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JUNIOR MORTGAGE, SECURITY AGREEMENT  
AND FINANCING STATEMENT

\$37.00

THIS JUNIOR MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") is made as of July 21, 1986 by and between LASALLE NATIONAL BANK, a national banking association, not personally but as Trustee ("Trustee") under Trust Agreement dated November 28, 1984 and known as Trust Number 109206, GREATER CAPITAL CORPORATION, a California corporation ("Greater Capital"), STEVEN A. COHN, ETHEL L. COHN, MARK F. COHN and ALEXIS LEWIN (collectively "Mortgagor"), whose mailing address is c/o Greater Capital Corporation, Burlingame Office Center, 1633 Bayshore Hwy, Suite 239, Burlingame California 94010 and FOCUS REAL ESTATE FINANCE CO., a Delaware corporation ("Mortgagee"), whose mailing address is 200 West Madison Street, Suite 3000, Chicago, Illinois 60606.

WITNESSETH:

THAT, WHEREAS Mortgagor is justly indebted to Mortgagee in the principal sum of Two Million and No/100 Dollars (\$2,000,000.00) evidenced by one certain PROMISSORY NOTE of the Mortgagor of even date herewith (the "Note"), the terms of which are incorporated herein by reference, made payable to the order of and delivered to the Mortgagee, whereby the Mortgagor promises to pay the said principal sum, late charges and interest at the rate or rates and in installments, all as provided in the Note. The final payment of principal and interest, if not sooner paid, shall be due on July 25, 1987, unless the extension options provided for therein are exercised, except that in no event shall the final payment of all principal and accrued interest be paid later than July 25, 1991. All payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance at the "Interest Rate" (as defined in the Note), second to any other sums due hereunder or thereunder, third to all other advances and sums secured hereby, and the remainder to principal, all of said principal, interest and other sums being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of FOCUS REAL ESTATE FINANCE CO., 200 West Madison, Suite 3000, Chicago, Illinois 60606.

NOW, THEREFORE, the Mortgagor, to secure the payment of said principal sum of money and said interest, late charges and other sums in accordance with the terms, provisions and limitations of this Mortgage and of the Note, and the performance of the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all of its present and hereafter-acquired

THIS INSTRUMENT PREPARED BY  
AND UPON RECORDING SHOULD BE RETURNED TO:  
DEER COUNTY, ILLINOIS  
RECORDS RECORD

BARBARA S. MILLER  
SCHWARTZ & FREEMAN  
SUITE 3400  
401 NORTH MICHIGAN AVENUE  
CHICAGO, ILLINOIS 60611

'906 JUL 25 AM 10:43

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Recorder's Box #57

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estate, right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois to-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO  
AND MADE A PART HEREOF AS EXHIBIT "A"

which, with the property hereinafter described, is collectively referred to herein as the "Premises";

TOGETHER with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily); all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding; and all fixtures, apparatus, equipment and articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation (whether single units or centrally controlled) including (without restricting the foregoing): all furniture, fixtures, apparatus, equipment and articles ("FF&E") (other than trade fixtures used in the operation of a business, inventories held for sale and other than any FF&E that may be owned by O'Hare Hotel Investors, Ltd., a California limited partnership ("O'Hare Hotel") and pledged to Mortgagee as collateral for the Note pursuant to a certain Security Agreement executed by O'Hare Hotel or any tenant or other occupant) which relate to the use, occupancy, and enjoyment of the Premises, it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.

1. Mortgagor shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), except for the "Prior Encumbrance" described on EXHIBIT "B" attached hereto and made a part hereof; subject, however, to the rights of the Mortgagor set forth in Paragraph 1a below; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (e) complete

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within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof which may or might materially affect the security of Mortgagor's collateral; provided that the security of Mortgagor's collateral shall be deemed to be materially affected if (A) any notice of violation is given by any governmental or administrative authority which could lead to a forced cessation of or reduction in the operation of the Premises or (B) the cost of curing any violation would exceed \$30,000; and provided further that Mortgagee shall have the right to cure any violation without regard to whether it materially affects the security of its collateral and any costs incurred by Mortgagee in effectuating such cure shall constitute "Indebtedness" (as hereinafter defined) secured hereby, notwithstanding anything to the contrary contained herein; (g) perform no excavation, construction, alterations, improvements, earth work, site work or any other mechanic's lienable work in an aggregate amount in excess of \$100,000 without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent, except for work required by law or municipal ordinance (and Mortgagor warrants that all such work will be done in a first-class, workmanlike and lien-free manner); (i) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises; and (j) pay each item of Indebtedness when due according to the terms hereof and of the Note. As used herein, the term "Indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest, late charges and all other sums at any time secured by this Mortgage.

