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JUNIOR MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE, made this 30<sup>th</sup> day of October, 1987 by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under Trust No. 28443 ("Mortgagor") and THE TANDEM INSURANCE GROUP, INC., an Illinois Life Insurance Company, 1700 Broadway, New York, New York 10019 ("Mortgagee");

3700

WITNESSETH:

WHEREAS Mortgagor has executed and delivered to Mortgagee a Secured Promissory Note of even date herewith in the principal amount of \$11,500,000.00 (the "Note"), which Note bears interest and is payable to Mortgagee as more fully described therein, and matures as provided therein but in no event later than June 1, 1993;

WHEREAS, Mortgagor and Mortgagee intend that this Mortgage shall secure the debt evidenced by the Note;

WHEREAS, Mortgagor has executed certain notes set forth in Exhibit C attached hereto and incorporated herein ("Existing Notes") which Existing Notes are secured by that certain Construction-Permanent Mortgage and Security Agreement set forth in Exhibit C attached hereto and incorporated herein ("Existing Mortgage"), the Existing Mortgage being hereby senior in priority to this Mortgage (the Existing Notes and Existing Mortgage shall sometimes be hereinafter collectively referred to as the "Existing Obligations").

WHEREAS, Mortgagee is desirous of securing the prompt payment of the Note together with interest and any premium thereon in accordance with the terms of the Note and any additional indebtedness accruing to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Note or this Mortgage all hereinafter sometimes collectively called the "indebtedness secured hereby";

NOW, THEREFORE, Mortgagor, to secure payment of the indebtedness secured hereby and the performance of the covenants and agreements herein contained to be performed by Mortgagor, and for good and valuable consideration in hand paid, the receipt whereof is hereby acknowledged, does by these presents assign, grant, mortgage, and convey unto Mortgagee, its successors and assigns, (i) the premises described in Exhibit A attached hereto (the "Property"), and (ii) all of Mortgagor's right, title and interest, as lessee, in and to the Garage Lease described in Exhibit B hereto (the "Garage Lease") and the leasehold estate created thereby (the "Leasehold Estate"), including, without limitation, all credits, deposits, privileges, rights, options to renew or extend, options to purchase and any other options or rights of Mortgagor, as lessee, under the Garage Lease and together with all right, title, interest which Mortgagor now has or may hereafter acquire in and to the real property covered by said Garage Lease, which real property is more fully described as the "Leased Premises" on Exhibit B hereto (the "Leased Premises");

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Mail to:

Daniel J. Perlman  
Katten, Muchin & Zavis  
525 W. Monroe  
Suite 1600 Chicago, IL 60606

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TOGETHER with all and singular the easements, rights-of-way, licenses, privileges, tenements, appendages, hereditaments and appurtenances belonging or in any wise appertaining to the Property, Leasehold Estate or the Leased Premises, and all the rents, issues and profits therefrom, and also all the estate, right, title and interest of Mortgagor, either at law or in equity, of, in and to all such property and every part thereof;

TOGETHER with all right, title and interest, if any, of Mortgagor, in and to the land lying within any street or roadway adjoining the Leased Premises and/or Property; and all right, title and interest, if any, of Mortgagor in and to any strips and gores thereunto adjoining;

TOGETHER with all buildings, structures and improvements now or hereafter erected on the Property and all right, title and interest, if any, which Mortgagor now has or may hereafter acquire in all buildings, structures and improvements now or hereafter erected on the Lease Premises and, also, all machinery, apparatus, equipment, goods, systems, fixtures (including without limitation trade fixtures) and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Property and/or Leased Premises, or any part thereof, and used or usable in connection with any present or future operation thereof, and now owned or hereafter acquired by Mortgagor, including, but without limitation of the generality of the foregoing, all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lifting, fire extinguishing, plumbing, cleaning, communications, and power, equipment, systems and apparatus; and all elevators, escalators, switchboards, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, ranges, stoves, refrigerators, washers, dryers, wall beds, cabinets, partitions, conduits, ducts and compressors; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property which are owned and not leased by Mortgagor are a part of said real estate and are declared to be a portion of the security for the indebtedness secured hereby (whether in single units or centrally controlled, and whether physically attached to said real estate or not); all of the property and rights described in this paragraph and in the preceding three paragraphs, including, without limitation, the Property, the Leasehold Estate and the Leased Premises, being herein sometimes collectively referred to as the "premises" or the "mortgaged premises". Notwithstanding the foregoing, the premises and mortgaged premises shall not include equipment leased by Mortgagor in connection with the operation of the Property or the Leased Premises ("Leased Equipment"). Mortgagor hereby represents and warrants to Mortgagee that the Leased Equipment is not material to the operation of the Property and Leased Premises and has a current value of less than \$1,000,000.00;

