PARTY

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO, a
national banking association

By: *Robert M. Jones*
Its: VICE PRESIDENT
Print Name: Robert W. Jones

Attest:

Lana Y. P. Choy
Its: OFFICER
Print Name: Lana Y. P. Choy

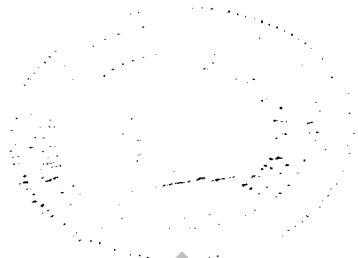
This instrument prepared by
(and after recording mail to):

Robert M. Berger
Mayer, Brown & Place
231 South LaSalle Street
Suite 1955
Chicago, Illinois 60604

BOX 333 - HV

Property of Cook County Clerk's Office

UNOFFICIAL COPY



Property of Cook County Clerk's Office

111
111
111

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Michael J. Czapek a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael R. Hunkley personally known to me to be the Vice- President of AMERICANA HOTELS AND REALTY CORPORATION, a Maryland corporation, and Charles E. Jennings personally known to me to be the Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice- President and Assistant Secretary, they signed and delivered the said instrument as Vice- President and Assistant Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of October, 1985.

[Signature]
Notary Public
[SEAL]

My Commission expires:
April 14, 1988

Notary Public of Cook County Clerk's Office

85 230 905

UNOFFICIAL COPY

8 5 2 3 0 9 0 3

STATE OF ILLINOIS)
COUNTY OF ~~COOK~~ ^{DuPage}) SS.

I, Michael J. Gyzale, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT J. David Noll, personally known to me to be the Sr. Vice-President of CENTRAL HOTEL COMPANY, and Illinois corporation, and Charles F. Jennings personally known to me to be the Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Sr. Vice-President and Assistant Secretary of said corporation, they signed and delivered the said instrument pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of October, 1985.

Michael J. Gyzale
Notary Public

My Commission expires:
April 14, 1988

STATE OF ILLINOIS)
COUNTY OF ~~COOK~~ ^{DuPage}) SS.

I, Michael J. Gyzale, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT J. David Noll, personally known to me to be the Sr. Vice-President of PICK-HARRISON CORPORATION, an Illinois corporation, and Charles F. Jennings personally known to me to be the Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Sr. Vice-President and Assistant Secretary of said corporation, they signed and delivered the said instrument pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of October, 1985.

Michael J. Gyzale
Notary Public

My Commission expires:
April 14, 1988

[SEAL]

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 5 2 3 0 9 0

STATE OF ILLINOIS)
COUNTY OF ~~COOK~~ ^{DeKalb}) SS.

I, ~~Michael J. Gopels~~ ^{and Lenny P. Choy} a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT ~~Delbert W. Jones~~ ^{and Greer} personally known to me to be the ~~Vice-president~~ of Continental Illinois National Bank and Trust Company of Chicago, a national banking association, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such ~~they~~ ^{they} he signed and delivered the said instrument as ~~Vice-President~~ of said association, pursuant to authority given by the Board of Directors of said association as his free and voluntary act, and as the free and voluntary act and deed of said association for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of October 1985

Michael J. Gopels
Notary Public

[SEAL]

My Commission expires:
April 14, 1988

Property of Cook County Clerk's Office

UNOFFICIAL COPY



Property of Cook County Clerk's Office

11/15/11

UNOFFICIAL COPY

Subordination Agreement dated
as of October 9, 1985

EXHIBIT A (Page 1 of 3)

The Land

PARCEL 1:
SUB-LOTS 1, 2, 3, 4 AND 5 IN THE SUBDIVISION OF SUB-LOTS
1 AND 2 IN LUNT'S SUBDIVISION OF LOT 1 AND THE NORTH 3/4
OF LOT 4 IN BLOCK 12 IN FRACTIONAL SECTION 15 ADDITION TO
CHICAGO IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD
PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM THE NORTH 20 FEET
OF SAID SUB-LOTS 1, 4 AND 5),

ALSO,

PARCEL 2:
LOTS 3, 4, 5, 7, 8 AND 9 IN ORRINGTON LUNT'S SUBDIVISION
OF LOT 1 AND THE NORTH 3/4 OF LOT 4 IN BLOCK 12 IN FRACTIONAL
SECTION 15 ADDITION TO CHICAGO AFORESAID, IN TOWNSHIP 39
NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,