#### Right to Contest.

1a. Anything in Paragraphs 1(c) and (d) of this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pending of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) that Mortgagor shall have either (A) deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee in Chicago, Illinois, a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable, which deposits are to be held without any allowance of interest, or (B) furnished at its own expense an endorsement to Mortgagee's Title Insurance Policy insuring over such Lien. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as

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provided below, or shall fail to maintain sufficient funds on deposit or furnish title insurance as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. If Mortgagor shall have elected to deposit money and the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full, Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagee and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

#### Payment of Taxes.

2. Mortgagor shall pay all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor within thirty (30) days following the date of payment. Mortgagor shall pay in full "under protest" any tax or assessment which Mortgagor may desire to contest, in the manner provided by law.

#### Tax Deposits.

3. Except to the extent that sufficient estimated general real estate taxes and assessments are deposited by Mortgagor with the owner and holder of the Prior Encumbrance, Mortgagor shall deposit with the Mortgagee or such depository ("Depository") as the Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee in Chicago, Illinois, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimates as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one month prior to the date when such taxes and assessments will become due and payable. Such deposits are to be held without any allowance of interest to Mortgagor and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after receipt of demand therefor from the Mortgagee or Depository, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee or the Depository.

Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or

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assessments (general or special) or any installment thereof, Mortgagor will, not later than the thirtieth (30th) day prior to the last day on which the same may be paid without penalty or interest, deposit with the Mortgagee or the Depository the full amount of any such deficiency.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

**Insurance Deposits.**

3a. So long as the loan secured by this Mortgage is in good standing and free from default, and Mortgagor provides proof that all premiums as provided in paragraph 5 hereof have been timely paid, Mortgagee shall not require an impound for such premiums, notwithstanding that the Prior Encumbrance does not require impounds for same. In the event of a default hereunder and the expiration of any applicable cure period, or the failure of Mortgagor to provide Mortgagee with timely evidence of timely payment of such premiums and for the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral (defined below), Mortgagor shall deposit with the Mortgagee or the Depository, commencing on the date of demand by Mortgagee and on the first day of each month following the month in which said demand occurs, a sum equal to the Mortgagee's estimate of the premiums that will next become due and payable on such policies reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one (1) month prior to the date when such premiums become due and payable. No interest shall be allowed to mortgagor on account of any deposit made hereunder and said deposit need not be kept separate and apart from any other funds of the Mortgagee or the Depository.

**Mortgagee's Interest In and Use of Tax and Insurance Deposits; Security Interest.**

4. In the event of a default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time on deposit pursuant to Paragraphs 3 and 3a hereof on account of the Indebtedness, in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises as the same appear on the records of the Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State in which the Premises are located, is hereby granted to the Mortgagee in and to all monies at any time on deposit pursuant to Paragraphs 3 and 3a hereof and such monies and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all as additional security for the Indebtedness hereunder and shall, in the absence of default hereunder, be applied by the Mortgagee or Depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor the Depository shall be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default

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hereunder, shall have furnished Mortgagee with the bills therefor and requested Mortgagee or the Depositary in writing to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes or assessments or insurance premiums. Neither Mortgagee nor the Depositary shall be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

#### Insurance.

5. Mortgagor shall keep all buildings and improvements and the Collateral (defined in Paragraph 27 below) now or hereafter situated on said Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) 12 months rent loss or business interruption insurance; and (b) flood insurance whenever all or part of the Premises lie within a flood plain. Mortgagor shall also provide insurance for personal injury and death and property damage of at least \$1,000,000 single limit coverage. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause naming Mortgagee as mortgagee attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of the Mortgagee, Mortgagor agrees to furnish evidence of insurable value and of replacement cost without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost and insurable value of the building(s) and other improvements on the Premises.