TO HAVE AND TO HOLD the mortgaged premises with the privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein expressed. Mortgagor covenants that Mortgagor is well seized of the premises (other than the Leased Premises), in fee simple, and has good right and full power to grant, mortgage and convey the same in the manner and form herein provided; and that the same are free from all liens and encumbrances whatsoever, except, with respect to the Property, those permitted exceptions set forth in Exhibit E

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attached hereto. Mortgagor further represents that (i) the Leased Premises, the Garage Lease and the Leasehold Estate are free from all liens and encumbrances whatsoever except those permitted exceptions set forth in Exhibit F hereto, (ii) Mortgagor has good right and full power to grant, mortgage and convey the Leasehold Estate in the manner and form herein provided, (iii) Mortgagor has delivered to Mortgagee a true and correct copy of the Garage Lease and all amendments thereto, (iv) the Garage Lease is the valid and binding obligation of the parties thereto, is enforceable in accordance with its terms, is in full force and effect, has not been amended or modified in any way except pursuant to those amendments heretofore delivered to Mortgagee as aforesaid, (v) no default, and no event which with the passage of time or giving of notice, or both, could ripen into a default, exists under the Garage Lease, and (vi) Mortgagor is the sole owner and holder of lessee's interest in said Garage Lease and the Leasehold Estate. Mortgagor will defend the mortgaged premises, with the privileges and appurtenances thereunto belonging to Mortgagee, its successors and assigns, forever, against all claims and demands whatsoever.

WITHOUT limitation of the foregoing, Mortgagor hereby further grants unto Mortgagee, pursuant to the provisions of the Uniform Commercial Code of the State of Illinois, a security interest in all of the above described property, and in all building materials, fittings, appliances, furniture, furnishings, carpeting, supplies, motor vehicles (together with all tires, equipment, parts and accessories thereof and all other attachments thereto), and all other personal property and all replacements of any of the foregoing, now or at any time hereafter affixed to, attached to, incorporated or intended to be incorporated in, placed upon, or used or usable in any way in connection with, the Property, the Leased Premises, and/or any structures or buildings at any time thereon or being constructed thereon, regardless of whether located in or upon the Property, the Leased Premises, and/or any structures or buildings at any time thereon, or in the possession of any third party for purposes of the manufacture, storage, fabrication, or transportation thereof or otherwise, and owned or hereafter owned by a Mortgagor or in which Mortgagor now or hereafter has any interest, but excluding only the Leased Equipment, which property includes without limitation goods which are or are to become fixtures and all proceeds of all of the foregoing, and Mortgagor further grants unto Mortgagee a security interest in all of Mortgagor's right, title and interest in the good will relating to, and in the tradenames, trademarks, servicemarks and registrations thereof and in all of the good will of the business symbolized thereby used in connection with, the operation of the mortgaged premises. All of the foregoing are included in the definition of the terms "premises" and "mortgaged premises".

THIS MORTGAGE IS GIVEN TO SECURE: (a) payment of the indebtedness secured hereby, and (b) performance of each and every of the covenants, conditions, and agreements contained in this Mortgage, in the Note, in the Second Assignment of Rents and Leases of even date herewith (the "Assignment of Rents and Leases") executed by Mortgagor and 540 Hotel Venture, an Illinois limited partnership, in the Junior Assignment of Landlord's Interest in Lease of even date herewith executed by Mortgagor and 540 Hotel Venture, in the Security Agreement of even date herewith executed by Mortgagor, Marriott Corporation and 540 Hotel Venture and in any other instrument to which reference is expressly made in this Mortgage.

AND, MORTGAGOR HEREBY COVENANTS AND AGREES that:

1. PAYMENT OF PRINCIPAL AND INTEREST.

Mortgagor will pay the principal and interest, evidenced by the Note at the times and in the manner therein provided.

2. PERFORMANCE OF GARAGE LEASE OBLIGATIONS.

(a) Mortgagor will pay, or cause to be paid, not later than the day when the same become due and payable by Mortgagor pursuant to the terms of the Garage Lease, all rent, additional rent and all other payments required to be made by the tenant under the terms of the Garage Lease.

(b) Mortgagor will timely and fully perform and comply with, or cause to be performed and complied with, all of the terms, covenants and conditions contained in the Garage Lease required to be performed and complied with by the tenant thereunder and will not do or suffer to be done anything the doing of which, or refrain from anything the omission of which, will impair the security of this Mortgage or be grounds for a termination of the Garage Lease.

