

AGREEMENT OF OPTION TO REPURCHASE

\$ 19.00

THIS AGREEMENT OF OPTION TO REPURCHASE is made and entered into this 23rd day of September, 1987 by and between MARRIOTT CORPORATION, a Delaware corporation ("Marriott"), having a principal business address at 10400 Fernwood Road, Bethesda, Maryland 20058, and METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation ("Metropolitan"), having a principal business address at One Madison Avenue, New York, New York 10010.

W I T N E S S E T H:

WHEREAS, Marriott and Metropolitan entered into that certain Real Estate Purchase Agreement dated April 6, 1987 (the "Purchase Agreement") whereby Marriott agreed to purchase and Metropolitan agreed to sell that certain real estate located in Cook County, Illinois, legally described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, Metropolitan has a continued interest in the harmonious development and existence of the Northwest Point Office Park (the "Office Park"), being a 123-acre tract of which the Property is a part; and

WHEREAS, as a condition to Metropolitan's obligation to sell the Property to Marriott, Marriott agreed to grant certain rights of repurchase of the Property to Metropolitan, all as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements as herein contained, Ten and No/100 Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Right of Purchase of the Property. In the event Marriott has not commenced construction of a "Marriott Suites" hotel on the Property in accordance with the plans and specifications heretofore delivered to Metropolitan on or before August 1, 1988, Metropolitan shall have the right to purchase the Property from Marriott upon the terms set forth below:

(a) Metropolitan shall have the right and option to purchase the Property (or to cause the same to be purchased by the designee or designees, corporate or otherwise, of Metropolitan) for the Purchase Price (as such term is hereinafter defined), such right to be exercised in a written notice delivered by Metropolitan to

7088279D1

87525554

UNOFFICIAL COPY

7 2 5 5 4

Marriott within thirty (30) Business Days (as such term is hereinafter defined) (the "Option Period") after August 1, 1988. In the event Metropolitan fails to give such notice specifying its election on or before the last day of the Option Period, Metropolitan shall be deemed to have elected not to purchase the Property under this paragraph. For purposes of this Agreement, a "Business Day" shall mean any day other than a Saturday or Sunday or legal holiday in the State of Maryland, the State of Illinois or the State of New York.

(b) In the event that on or before the last day of the Option Period Metropolitan elects to purchase the Property, the time and place for closing such transaction (which shall be not more than sixty (60) days after the receipt of notice from Metropolitan of its election to purchase the Property) shall be established by Metropolitan in a written notice given to Marriott at least twenty (20) days in advance of such closing date. Marriott shall deliver title to the Property by a stamped Quit Claim Deed, and Marriott shall, at Marriott's sole cost, provide Metropolitan with title insurance, with extended coverage, covering title to the Property in the amount of the Purchase Price. Title to the Property shall be subject only to those liens, claims and encumbrances affecting title to which such title was subject when the same was conveyed to Marriott and general real estate taxes not yet due and payable. The closing costs shall be paid by Metropolitan and Marriott as provided in the Purchase Agreement, with Marriott, as seller, and Metropolitan, as purchaser. Upon the reconveyance of title to Metropolitan, this Agreement shall be released and removed of record.

(c) The "Purchase Price" shall be the sum of the following:
(i) the price paid by Marriott to Metropolitan to acquire the Property; and (ii) the amount of assessments (excluding real estate taxes); and (iii) interest on such amount at the rate of eight percent (8%) per annum from the date that Marriott acquired title to the Property to the date that title is reconveyed to Metropolitan.

(d) In the event Metropolitan elects to purchase the Property and Marriott fails to close such transaction in accordance herewith (other than due to Metropolitan's default), then Metropolitan shall have all rights and remedies available to it at law or in equity, including, without limitation, the right to specific performance.

2. Notices. Subject to the right of any party to designate a different address for itself by notice similarly given, any notice or demand which any party hereto is required or may desire to give or deliver to or make upon the other party shall be in

UNOFFICIAL COPY

2 3 5 5 4

writing and delivered or given or made by United States, postage prepaid and registered or certified mail, return receipt requested, or by commercial overnight carrier, as follows:

To Marriott: Marriott Corporation
10400 Fernwood Road
Bethesda, Maryland 20058
Attention: Law Department

To Metropolitan: Metropolitan Life Insurance Company
One Madison Avenue
New York, New York 10010
Attention: Senior Vice President,
Real Estate Investments

with a copy to:

Metropolitan Life Insurance Company
2021 Spring Road, Suite 300
Oak Brook, Illinois 60521
Attention: Vice President,
Real Estate Investments

Any notice or demand so given, delivered or made by United States mail shall be deemed to have been given, delivered or made on the third (3rd) Business Day after the same is deposited in the United States mail as registered or certified mail, return receipt requested, addressed as above provided, with postage thereon fully prepaid. Any such notice, demand or document so given, delivered or made by commercial overnight carrier shall be deemed to be given, delivered or made on the next Business Day after delivery of the same to the commercial carrier.