#### Adjustment of Losses with Insurer and Application of Proceeds of Insurance.

6. In case of loss or damage by fire or other casualty, Mortgagee is authorized, subject to the rights of the holder of the Prior Encumbrance: (a) to settle and adjust any claim under insurance policies which insure against such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. Provided that Mortgagor is not then in default hereunder, Mortgagee shall allow Mortgagor to negotiate settlements with insurance companies without Mortgagee's

approval if the amount is less than \$100,000 and with Mortgagee's approval, which approval shall not be unreasonably withheld, if the amount is \$100,000 or more. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies. Such insurance proceeds may, at the option of the Mortgagee, be: (a) applied in reduction of the Indebtedness, whether due or not; or (b) held by the Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the buildings and other improvements on the Premises. Notwithstanding the foregoing, the Mortgagee shall make said proceeds available to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of buildings or other improvements on the Premises, in the manner and under the conditions that the Mortgagee may require, provided that Mortgagor is not then in default hereunder and in the Mortgagee's reasonable opinion the buildings and other improvements can be repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction within a reasonable period of time. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), then the Mortgagee must approve plans and specifications of such work before such work shall be commenced. Any surplus which may remain out of such insurance proceeds after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party (hereinafter defined) shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagee and to any responsible trust company or title insurance company selected by the Mortgagee.

#### Stamp Tax; Effect of Changes in Laws Regarding Taxation.

7. If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

7.1 In the event of the enactment, after this date, of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee; (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

## Observance of Lease Assignment.

8. As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor and its beneficiary or beneficiaries have assigned to the Mortgagee (subject to the rights of the Prior Mortgagee described on EXHIBIT B) all of their right, title and interest as landlords in and to the leases listed on the SCHEDULE OF LEASES attached hereto as EXHIBIT C, if any, and all future leases of the Premises. All leases of the Premises are subject to the approval of the Mortgagee as to form, content and tenant(s), except that Mortgagor may enter into leases and renewals of leases with terms one year or less without Mortgagee's approval.

Mortgagor will not and Mortgagor's beneficiary or beneficiaries will not, without Mortgagee's prior written consent: (i) execute any assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the Indebtedness; or (ii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; or (iii) make any lease of the Premises except for actual occupancy by the tenant thereunder.

Mortgagor at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the tenants to be kept and performed, but Mortgagor shall not and Mortgagor's beneficiary or beneficiaries shall not modify, amend, cancel, terminate or accept surrender of any lease without prior written consent of Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Mortgagee the right, if any such right exists, to request from the tenant under any lease of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee expressly or by implication, to perform any of the covenants of any landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

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 insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Mortgage, the tenant under each lease of the Premises shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each tenant, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Mortgagee shall have the option to declare this Mortgage in default because of a material default of landlord in any lease of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default under any Assignment of Rents or Leases executed pursuant to this paragraph 8 shall constitute a default hereunder, on account of which the whole of the Indebtedness secured hereby shall at once, at the option of the Mortgagee, become immediately due and payable, without notice to the Mortgagor.

#### Mortgagor and Lien Not Released.

9. From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor or Mortgagor's successors or assigns or the consent of any junior lien holder, guarantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal note or notes therefor; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the Indebtedness; (e) consent to any plat, map or plan of the Premises; (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the monthly installments payable thereunder; and (i) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 9 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the Indebtedness; and (c) the lien or priority of the lien hereof against the Premises.

Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and attorneys' fees as may be incurred by Mortgagee for any action described in this Paragraph 9 taken at the request of Mortgagor or its beneficiary or beneficiaries.