(c) Without limitation of the generality of the foregoing or of any of the terms and conditions of the Garage Lease, Mortgagor will not modify, extend or in any way alter the terms of the Garage Lease or cancel or surrender the Garage Lease, or waive, excuse, condone or in any way release or discharge the lessor-operator thereunder or from the obligations, covenants, conditions and agreements to be kept and performed by said lessor-operator. Mortgagor shall not subordinate or consent to the subordination of the Garage Lease to any mortgage on lessor-operator's interest in the Leased Premises. Mortgagor will promptly notify Mortgagee in writing of any default by lessor-operator under the Garage Lease, and will deliver to Mortgagee a true and complete copy of any notice given by Mortgagor to the lessor-operator under the Garage Lease. Mortgagor will not terminate the Garage Lease without the prior written consent of Mortgagee for any reason whatsoever, including, without limitation, a default by the lessor-operator thereunder.

(d) Mortgagor will promptly advise the Mortgagee in writing of the giving of any notice by the lessor-operator to the Mortgagor of any default by the Mortgagor, as tenant, in the performance or observance of any of the terms, covenants or conditions of the Garage Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed, and deliver to the Mortgagee a true copy of each such notice and of any other notice given by the lessor-operator to Mortgagor as tenant under the Garage Lease.

3. PAYMENT OF TAXES, AND TAX DEPOSITS.

(a) Mortgagor will pay, or cause to be paid, all taxes, assessments, and other similar charges which are assessed, levied, confirmed, imposed, or which become a lien upon or against the mortgaged premises or any portion thereof (including, without limitation, the Leased Premises and Mortgagor's Leasehold Estate or any portion thereof) or which

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become payable with respect thereto or with respect to the occupancy, use or possession of the mortgaged premises, at least thirty (30) days before the same become delinquent, and will promptly deliver to Mortgagee receipt of the proper officers therefor. In default thereof, Mortgagee may (but shall not be obligated to) pay such taxes, assessments, and other similar charges, including any penalties or interest thereon (of which payment, amount and validity thereof, the receipt of the proper officer shall be conclusive evidence), and any amount so paid by Mortgagee shall become immediately due and payable by Mortgagor with interest as described in Paragraph 10 hereof until paid and shall be secured by this Mortgage.

(b) Subject to the interests, if any, of the holders of the Existing Obligations, and only during the occurrence of an Event of Default, Mortgagor shall pay to Mortgagee concurrently with each installment of interest payable on the Note, or at the election of the Mortgagee on or before the first day of each calendar month, such amount as Mortgagee from time to time estimates will be required to maintain thereafter a balance from which to pay taxes, assessments and other governmental liens or charges against the mortgaged premises (including, without limitation, both the Leased Premises and Mortgagor's Leasehold Estate) at least thirty (30) days prior to the date on which the same become delinquent or past due. Mortgagor shall, if possible, procure and deliver to Mortgagee in advance statements for such charges. Payments by Mortgagee for such purposes may be made by Mortgagee at its discretion, even though subsequent owners or lessees of the mortgaged premises, or any part thereof, may benefit thereby. Such amounts received pursuant to the foregoing may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Only during the occurrence of an Event of Default and upon demand by Mortgagee, Mortgagor will deliver and pay over to Mortgagee such additional sums as are necessary to make up any deficiency in the amount necessary to enable Mortgagee to fully pay any of the items hereinabove mentioned as they become payable. During the occurrence of an Event of Default, any part or all of the balance of said amounts received by Mortgagee pursuant to the foregoing may be applied to any part of the indebtedness secured hereby in the discretion of Mortgagee and in refunding any part of said amounts Mortgagee may deal with whomever is represented to be the owner of the mortgaged premises at that time. The obligations of Mortgagor pursuant to covenants contained in this Mortgage relating to taxes and assessments shall not be affected by this Paragraph or payments made pursuant hereto, except to the extent that said obligations have actually been satisfied by compliance with this Paragraph.