3. Injunctive and Other Relief. The rights and remedies given to Metropolitan by this Agreement shall be deemed to be cumulative, and not one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by Metropolitan shall not impair Metropolitan's standing to exercise any other right or remedy. Without limitation of the foregoing, Metropolitan shall have the right to restrain by injunction any breach or threatened breach of this Agreement by Marriott, and shall have the right to compel specific performance of the terms of this Agreement.

4. Separability. If any one or more of the provisions of this Agreement shall for any reason be held to be inapplicable, invalid, illegal or unenforceable in any respect, such

UNOFFICIAL COPY

2 5 5 5 4

inapplicability, invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if the inapplicable, invalid, illegal or unenforceable provision had never been contained herein.

5. Amendment. This Agreement may be amended and such amendment may include deletion of all or any part of said paragraphs. Such amendment shall be effective on and after the date of its recording if duly executed by Marriott and Metropolitan.

6. Binding on Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties, their heirs, legal representatives, successors and assigns.

7. Run with the Land. The conditions, covenants, restrictions, reservations and standards herein set forth shall operate as covenants running with the land into whosoever hands the Property, or any part thereof, shall come and shall be enforceable at the suit of Metropolitan and its respective successors and assigns, by a proper proceeding, either in equity or at law, but with no right of reverter, it being understood and agreed that the provisions of this Agreement are for the benefit of Metropolitan only and not for the benefit of any third parties.

8. Superiority. This Agreement shall be superior to mortgages or trust deeds that may hereafter be placed upon the Project or any portion of the same and to and any and all advances to be made thereunder and all renewals, replacements and extensions thereof.

9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

UNOFFICIAL COPY

7 3 2 5 5 4

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MARRIOTT CORPORATION, a Delaware corporation

By: Roberto Manis
Its: Vice President

METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation

By: _____
Its: _____

This instrument prepared by und mail to:

John A. Goldstein
Katten Muchin & Zavis
525 West Monroe Street
Suite 1600
Chicago, Illinois 60606-3693

BOX 333-HV

COOK COUNTY, ILLINOIS
FILED FOR RECORDS
1987 SEP 25 PM 3:00

87525554

87525554

UNOFFICIAL COPY

7 2 5 5 4

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MARRIOTT CORPORATION, a Delaware corporation

By: _____
Its: _____

METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation

By: Charles F. Goetz
Its: ASSISTANT VICE-PRESIDENT

This instrument prepared by and mail to:

John A. Goldstein
Katten Muchin & Zavis
525 West Monroe Street
Suite 1600
Chicago, Illinois 60606-3693

DPA
9-23

Property of Cook County Clerk's Office

87525554

UNOFFICIAL COPY

7 3 2 5 5 4

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, JOAN LOSSAU, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ASSISTANT VICE-PRESIDENT personally known to me to be the VICE-PRESIDENT of Metropolitan Life Insurance Company, a New York corporation, 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 ASSISTANT VICE-PRESIDENT of said corporation, he signed and delivered the said instrument, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of said corporation as his free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of September, 1987.

Joan Lossau
Notary Public

My Commission expires:

"OFFICIAL SEAL"
Joan Lossau
Notary Public, State of Illinois
My Commission Expires 8/19/91

"OFFICIAL SEAL"
Joan Lossau
Notary Public, State of Illinois
My Commission Expires 8/19/91

87525554

UNOFFICIAL COPY

87525554

STATE OF MARYLAND)
COUNTY OF MONTGOMERY) SS

I, Regina U. Reagan, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert B. Morris personally known to me to be the Vice President of Marriott Corporation, a Delaware corporation, 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 Vice President of said corporation, he signed and delivered the said instrument, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of said corporation as his free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 23rd day of September, 1987.

Regina U. Reagan
Notary Public

My Commission expires:

4/1/90

UNOFFICIAL COPY

87525554

EXHIBIT A

Legal Description

LOT 2 IN THE PARK AT NORTHWEST POINT, BEING A SUBDIVISION OF PARTS OF SECTIONS 15, 16, 21 AND 22, ALL IN TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SUBDIVISION THEREOF RECORDED ON AUGUST 5, 1987, AS DOCUMENT NO. 87-433382.

08-16-401-026

08-16-401-034

08-21-202-071

WN

Vacant, near intersection of Northwest Point Road
and Arlington Heights Road, Elk Grove Village, IL

Property of Cook County Clerk's Office