#### Mortgagee's Performance of Defaulted Acts.

10. In case of default herein, Mortgagee may, after notice to Mortgagor, but need not, make any payment or perform any act herein required of Mortgagor: in any form and manner Mortgagee deems

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expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraphs 7 or 7.1 or to protect the Premises or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

#### Mortgagee's Reliance on Tax Bills, etc.

11. Mortgagees in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

#### Acceleration of Indebtedness in Case of Default.

12. Subject to any cure periods provided in the Note, if: (a) default be made in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof (which terms are hereby incorporated herein by reference); or (b) the Mortgagor or any beneficiary thereof or any guarantor of the Note shall file (i) a petition for liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.) or any similar law, state or federal, whether now or hereafter existing, or (ii) any answer admitting insolvency or inability to pay its debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days, as hereinafter provided; or (c) any order for relief of the Mortgagor or any beneficiary thereof or any guarantor of the Note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagor or for any beneficiary thereof or for any guarantor of the Note, or for all or the major part of the property of Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgagor or of any beneficiary thereof or of any guarantor of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days; or (d) the Mortgagor or any beneficiary thereof or any guarantor of the Note secured hereby shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or any major part of its property; or (e) default shall be made in the



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## EXHIBIT "D"

### PERMITTED SUBORDINATED ENCUMBRANCE

#### Subordinated Mortgagee

Roberts-O'Hare, Ltd., a California limited partnership and Roberts Hotel Management Corp., a California corporation.

#### Subordinated Mortgage

Secures \$1,000,000 debt due 1/92. Interest payable monthly at Bank of America Prime Rate + 3%. Principal payments of \$150,000 due annually.

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due observance or performance of any other covenant, agreement or condition hereinbefore or hereinafter contained and required to be kept or performed or observed by the Mortgagor or its beneficiary; or (f) default shall be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagor or its beneficiary or beneficiaries in any other instrument given at any time to secure the payment of the Note; or (g) all or any part of the beneficial interest in Mortgagor shall be sold, conveyed, transferred, assigned or pledged as security for any debt; or (h) Mortgagor or Beneficiary shall fail to perform or breach any of the terms, conditions, covenants, agreements representations or warranties contained in the license agreement between Sheraton Inns, Inc., a Delaware corporation, as licensor and Beneficiary, as licensee (the "License Agreement"), which default is not cured within ten (10) days prior to the expiration of any cure periods provided in the License Agreement; then and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. If while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) on the Premises, as set forth in Paragraphs 6 and 18 hereof, the Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

#### Foreclosure; Expense of Litigation.

13. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, the Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of Mortgagee affect the value of the Premises, the

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priority of this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest after demand at the rate specified in the Note applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

#### Application of Proceeds of Foreclosure Sale.

14. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Paragraph hereof; second, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to any party entitled thereto as their rights may appear.

#### Appointment of Receiver or Mortgagee in Possession.

15. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee or any holder of the Note may be appointed as such receiver or as Mortgagee in possession. Such receiver or the Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the Indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

#### Rights Cumulative.

16. Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to

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time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by, the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

#### Mortgagee's Right of Inspection.

17. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

#### Condemnation.

18. Subject to the rights of the Prior Mortgagee, Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or make those proceeds available for repair, restoration or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In any case where proceeds are made available for repair, rebuilding or restoration, the proceeds of the award shall be paid out in the same manner and under the same conditions provided in Paragraph 6 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding or restoration. Any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

#### Release Upon Payment and Discharge of Mortgagor's Obligations.

19. Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness secured hereby (including any prepayment charges and late charges provided for herein or in the Note).

#### Giving of Notice.

20. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof by personal delivery, national overnight courier service or certified mail addressed to the Mortgagor or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder. Notice shall be deemed given the day of personal delivery, one business day after delivery to a courier service or three business days after mailing. Copies of notices to Mortgagor shall be sent to: Rudnick & Wolfe, 30 North LaSalle Street, Chicago, Illinois 60602, Attention: Richard Homer. Copies of notices to Mortgagee shall be sent to: Schwartz & Freeman, 401 North Michigan Avenue, Suite 3400, Chicago, Illinois, Attention: Fred L. Drucker.



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Waiver of Defense.

21. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

Waiver of Statutory Rights.

22. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, except judgment creditors of the Mortgagor in its representative capacity and of the trust estate, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

Furnishing of Financial Statements to Mortgagee.