4. INSURANCE.

(a) Mortgagor will procure, deliver to and maintain for the benefit of Mortgagee during the continuance of this Mortgage and until the same is fully satisfied and released, a policy or policies of insurance insuring the buildings, structures and improvements now existing or hereafter created on, or constituting part of, the premises against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and other

hazards, casualties, and contingencies including, but without limitation, war risks (as, when and to the extent insurance against war risks is obtainable from the United States of America or any agency thereof) as under good insurance practices in Chicago, Illinois, from time to time, are insured against for buildings, structures and improvements of like character. The amount of such insurance shall be not less than 100% of the full replacement cost of said buildings, structures and improvements (excluding those covered by insurance in accordance with clause (iii) below), without reduction for depreciation, but in no event less than \$95,000,000.00. Each policy shall contain a Replacement Cost Endorsement. Mortgagor shall also furnish (i) Business Interruption Insurance in any amount equal to one year's gross revenue from all sources involving the mortgaged premises, less any allowable charges and expenses which do not continue during the period of restoration of the mortgaged premises, (ii) policies of insurance covering boilers, pressure vessels, pressure piping and machinery, and all major components of any centralized heating or air-conditioning systems, if any such are installed in the buildings, structures and improvements which at any time constitute part of the mortgaged premises, for an amount not less than \$2,500,000, such policies also to insure against physical damage to such buildings, structures and improvements, arising out of an accident covered thereunder, (iii) insurance on all personal property, furnishings, furniture, fixtures and equipment (except trade fixtures owned by tenants under Retail Space Leases [as hereinafter defined]) located in and upon and used in the operation of, or constituting part of the mortgaged premises and said buildings, structures and improvements located thereon or constituting a part thereof against loss or damage by fire and other hazards presently included in so-called "extended coverage" and vandalism and malicious mischief in the amount of not less than \$7,000,000, but in any event in such amount as would preclude Mortgagor from being a co-insurer, and (iv) such other insurance on the mortgaged premises or any replacements or substitutions therefor, and in such amounts as may from time to time be reasonably required by Mortgagee against other insurable hazards and perils which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the improvements, buildings and structures constituting a part of the mortgaged premises, their construction, location, use and occupancy. All policies of insurance required hereunder shall be in such form, companies, and amounts as may be acceptable to Mortgagee, with loss payable to Mortgagee in accordance with the New York Standard Mortgagee clause or its equivalent. Mortgagor will promptly pay when due, any premiums on any policy or policies of insurance required hereunder, and will deliver to Mortgagee renewals of such policy or policies at least thirty (30) days prior to the expiration dates thereof; the said policies and renewals to be marked "paid" by the issuing company or agent. Upon Mortgagor's failure to comply with the requirements of this Paragraph, Mortgagee may, in its discretion, effect any insurance required hereunder and pay the premiums due therefor, and any amounts so paid by Mortgagee shall become immediately due and payable by Mortgagor with interest as described in Paragraph 11 hereof, and shall be secured by this Mortgage. The delivery to

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Mortgagee of any policy or policies of insurance hereunder, or renewals thereof, shall constitute an assignment to Mortgagee of all unearned premiums thereon as further security for the payment of the indebtedness secured hereby. In the event any foreclosure action or other proceeding hereunder is instituted by Mortgagor, all right, title and interest of Mortgagor in or to any policy or policies of insurance then in force shall vest in Mortgagee.

(b) In the event of any loss or damage, Mortgagor will give immediate notice thereof to Mortgagee, and Mortgagee may make proof of such loss or damage if the same is not promptly made by Mortgagor or if Mortgagee deems it desirable to do so. Subject to the interests, if any, of the holders of the Existing Obligations, all proceeds of insurance shall be payable to Mortgagee, and any affected insurance company is authorized and directed to make payment thereof directly to Mortgagee. Subject to the interests, if any, of the holders of the Existing Obligations, Mortgagee is authorized and empowered to settle, adjust, or compromise any claims for loss, damage, destruction or otherwise under any policy or policies of insurance. Subject to the interests, if any, of the holders of the Existing Obligations, all such insurance proceeds may, at the sole discretion of Mortgagee, be applied to the restoration, repair, replacement, or rebuilding of the premises, or to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable); provided, however, Mortgagee shall allow all such insurance proceeds to be applied to the restoration, repair, replacement, or rebuilding of the premises in the event the holders of the Existing Obligations release all such insurance proceeds for said purposes.

(c) Notwithstanding anything in 4(b) above to the contrary, and subject to the interests, if any, of the holders of the Existing Obligations, Mortgagee agrees that, provided that no Event of Default has occurred hereunder, the proceeds of any such insurance, to the extent that same relate solely to the building, structure and improvements on the Leased Premises (the "Garage"), may be applied to the restoration or repair of the Garage as provided in Paragraph 15 of the Garage Lease, provided that Mortgagor expressly agrees that any election to be made by Mortgagor as lessee under the Garage Lease, pursuant to Paragraph 15(c) thereof shall be made by Mortgagor as Mortgagee may direct, Mortgagor hereby agreeing to give Mortgagee written notice of any event giving rise to the provisions of said Paragraph 15(c) immediately upon the occurrence of such event. In the event of a failure by Mortgagor to make such an election under Paragraph 15(c) at Mortgagee's direction, Mortgagee shall have and is hereby granted, subject to the interests, if any, of the holders of the Existing Obligations, the irrevocable right to make any such election either in its own name and behalf or in the name and behalf of a designee or nominee of Mortgagee or in the name and behalf of Mortgagor, as Mortgagee shall in its sole discretion determine.