ALSO,

PARCEL 3:
THE SOUTH 20 FEET OF LOT 4 AND ALL OF LOT 5 (EXCEPT THE
WEST 8 FEET THEREOF TAKEN AND USED FOR ALLEY AND EXCEPT
THE SOUTH 41 FEET OF SAID LOT 5), ALSO THE NORTH 52 FEET
OF LOT 8 (EXCEPT THE WEST 8 FEET THEREOF TAKEN AND USED
FOR ALLEY), IN BLOCK 12 IN FRACTIONAL SECTION 15 ADDITION
TO CHICAGO, AFORESAID,

ALSO,

PARCEL 4:
THE NORTH 25-3/12THS FEET OF THE SOUTH 56-3/12THS FEET OF
THE EAST 132 FEET OF LOT 9 IN BLOCK 12 IN FRACTIONAL SECTION
15 ADDITION TO CHICAGO AFORESAID,

ALSO,

PARCEL 5:
A TRACT OF PARCEL OF LAND DESCRIBED AS 'PRIVATE ALLEY FOR
USE OF THE PROPERTY' AS SHOWN ON THE PLAT OF ORRINGTON LUNT'S
SUBDIVISION OF LOT 1 AND THE NORTH 3/4 OF ORIGINAL LOT 4
IN BLOCK 12 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO,
RECORDED APRIL 25, 1855 IN BOOK 85 OF MAPS, PAGE 112, AS
DOCUMENT 58647, LYING SOUTH OF AND ADJOINING THE WEST 12
FEET OF LOT 1 OF SAID SUBDIVISION WEST OF LOTS 2, 3, 4 AND
PART OF LOT 5, NORTH OF PART OF LOT 5, AND OF LOTS 7, 8
AND 9; AND SOUTH OF AND ADJOINING LOT 6 IN SAID LUNT'S
SUBDIVISION (EXCEPT THE NORTH 1/2 OF THAT PART OF SAID ALLEY
LYING SOUTH OF AND ADJOINING THE WEST 17 FEET OF LOT 6 IN
LUNT'S SUBDIVISION AFORESAID),

ALSO,

PARCEL 6:
THE SOUTH 41 FEET OF LOT 5 (EXCEPT THE WEST 8 FEET THEREOF
TAKEN OR USED FOR ALLEY), IN BLOCK 12 IN FRACTIONAL SECTION
15 ADDITION TO CHICAGO AFORESAID,

85 230 905

UNOFFICIAL COPY

Subordination Agreement dated
as of October 9, 1985

EXHIBIT A (Page 2 of 3)

The Land

ALSO,

PARCEL 7:

THE RIGHTS AND EASEMENTS AS TO THE NORTH 20 FEET OF THE SUB-LOTS 1, 4 AND 5 IN THE SUBDIVISION OF LOTS 1 AND 2 IN LUNT'S SUBDIVISION FOR THE BENEFIT OF PARCELS 1 TO 6 INCLUSIVE AND OTHER PROPERTY, RESERVED IN THAT CERTAIN QUIT CLAIM DEED DATED JULY 16, 1952 FROM THE CENTRAL HOTEL COMPANY AND OTHERS TO THE CITY OF CHICAGO, WHICH DEED WAS RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS AS DOCUMENT 15466793, IN BOOK 48584 ON PAGE 265, WHICH RIGHTS AND EASEMENTS ARE MORE FULLY SET FORTH IN THE JUDGMENT ORDER ENTERED JULY 10, 1952 IN CASE 49C5321 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,

ALSO,

PARCEL 8:

LEASEHOLD ESTATE CREATED IN AND BY THAT CERTAIN INDENTURE OF LEASE MADE BY WILLIAM FITZGERALD TO PERRY D. CREAGER, DATED APRIL 15, 1892 AND RECORDED APRIL 29, 1892 IN BOOK 3919, PAGE 7, AS DOCUMENT NUMBER 1654010 AND AS AMENDED BY ASSIGNMENT DATED JULY 16, 1952 AND RECORDED SEPTEMBER 22, 1952 AS DOCUMENT 15441648 AND AMENDMENT DATED OCTOBER 28, 1952 AND RECORDED ON NOVEMBER 28, 1952 AS DOCUMENT 15495042 AND AMENDMENT TO LEASE DATED JUNE 17, 1981 AND RECORDED JULY 6, 1981 AS DOCUMENT 25927158, DEMISING AND LEASING FOR A TERM OF 99 YEARS COMMENCING MAY 1, 1892 AND ENDING APRIL 30, 1991, THE PREMISES DESCRIBED AS FOLLOWS:

'A':

LOT 6 (EXCEPT THE WEST 17 FEET THEREOF) IN LUNT'S SUBDIVISION OF LOT 1 AND THE NORTH 3/4 OF LOT 4 IN BLOCK 12 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO (EXCEPTING THEREFROM THE NORTH 20 FEET THEREOF),

ALSO,

'B':

THE RIGHTS AND EASEMENTS AS TO THE NORTH 20 FEET OF SUB-LOT 6 (EXCEPT THE WEST 17 FEET THEREOF) IN LUNT'S SUBDIVISION FOR THE BENEFIT OF PARCEL (A) HEREIN, AND OTHER PROPERTY, AS RESERVED IN THAT CERTAIN QUIT CLAIM DEED DATED JULY 16, 1952, FROM THE CENTRAL HOTEL COMPANY AND OTHERS TO THE CITY OF CHICAGO, WHICH DEED WAS RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS, AS DOCUMENT 15466793, IN BOOK 48584 ON PAGE 265, WHICH RIGHTS AND EASEMENTS ARE MORE FULLY SET FORTH IN THE JUDGMENT ORDER ENTERED ON JULY 10, 1952 IN CASE NUMBER 49C5321, IN CIRCUIT COURT OF COOK COUNTY, ILLINOIS,

85 230 905

UNOFFICIAL COPY

Subordination Agreement dated
as of October 9, 1985

EXHIBIT A (Page 3 of 3)

ALSO,

The Land

PARCEL 9:

THE SOUTH 28 FEET OF LOT 8 AND THE NORTH 24 FEET OF LOT 9 (EXCEPT THE WEST 8 FEET THEREOF TAKEN OR USED FOR ALLEY), ALL IN BLOCK 12 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO AFORESAID,

ALSO,

PARCEL 10:

THE WEST 17 FEET FRONT AND REAR OF SUB-LOT 6 (EXCEPTING THEREFROM THE NORTH 20 FEET THEREOF) IN LUNT'S SUBDIVISION OF LOT 1 AND THE NORTH 3/4 OF LOT 4 IN BLOCK 12 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING THE PREMISES KNOWN AS NUMBER 13 EAST CONGRESS STREET IN CHICAGO, OTHERWISE DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST LINE OF THE 16 FOOT ALLEY RUNNING NORTH AND SOUTH AS SHOWN ON THE PLAT OF SAID SUBDIVISION RECORDED ON APRIL 25, 1855, WHERE THE SOUTH LINE OF CONGRESS STREET (FORMERLY TYLER STREET) INTERSECTS WITH SAME, RUNNING THENCE EAST ALONG THE SOUTH LINE OF SAID CONGRESS STREET, 17 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID 16 FOOT ALLEY, 100 FEET TO THE NORTH LINE OF THE 20 FOOT ALLEY SHOWN ON SAID PLAT AND DESIGNATED 'PRIVATE ALLEY FOR THE USE OF PROPERTY'; THENCE WEST ALONG THE NORTH LINE OF SAID ALLEY, 17 FEET TO A POINT WHERE THE SAME INTERSECTS WITH THE 16 FOOT ALLEY ABOVE MENTIONED; THENCE NORTH ALONG THE EAST LINE OF SAID 16 FOOT ALLEY, 100 FEET TO THE POINT OF BEGINNING AND THE NORTH 1/2 OF THAT PART OF SAID PRIVATE ALLEY LYING SOUTH OF AND ADJOINING THE WEST 17 FEET OF SAID LOT 6,

ALSO,

PARCEL 11:

THE SOUTH 50 FEET OF LOT 9 (EXCEPT THE WEST 8 FEET TAKEN FOR PUBLIC ALLEY AND EXCEPT THE NORTH 19 FEET OF THE EAST 132 FEET OF THE SAID SOUTH 50 FEET OF SAID LOT 9), IN BLOCK 12 IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,

ALSO,

PARCEL 12:

THE RIGHTS AND EASEMENTS AS TO THE NORTH 20 FEET OF THE WEST 17 FEET FRONT AND REAR OF SUB-LOT 6 IN LUNT'S SUBDIVISION FOR THE BENEFIT OF PARCEL 10 AFORESAID AND OTHER PROPERTY, RESERVED IN THE CERTAIN QUIT CLAIM DEED DATED JULY 16, 1952 FROM THE CENTRAL HOTEL COMPANY AND OTHERS TO THE CITY OF CHICAGO, WHICH DEED WAS RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS AS DOCUMENT 15466793, IN BOOK 48584, PAGE 265, WHICH RIGHTS AND EASEMENTS ARE MORE FULLY SET FORTH IN THE JUDGMENT ORDER ENTERED ON JULY 10, 1952 IN CASE 49C5321, IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, ALL IN COOK COUNTY, ILLINOIS.

17-15-111-009
17-15-111-010
17-15-111-011
17-15-111-012
17-15-111-013

17-15-111-014
17-15-111-015
17-15-111-016
17-15-111-017
17-15-111-018

RP

*Congress & Michigan
Chicago, Illinois*

85 230 905

UNOFFICIAL COPY

85 230 905

Subordination Agreement dated
as of October 9, 1985

EXHIBIT B

CERTAIN PROPERTY COMPRISING PART OF THE "FIRST PARTY COLLATERAL"

All of the following, whether now or hereafter existing
or acquired:

(i) Real Estate. All of the Land (defined on Exhibit A to this Subordination Agreement), together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Borrower in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing, including (without limitation) any and all right, title and interest in the fee title to the Leasehold Land (defined on Exhibit A to this Subordination Agreement) which Borrower may now or hereafter acquire, or in any other land arising by virtue of the Ground Lease (hereinafter defined) or any other lease, sublease, occupancy agreement or concession affecting the Land, including (without limitation) access rights and fixtures (all of the foregoing is herein referred to collectively as the "Real Estate");

(ii) Leasehold Estate. All present and future estate, right, title and interest of Borrower, as lessee, in and to the Leasehold Land which is created under or pursuant to or arises out of that certain ground lease (the "Ground Lease") dated April 15, 1892 between William Fitzgerald (as the lessor thereunder) and Perry D. Creager (as the lessee thereunder) relating to the Leasehold Land described on Exhibit B attached hereto (and recorded by the Recorder of Cook County, Illinois on April 29, 1892 as Document No. 1654010), as amended by an amendment dated July 16 1952 between Evelyn Heyworth Stamm, Elmer J. Stamm, Marguerite Heyworth, Lawrence Heyworth, Jr. and Jean Heyworth (collectively, as the lessor thereunder) and Central Hotel Company (as the lessee thereunder) (and recorded by the Recorder of Cook County, Illinois on September 22, 1952 as Document No. 15441648), as further amended by an amendment dated October 28, 1952 between Evelyn Heyworth Stamm, Elmer J. Stamm, Marguerite Heyworth, Lawrence Heyworth, Jr. and Jean Heyworth (collectively, as the lessor thereunder) and Central Hotel Company (as the lessee thereunder) (and recorded by the Recorder of Cook County, Illinois on November 28, 1952 as Document No. 15495042), and as

further amended by an amendment dated June 5, 1981 (the "1981 Amendment") between Evelyn Heyworth Stamm, Elmer J. Stamm and Chicago Title and Trust Company, not individually, but as Trustee under Trust Agreement dated June 14, 1978 and known as Trust No. 1072479 (collectively, as the lessor thereunder) and Central Hotel Company (as the lessee thereunder) (and recorded by the Recorder of Cook County, Illinois on July 6, 1981 as Document No. 25927158), and all present and future amendments, extensions, renewals and supplements, including all of Borrower's unexpired estate, title, interest and term of years in the Leasehold Land by virtue of the Ground Lease and any and all credits, deposits, options to renew or extend, options to purchase, rights and privileges of Borrower thereunder (all of the foregoing is herein referred to collectively as the "Leasehold Estate");

(iii) Improvements and Fixtures. All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on any part of the Land, together with all of Borrower's right, title and interest in and to all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to any part of the Land, including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration, telephone, and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");