23. Mortgagor covenants and agrees that it will keep and maintain, or cause its beneficiary or beneficiaries from time to time to keep and maintain, books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

23.1 Mortgagor covenants and agrees to furnish to the Mortgagee, within ninety (90) days following the end of every fiscal year applicable to the operation of the improvements on the Premises, a copy of a report of the operations of the improvements on the Premises for the year then ended, to be certified by a beneficiary of Mortgagor (or a general partner, if the beneficiary of Mortgagor is a partnership or the chief financial officer if the beneficiary of Mortgagor is a corporation) satisfactory to the Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certificate to each such annual report shall certify that the certifying party examined such records as were deemed necessary for such certification and that those statements are true, correct and complete.

23.2 If Mortgagor fails to furnish promptly any report required by Paragraph 23.1, Mortgagor covenants and agrees to pay to Mortgagee the sum of TWO HUNDRED DOLLARS (\$200.00) as administrative expenses for each month or part thereof elapsing after such ninety (90) day period until such report is furnished to Mortgagee.

23.3 If Mortgagor fails to furnish promptly any report required by Paragraph 23.1, the Mortgagee may elect (in addition to exercising any other right, remedy and power) to make an audit of all books and records of Mortgagor and its beneficiaries which in

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any way pertain to the Premises and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder.

## Filing and Recording Charges and Taxes.

24. Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgement of this Mortgage and all other documents securing the Note and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

## Business Purpose; Usury Exemption.

25. Mortgagor has been advised by its beneficiaries that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph 6404 of Chapter 17 of the 1985 Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a "business loan" which comes within the purview and operation of said paragraph.

## Miscellaneous.

26. Binding Nature. This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage.

26.1 Release of Previous Holder. The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

26.2 Severability and Applicable Law. In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and this Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Note it secures are to be construed in

accordance with and governed by the laws of the State in which the Premises are situated.

26.3 Governmental Compliance. Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

26.4 Estoppel Certificates. Mortgagor, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the indebtedness and whether or not any default, offset or defense then is alleged to exist against the indebtedness and, if so, specifying the nature thereof.

26.5 Non-Joiner of Tenant. After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

26.6 Regulation G Clause. Mortgagor covenants and has been advised by its beneficiaries that the proceeds evidenced by the Note secured hereby will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System, or for the purpose of releasing or retiring any indebtedness which was originally incurred for any such purpose.

#### Security Agreement and Financing Statement.

27. Subject to the security interests of the First Mortgagee, Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to Paragraphs 6 and 18 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in EXHIBIT "A" or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and

interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

In the event of a default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, fifteen (15) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and second in priority after the security interest of the First Mortgagee, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

The Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in "EXHIBIT A"; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Mortgagor is a record owner of the land described in EXHIBIT "A".

If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits and the deposits described in Paragraph 4 above.

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Lien for Loan Commissions, Service Charges and the like.

28. So long as the original Mortgagee named on page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgage also secures the payment of all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby, all in accordance with the application of, and loan commitment issued to and accepted by, one or more of Mortgagor's beneficiaries in connection with said loan.

Due on Sale or Further Encumbrance Clause.

29. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor's Beneficiary, found it acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Beneficiary and its general partner in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. Beneficiary and its general partner are business persons or entities well-experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Beneficiary recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan the security for which is purchased by a party other than the original Beneficiary or Mortgagor. Beneficiary further recognizes that any junior financing placed upon the property secured hereby: (a) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (b) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (c) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Beneficiary and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Beneficiary and Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Beneficiary and Mortgagor agree that if this Paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events without the Mortgagee's prior written consent shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder:

(a) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the



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title to the Premises or the beneficial interest or power of direction under the trust agreement with Trustee;

(b) the License Agreement is cancelled by the licensor for monetary reasons without the prior written consent of the Prior Mortgagee;

(c) Greater Capital does not, without the prior written consent of the Prior Mortgagee, use any of itself, Mark Cohn, Rudy Rausch or Hugo M. Friend, Jr. or any entity controlled by one or more of them as managers of the Premises;

(d) The Premises are used for any purpose other than a hotel without the prior written consent of the Prior Mortgagee;

(e) any change in the management or control of Greater Capital.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

The following transactions shall, notwithstanding anything to the contrary stated above, be deemed permitted transfers of title and not events of default: (i) any sale, conveyance, assignment or other transfer to or among the Beneficiary, its general partner, the shareholders of its general partner or entities controlled by any one or more of them; (ii) a mortgage of the Premises subordinated in writing to this Mortgage securing no more than \$1,000,000 of debt and otherwise described on EXHIBIT "D" attached hereto and incorporated herein; and (iii) any sale, conveyance, assignment or other transfer to which the Prior Mortgagee has consented in writing.