5. MAINTENANCE, REPAIRS, RESTORATION, COMPLIANCE WITH LAWS, ETC.

(a) Mortgagor will keep and maintain the mortgaged premises in good order, condition and repair and will make, as and when the same shall become necessary, all structural

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and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen, repairs and maintenance necessary or appropriate. Mortgagor will suffer or commit no waste to the mortgaged premises or any portion thereof. All repairs and maintenance required of Mortgagor shall be in the opinion of Mortgagee) of first-class quality and shall in all respects be in compliance with all matters and things provided in Subparagraph (c) of this Paragraph 5. Mortgagor will not cause, suffer or permit the construction of any buildings, structures, additions or improvements on the mortgaged premises, or any part thereof, without the prior written consent of the Mortgagee to the proposed action as well as to the plans and specifications relating thereto. None of the buildings, structures, or improvements now or hereafter erected or located on the mortgaged premises shall be removed, demolished or substantially or structurally altered in any respect without the prior written consent of Mortgagee. Mortgagor shall, however, have the right, at any time and from time to time, to remove and dispose of any equipment which may have become obsolete or unfit for use or which is no longer useful in the operation of said premises, provided Mortgagor promptly replaces any such equipment so removed or disposed of with other equipment and fixtures, free of superior title, security interest, liens or claims, not necessarily of the same character, but of at least equal usefulness and quality. Mortgagee, and any person authorized by Mortgagee, shall have the right (but not the duty) to enter upon and inspect the mortgaged premises at all reasonable times. Mortgagor will (whether or not the proceeds of insurance or the condemnation award are adequate or made available to Mortgagor for such purpose) promptly repair, restore, replace or rebuild any part of the mortgaged premises which may be damaged or destroyed by any casualty or as the result of any taking under the power of eminent domain.

(b) Without limitation of the foregoing, during each full "fiscal year" (as hereinafter defined) of operation of that portion of the structures, buildings and improvements constructed on the Property which are subject to that certain lease dated as of May 23, 1974, between Mortgagor and Marriott Corporation ("Marriott"), as the same has been amended (the "Hotel Lease"), such portion of said structures, buildings and improvements being hereinafter called the "Hotel Facilities", Mortgagor shall perform and provide or cause to be performed and provided such work and materials as may be necessary for "Repairs and Maintenance" of the Hotel Facilities, the total amount expended or committed to be expended for such materials and work actually provided and performed in each fiscal year to be not less than three percent (3%) of the average "Gross Revenues" from all operations of the Hotel Facilities during the next preceding three fiscal years. As used in this Mortgage the terms "Repairs and Maintenance" and "Gross Revenues" shall be determined in accordance with the Uniform System of Accounts for Hotels of the American Hotel Association, 6th Revised Edition, 1961. The term "fiscal year" shall mean the 12-month period beginning on the first Saturday following the last Friday in December of each calendar year and ending at Midnight on the Friday ending closest to December 31 in the next succeeding calendar year.

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(c) Mortgagor will promptly comply or cause compliance with all present and future laws, ordinances, rules, regulations and other requirements of all governmental authorities with respect to the mortgaged premises or any portion thereof or the use or occupation thereof.

6. FURTHER ENCUMBRANCE OR OTHER LIENS AND CHARGES.

(a) Except for the Existing Obligations, Mortgagor will not, without the prior written consent of Mortgagee, further mortgage, grant a deed of trust, pledge or otherwise further encumber, or suffer or permit to exist any further mortgage, lien or encumbrance upon, whether by operation of law, or otherwise, any or all of the mortgaged premises or its interests therein; any such mortgage, deed of trust, pledge or other encumbrance made without Mortgagee's prior written consent shall be null and void and of no force and effect and the making thereof shall at the option of the Mortgagee constitute an Event of Default under this Mortgage.