(iv) Personal Property. All of Borrower's right, title and interest in and to all building materials, goods, construction materials, appliances (including but not limited to stoves, refrigerators, freezers, water fountains and coolers, fans, heaters, incinerators, compactors, dishwashers, clothes washers and dryers, water heaters and similar equipment), linens, supplies, blinds, window shades, carpeting, floor coverings, elevators, escalators, switchboards, office equipment, growing plants, fire sprinklers and alarms, smoke detectors, control devices, equipment (including but not limited to motor vehicles and all window cleaning, building cleaning, swimming pool, recreational, bar, restaurant, monitoring, garbage, air conditioning, pest control, maintenance, cable and satellite television equipment and other equipment, television sets, radios, VCR machines and similar equipment), tools, furnishings, furniture, light fixtures, non-structural additions to the Real Estate or the Leasehold Estate and all other tangible property of any kind or character now or hereafter owned by the Borrower and used or useful in connection with the Premises, any construction undertaken on the Real Estate or the Leasehold Estate, any trade, business or other activity (whether or not engaged in for profit) for which the Real Estate or Leasehold Estate is used, the maintenance of the Real Estate or Leasehold Estate

or the convenience of any guests, licensees or invitees of the Borrower, all regardless of whether located on the Land or located elsewhere for purposes of fabrication, storage or otherwise, including (without limitation) all rights under and to the escrow account(s) established and maintained pursuant to Section 20 of Article I of the Second Party Mortgage (all of the foregoing is herein referred to collectively as the "Goods");

(v) Intangibles. All of Borrower's right, title and interest in and to all goodwill, trademarks (but excluding all trade names), option rights, purchase contracts, books and records and general intangibles of the Borrower relating to the Land or the Improvements (including, without limitation, all options of any kind, rights of first refusal, privileges and other benefits of Borrower under the Ground Lease, including, without limitation, Borrower's option to purchase the fee simple, title to the Leasehold Land which is the subject of the Ground Lease as set out in Paragraph 2 of the 1981 Amendment), and all accounts, contract rights, instruments, items, credit card receivables, chattel paper and other rights of the Borrower for payment of money for property sold or lent, for services rendered, for money lent, or for advances or deposits made, and any other intangible property of the Borrower related to the Land or the Improvements (including, without limitation, all receipts, revenues, income and other monies due or received from the operation, ownership or leasing of the Real Estate and Leasehold Estate) (all of the foregoing is herein referred to collectively as the "Intangibles");

(vi) Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Borrower directly or indirectly from the Land, the Improvements or the Leases (all of the foregoing is herein collectively called the "Rents");

(vii) Leases. All rights of the Borrower under all leases, subleases and subtenancies, licenses, occupancy agreements, concessions or other arrangements of any kind whatsoever affecting all or any part of or interest in the Land, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, all or any part of or interest in the Land, the Real Estate, the Leasehold Estate or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof, including, without limitation, all deposits of money as advance rent or security deposits under any thereof (all of the foregoing is herein referred to collectively as the "Leases");

(viii) Licenses. All assignable licenses, authorizations, certificates, variances, approvals and permits relating to the construction, reconstruction, repair or alteration, addition, improvement, use, operation or management of all or any part of the Real

UNOFFICIAL COPY

8 5 2 3 0 7

Estate or the Leasehold Estate (all of the foregoing is herein referred to collectively as the "Licenses");

(ix) Plans. All assignable rights of the Borrower to plans and specifications, designs, drawings and other matters prepared for any purpose, including without limitation, construction on the Real Estate (all of the foregoing is herein called the "Plans");

(x) Contracts. All assignable rights of the Borrower under any contracts or leases executed by the Borrower as owner or lessee with any provider of goods, equipment or services for or in connection with any construction undertaken on, use or operation of, or services performed or to be performed at or in connection with, the Land or the Improvements, (all of the foregoing is herein referred to collectively as the "Contracts");

(xi) Management Agreements. All assignable rights, title and interest of the Borrower in and to any management and operating agreements entered into pertaining to all or any part of the Real Estate or the Leasehold Estate (the foregoing is herein referred to individually as "Management Agreement" and collectively as the "Management Agreements"); and

(xii) Other Property. All other property or rights of the Borrower of any kind or character whatsoever directly or indirectly related to the Real Estate, the Leasehold Estate or the Improvements, or the use or operation thereof and all proceeds (including, without limitation, insurance and condemnation proceeds) and products of any of the foregoing. (All of the Real Estate, the Leasehold Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises".)