#### Incorporation of Commitment Terms.

30. The loan evidenced by the Note is to be disbursed by Mortgagee to or for the benefit of Mortgagor in accordance with the provisions contained in one or more of (i) the APPLICATION FOR LOAN to Mortgagee (the "Application"); and (ii) the Mortgagee's Mortgage Loan Commitment dated May 9, 1986, as amended (the "MLC"). All evidences of indebtedness arising and accruing under the Application and the MLC, from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be indebtedness of Mortgagor and secured hereby to the same extent as though the Application and MLC were fully incorporated in this Mortgage at this point; and the occurrence of any event of default under the Application or MLC shall constitute an event of default under this Mortgage, entitling Mortgagee to all the rights, powers and remedies conferred upon the Mortgagee by the terms of the Application, the MLC, this Mortgage and all other security now held by Mortgagee and by law, as in the case of any other default hereunder.

#### Prior Encumbrances; Defaults.

31. Mortgagor (or a predecessor in title to the Premises, as the case may be) has previously executed and delivered the mortgage (the "Prior Mortgage") described on EXHIBIT B attached hereto and made a part hereof, which secures the note (the "Prior Note") described on Exhibit B and which encumbers the Premises or portions thereof. Mortgagor covenants and agrees that each of the following shall be an event of default hereunder: (a) any restructuring or refinancing (except for a decrease in the interest rate) of the indebtedness evidenced by the Prior Note; (b) any modification of,

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or default or breach of, any term or covenant or condition contained in, either of the Prior Note or Prior Mortgage or any other document evidencing or securing the indebtedness evidenced by the Prior Note or Prior Mortgage not cured within any applicable time periods permitted thereby; and thereafter Mortgagee, at its option, may declare all Indebtedness, with or without notice, to be immediately due and payable, and Mortgagee may foreclose this Mortgage as in the case of any other default hereunder, without regard to whether the maturity of the Prior Note has been accelerated or whether the Prior Mortgage is then being foreclosed.

Upon default by Mortgagor hereunder, Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's agent, at Mortgagee's option but without obligation on the part of Mortgagee to do so, from time to time to perform any covenant, do any act and make any payment required or permitted by the terms of the Prior Mortgage or of the indebtedness evidenced by the Prior Note as have not been performed by, done by, or paid by Mortgagor, at or before the times required by the Prior Mortgage or the Prior Note or such other documents. All expenses incurred and all sums paid by Mortgagee relative to the foregoing authority shall be secured hereby with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder and shall be payable to Mortgagee on demand. Any exercise of authority by Mortgagee to perform any of said covenants, do any of said acts, or make any of said payments as aforesaid, may be made by Mortgagee prior to, simultaneously with, or subsequent to the exercise by Mortgagee of the option (in this Paragraph contained) to declare all Indebtedness, with or without notice to be immediately due and payable, and shall not constitute a cure (as between Mortgagor and Mortgagee) of such event of default of Mortgagor hereunder.

#### Subordination of Lien of Prior Mortgage.

32. This Mortgage and the liens and security interests created hereby and by all other documents given at any time to secure the Indebtedness and all rights and remedies granted to the Mortgagee hereunder shall be, and the same are hereby made and shall continue, subject and subordinate to the liens and security interests created by the Prior Mortgage.