(b) This Mortgage is and will be maintained as a valid second lien on the mortgaged premises (except the fee interest in the Leased Premises unless and until the same are acquired by Mortgagor) and Mortgagor will not create or suffer or permit to be created, or to stand against the mortgaged premises or any portion thereof, or against the rents, issues and profits therefrom, any lien [including, without limitation, any liens arising with respect to the payment of taxes, assessments, charges and other matters described in Paragraph 3 above and below in this Paragraph 6(b)], security interest, encumbrance or charge except the lien of current general taxes duly levied and assessed but not due and payable and the lien of Construction Documents. Mortgagor will keep and maintain the mortgaged premises free from all liens of persons supplying labor and materials entering into the construction, modification, repair, restoration or maintenance of the mortgaged premises or any portion thereof. If any such liens shall be filed or exist against the mortgaged premises, Mortgagor agrees to discharge the same of record within ten (10) days after Mortgagor has notice thereof. Mortgagor will pay promptly when due, all charges for utilities or services, including, but not limited to electricity, gas, water and sewer. In the event Mortgagor fails to pay promptly all such charges, Mortgagee may, at its option, pay same and any amounts so paid by Mortgagee shall become immediately due and payable by Mortgagor with interest as described in Paragraph 10 hereof, and shall be secured by this Mortgage. Mortgagor agrees that Mortgagee is under no obligation to inquire into or establish the validity of any liens or claims of lien or interest before making advances to satisfy or settle all or any part of said claims.

(c) If any action or proceeding shall be instituted to evict Mortgagor or recover possession of the mortgaged premises or any part thereof or for any other purposes affecting the mortgaged premises or this Mortgage, Mortgagor will immediately, upon service thereof, on or by Mortgagor, deliver to Mortgagee a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers, however designated, served in any such action or proceeding.

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## 7. CONDEMNATION AND EMINENT DOMAIN.

Subject to the interests, if any, of the holders of the Existing Obligations, if all or any part of the mortgaged premises are damaged, taken or acquired either temporarily or permanently, as a result of any condemnation proceeding, or by exercise of the power of eminent domain, or by agreement with those authorized to exercise such power (it being agreed that Mortgagor will not enter into any agreement for the taking of the mortgaged premises, or any part thereof, with anyone authorized to acquire the same in or by condemnation proceedings or by exercise of any power of eminent domain unless and until Mortgagee shall have consented thereto in writing), or by the alteration of the grade of any street affecting the mortgaged premises, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the then remaining unpaid indebtedness secured hereby, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor, and the same shall be paid forthwith to Mortgagee. Subject to the interests, if any, of the holders of the Existing Obligations, any award or payment so received by Mortgagee may, at the option of Mortgagee, be retained and applied, in whole or in part, to the indebtedness secured hereby (whether or not then due and payable), in such manner as Mortgagee may determine, or released, in whole or in part, to Mortgagor for the purpose of altering, restoring, or rebuilding any part of the mortgaged premises which may have been altered, damaged, or destroyed as the result of such taking, alteration, or proceeding, but Mortgagee shall not be obligated to see to the application of any amounts so released. Subject to the interests, if any, of the holders of the Existing Obligations, without limitation of the foregoing, if as a result of any such taking, Mortgagor shall obtain the option to purchase provided under Paragraph 16 of the Garage Lease, Mortgagor shall give notice thereof to Mortgagee, Mortgagor hereby agreeing that it shall not exercise such option unless requested to do so by Mortgagee and that it shall exercise such option if Mortgagee shall so request, it being expressly agreed that in the event of the failure of Mortgagor to so exercise such option, the Mortgagee shall have, and is hereby granted, the irrevocable right to exercise such option in its own name and behalf or in the name and behalf of a designee or nominee of the Mortgagee or in the name and behalf of the Mortgagor, as Mortgagee, in its sole discretion shall determine.

## 8. EVENTS OF DEFAULT.

If any one or more of the following events of default, which events are herein collectively called "Events of Default" and separately called an "Event of Default", shall occur and be continuing, all indebtedness secured hereby, including, without limitation, the whole of the principal sum remaining unpaid under the Note, together with all accrued interest thereon, shall at the option of Mortgagee become immediately due and payable, and may be recovered at one, by foreclosure or otherwise:

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(a) Default shall be made in making any payment provided for herein or in the Note when the same shall be due and payable; or

(b) If default shall be made in the performance or observance of any other term, covenant, provision, representation, warranty, agreement, condition or obligation herein contained or if any such covenant, representation or warranty shall be incorrect or untrue; or

(c) If the beneficial interest under Trust No. 28443 shall be sold, transferred, assigned encumbered or otherwise conveyed by 540 Hotel Venture (which Venture is the sole beneficiary of such trust), without the prior written consent of Mortgagee; or if the mortgaged premises, or any part thereof, shall be sold, transferred, assigned, encumbered or otherwise conveyed without the prior written consent of Mortgagee; or

(d) If default shall be made by the tenant in the performance or observance of any term, covenant, provision, representation, warranty, agreement, condition or obligation contained in the Garage Lease or if the Garage Lease shall be terminated for any reason whatsoever; or

(e) If default shall be made by the Landlord in the performance or observance of any term, covenant, provision, representation, warranty, agreement, condition or obligation contained in the Hotel Lease; or

(f) If the Hotel Lease shall be terminated for any reason whatsoever other than a termination pursuant to Section 7.09 and Article VIII of the Hotel Lease; or

(g) If Marriott or any permitted assignee referred to in the proviso to this sentence shall assign or transfer, by operation of law or otherwise, or sublease or franchise its interest in the Hotel Lease, provided, however, that Marriott or any wholly-owned subsidiary of Marriott shall be permitted to assign its interest in the Hotel Lease to a wholly-owned subsidiary of Marriott but only if Marriott shall guaranty, absolutely and unconditionally, the full performance and observance of its obligations under the Hotel Lease pursuant to a guaranty in form and substance satisfactory to Mortgagee; or

(h) If the Hotel Facilities shall cease to be operated as a Marriott Hotel for a continuous period of thirty (30) days.

(i) If Mortgagor or any beneficiary of Mortgagor (or, if such beneficiary is a partnership, any general partner thereof), or any guarantor of the Note, shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the Bankruptcy Reform Act of 1978 or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator or Mortgagor or any beneficiary of

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Mortgagor (or, if such beneficiary is a partnership, any general partner thereof), or any guarantor of the Note, or of all or any substantial part of their respective properties or of any of the mortgaged premises; or

(j) If within thirty (30) days after the commencement of any proceeding against Mortgagor, or against any beneficiary of Mortgagor (or, if such beneficiary is a partnership, any general partner thereof), or against any guarantor of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the Bankruptcy Reform Act of 1978 or any future federal bankruptcy act or any present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within thirty (30) days after the appointment (without the consent or acquiescence of such party) of any trustee, receiver or liquidator of Mortgagor or of any beneficiary of Mortgagor (or, if such beneficiary is a partnership, any general partner thereof), or of any guarantor of the Notes, or of all or any substantial part of their respective properties or any of the mortgaged premises, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated; or

(k) If default shall be made by Mortgagor in the performance or observance of any term, covenant, provision, representation, warranty, agreement, condition or obligation contained in any instrument evidencing indebtedness of Mortgagor or in any document or agreement securing the payment thereof; or

(l) If default shall be made by Mortgagor in the performance or observance of any term, covenant, provision, representation, warranty, agreement, condition or obligation contained in the Existing Obligations or if the indebtedness evidenced by the Existing Notes, or any portion thereof, is accelerated by the holders of the Existing Obligations; provided, however, if such default shall be made by Mortgagor under the Existing Obligations, and Mortgagor receives a written waiver or notice to cure such default from the holders of the Existing Obligations, then for purposes of this subparagraph 8(1), the Existing Obligations shall not be deemed in default during such period of waiver or period of cure; or

(m) If any change in or amendment to the terms and provisions of the Existing Obligations occurs which has not been consented to in advance and in writing by Mortgagee.

Without limitation of any other term or provision hereof, it is expressly understood and agreed that the default provisions relating to the Hotel Lease and Marriott's operation of the Hotel Facilities under clauses (e), (f), (g), and (h) of this Paragraph 8 shall be cumulative and that the existence of one shall not impair, preclude or otherwise affect Mortgagee's rights, powers or privileges under the other.

Without limitation of the foregoing provisions of this Paragraph 8 or any other provisions hereof, if Mortgagor shall fail to make any payment required to be made by Mortgagor under this Mortgage, at the time and in the manner provided in this Mortgage, or if Mortgagor shall be in default in the performance or observance of any other term, covenant, condition or obligation required to be performed or observed by Mortgagor under this Mortgage, or if Mortgagor shall fail to make any payment or perform any term, covenant, condition or obligation required to be performed by Mortgagor under either the Garage Lease, Hotel Lease or the Existing Obligations, then, without waiving or releasing Mortgagor from any of its obligation hereunder or thereunder, Mortgagee shall have the right, but shall be under no obligation, to (a) make any such payment, including without limitation any penalties or interest thereon, including any installment payment of principal or interest (including contingent interest) under the Existing Obligations and/or (b) perform any other act or take such action as may be appropriate to cause such other term, covenant, condition or obligation to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagee in, to and under this Mortgage and the rights of Mortgagor in, to and under the Hotel Lease, Garage Lease and Existing Obligations, shall be kept unimpaired and free from default. In any such event, Mortgagee and any person designated by Mortgagee shall have, and is hereby granted, the right to enter upon the mortgaged premises at any time and from time to time for the purposes of performing any such act or taking any such action, and all moneys expended by Mortgagee in connection therewith (including, but not limited, to, legal expenses and disbursements) shall become immediately due and payable by Mortgagor with interest as described in Paragraph 10 hereof until paid and shall be secured by this Mortgage, and Mortgagee shall have, in addition to any other right or remedy of Mortgagee, the same rights and remedies in the event of non-payment of any such sums by Mortgagor as in the case of a default by Mortgagor in the payment of the indebtedness evidenced by the Note. In addition thereto, Mortgagee shall become and be subrogated to and enjoy all rights, liens, powers and privileges granted to the owner and/or holder of the Existing Obligations and, in Mortgagee's sole discretion and at its sole election, the Existing Obligations shall remain in existence for the benefit of, and to secure, the indebtedness hereunder.