#### Subrogation to Liens of Prior Mortgages or Other Liens.

33. To the extent Mortgagee pays any installment of principal or interest or any other sums due under either of the Prior Note or the Prior Mortgage or in the event any amount paid out or advanced by the Mortgagee shall be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, either of the Prior Note or the Prior Mortgage or any other prior lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall become entitled to a lien on the Premises hereunder equal in rank and priority to the prior Mortgage as to which such payment is made and, in addition, to the extent necessary to make effective such rank and priority: (i) Mortgagee shall become subrogated to, receive and enjoy all of the rights, liens, powers and privileges granted to the prior mortgagees under such Prior Mortgage, and (ii) such Prior Mortgage shall remain in existence for the benefit of and to further secure the debt and other sums secured, or that hereafter become secured, hereunder.

#### Notice of Default Under Prior Mortgage or Prior Note.

34. Mortgagor shall furnish forthwith to Mortgagee a copy of each notice claiming a default of any party under the Prior Note or Prior Mortgage, at any time given by or received by Mortgagor or Beneficiary.

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Mortgagee's Right of First Refusal for Future Financing.

35. Until the Indebtedness evidenced by the Note and secured by this Mortgage shall be repaid in full, Mortgagor shall notify Mortgagee in writing of the existence of any bona fide offer of financing or refinancing for the Premises which Mortgagor intends to accept and shall deliver to Mortgagee a copy of all writings in connection therewith. Thereafter, for a period of thirty (30) days from the date of receipt by Mortgagor of such notice and writings, FOCUS REAL ESTATE FINANCE CO. shall have the exclusive right to provide financing to Mortgagor upon the same terms or better terms than are contained in such notice and writings or to arrange to obtain such financing for Mortgagor from a third party. Mortgagor agrees to cooperate fully with Mortgagee in completing such documentation and in furnishing such information as may be required to obtain such financing. If FOCUS REAL ESTATE FINANCE CO. is able to arrange such financing or provide such financing to Mortgagor, Mortgagor shall accept such financing or refinancing from or through FOCUS REAL ESTATE FINANCE CO. and shall pay to FOCUS REAL ESTATE FINANCE CO. a brokerage fee upon the same terms as are contained in the original offer of financing or refinancing received by Mortgagor.

Prepayment.

36. The Indebtedness evidenced by the Note and secured hereby may be prepaid without premium or penalty on any monthly payment due date on at least thirty (30) days prior written notice to Mortgagee provided (i) no default exists under the Note, the Mortgage or any other document given as security in connection herewith and (ii) Mortgagor shall have complied with any right of first refusal granted in paragraph 35 hereof in respect to the financing or refinancing of the Premises.

Approval of Management.

37. Mortgagee shall have the absolute right to approve the manager of the Premises (and acknowledges its approval of those individuals and entities referred to in Paragraph 29(c) above) and the form and substance of any management agreement entered into with any such manager. Any such management agreement shall provide for cancellation upon not less than sixty (60) days prior written notice from Mortgagee.

Exculpatory.

38. This Mortgage is executed by the Trustee, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and LASALLE NATIONAL BANK hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing contained herein or in the Note shall be construed as creating any liability on any of the Mortgagors personally or on Beneficiary personally to pay the Note or any interest, late charge or premium that may accrue thereon, or any Indebtedness secured by this Mortgage or to perform any covenant, either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as any Mortgagor and Beneficiary personally are concerned, the legal holder or holders of the Note and the owner or owners of any Indebtedness secured hereby shall look solely to the Premises and Collateral hereby mortgaged, conveyed and assigned and

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to, any other security given at any time to secure the payment thereof, including any guarantys thereof.

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

LASALLE NATIONAL BANK, a national banking association, not personally but as Trustee as aforesaid

ATTEST:

By: *William Mills*  
Title: ASSISTANT SECRETARY

By: *[Signature]*  
Title: ASSISTANT VICE PRESIDENT

GREATER CAPITAL CORPORATION, a California corporation

ATTEST:

By: *Larry Jones*  
Title: Secretary

By: *[Signature]*  
Title: Vice President

For itself and under Power of Attorney dated July 10, 1986 for Steven A. Cohn, Ethel L. Cohn, Mark F. Cohn and Alexis Lewin

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STATE OF ~~California~~)  
) SS.  
COUNTY OF ~~San Mateo~~)

I, Dana L. Pierson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Mark E. Conn, personally known to me to be the VICE President of GREATER CAPITAL CORPORATION, a California corporation and Tessy L. Jones, personally known to me to be the \_\_\_\_\_ Secretary of said corporation, whose names are subscribed to the within instrument, appeared before me this day in person and severally acknowledged that as such VICE President and \_\_\_\_\_ Secretary, they signed and delivered the said instrument of writing as VICE President and \_\_\_\_\_ Secretary of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21 day of July, 1986.

Dana L. Pierson  
Notary Public

My Commission Expires

Feb. 27, 1989

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STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

I, APHRODITE KAPAJOHU, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that ... President of LASALLE NATIONAL BANK, a national banking association and William H. Dillon, personally known to me to be the Secretary of said Bank, whose names are subscribed to the within instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said Instrument of writing as President and Secretary of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of July, 1986.

Signature of Aphrodite Kapajohu
Notary Public

My Commission Expires: 8-30-87

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## EXHIBIT "A" TO MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

### LEGAL DESCRIPTION

#### PARCEL 1:

THE SOUTH 1/4 OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART TAKEN FOR MANNHEIM ROAD AND THAT PART CONVEYED TO THE ILLINOIS STATE TOLL HIGHWAY COMMISSION BY DEED RECORDED AS DOCUMENT NUMBER 16738863), (AND EXCEPT THAT PART TAKEN IN CASE NUMBER 64"L"21589), IN COOK COUNTY, ILLINOIS

#### PARCEL 2:

THAT PART OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE WEST LINE OF MANNHEIM ROAD AND NORTH OF THE NORTH LINE OF THE ILLINOIS TOLL HIGHWAY DRAIN FROM A POINT IN THE EAST LINE OF SAID SOUTH EAST 1/4, 315.2 FEET SOUTH OF THE EAST 1/4 CORNER OF SAID SECTION 32, TO A POINT IN THE NORTH LINE OF SAID EAST 1/2 OF THE SOUTH EAST 1/4, 644.84 FEET MEASURED ON THE SAID NORTH LINE EAST OF THE NORTH WEST CORNER OF SAID EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 32, (EXCEPT THAT PART TAKEN IN CASE NUMBER 64"L"21263), IN COOK COUNTY, ILLINOIS

#### PARCEL 3:

LOTS 1 TO 4 IN BLOCK 2 IN OLIVER SALINGER AND COMPANY'S 1ST ADDITION TO GLEN ACRES, BEING A SUBDIVISION OF THE NORTH 3/4 OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

#### PARCEL 4:

THAT PART OF THE SOUTH 1/2 OF MORSE AVENUE, VACATED BY DOCUMENT 26239728, LYING NORTH OF AND ADJOINING LOTS 3 AND 4 IN BLOCK 2 IN OLIVER SALINGER AND COMPANY'S 1ST ADDITION TO GLEN ACRES, BEING A SUBDIVISION OF THE NORTH 3/4 OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PERMANENT REAL ESTATE INDEX NUMBERS:

09-32-203-005-0000  
09-32-206-017-0000 all 25  
09-32-212-015-0000

#### Common Address of Property:

6810 N. Mannheim Road  
Rosemont, Illinois

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## EXHIBIT "B"

### PERMITTED PRIOR ENCUMBRANCE

#### Prior Mortgagee

Sheraton-Blackstone Corporation,  
a Delaware corporation

#### Prior Note and Mortgage

\$29,500,000 purchase money note due 12/1/96, bearing interest at 11.25% per annum, adjusted based upon treasury bill rates. The interest rate shall be fixed at 4% for the first year, 6% for the second year, 8% for the third year, 10% for the fifth year and full interest thereafter. Accruals shall be capitalized but no interest charged on accruals for the first three years. Additional payments on accrued interest from operating income shall be made after \$200,000 of net cash flow plus management fees have been paid to Beneficiary.

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## EXHIBIT "C"

### SCHEDULE OF LEASES

<u>TENANT</u>	<u>TERM</u>	<u>RENT</u>
Regency Gift Shop (new lease to be executed - terms not yet finalized)	Month to month	\$12,000.00/yr.
Foster & Kleiser	5 yrs.	\$12,000.00/yr.

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