9. FEES AND EXPENSES, ETC., DISTRIBUTION OF FORECLOSURE SALE PROCEEDS.

If Mortgagee shall incur any liability or expend any sums, including reasonable attorney's fees, whether or not in connection with any action or proceeding, to sustain the lien of this Mortgage or its priority, to protect or enforce any of Mortgagee's rights hereunder, to recover any indebtedness secured hereby, or on account of its being Mortgagee hereunder or arising out of or in connection with the exercise by Mortgagee of any of its rights under the Security Agreement or Assignment of Rents and Management Agreement or the assignment of the Hotel Lease executed by Mortgagor as additional security for the indebtedness secured hereby, all such sums shall become immediately due and payable by Mortgagor with interest thereon as described in Paragraph 10

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hereof. All such sums shall be secured by this Mortgage and be a lien on the mortgaged premises prior to any right, title, interest, or claim, in, to, or upon the mortgaged premises attaching or accruing subsequent to the date of this Mortgage. Without limitation of the generality of the foregoing, in any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby in the decree for sale all costs and expenses which may be paid or incurred by or on behalf of Mortgagee or holders of the Note for attorney's fees, appraiser's fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the mortgaged premises, stenographer's charges, publication cost and costs of procuring all abstracts of title, title searches and examinations, guarantee policies, Certificates of Title issued by the Registrar of Titles (Torrens certificates), and similar data and assurances with respect to title as Mortgagee or holders of the Note may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the mortgaged premises or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the decree for sale.

10. INTEREST ON ADVANCES AND SUMS EXPENDED.

In the event that Mortgagee makes any advances or expends any sums hereunder (exclusive of advances of principal evidenced by the Note), the amounts so expended or advanced shall become due and payable immediately with interest at a rate equal to four percent (4%) per annum, plus the rate of interest announced and/or published publicly from time to time by Chase Manhattan Bank at its principal place of business in New York, New York as its prime or equivalent rate of interest, which rate is not necessarily the lowest rate of interest charged by Chase Manhattan Bank with respect to commercial loans (the "Prime Rate"), but in no event more than the maximum lawful rate.

11. APPOINTMENT OF A RECEIVER.

Upon, or at any time after the filing of a complaint or bill to foreclose this Mortgage, the court in which such complaint or bill is filed may appoint a receiver of the mortgaged premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency at the time of application for such receiver of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the mortgaged premises whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder may be appointed as such receiver. Such receiver shall have power to pay rent and perform all other obligations of the Tenant under the Garage Lease and to collect the rents, issues and profits of the balance of the property constituting the mortgaged premises during the pendency of such foreclosure suit, as well as during any further times when Mortgagor, its successors or assigns,

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except for the intervention of such receiver, would be entitled to pay such rents and perform such obligations and to collect such rents, issues and profits, and all other powers (including, without limitation, the power to apply said rents, issues and profits to the payment of taxes and assessments (including taxes on the Leased Premises), insurance premiums, the expenses of such receivership and the expenses of keeping the mortgaged premises in repair and maintaining the same in a tenable condition) which may be necessary or are usual in such cases for the protection, possession, control, management and operation of said premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness and other sums secured hereby or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale, and (b) the deficiency in case of a sale and deficiency.

12. IMPAIRMENT OF SECURITY.

Without limitation of any other provision hereof, Mortgagor will not assign, in whole or in part, the rents, income or profits arising from the mortgaged premises without the prior written consent of Mortgagee; any such assignment made without Mortgagee's prior written consent shall be null and void and of no force and effect and the making thereof shall at the option of Mortgagee constitute an Event of Default under this Mortgage. Without limitation of the foregoing, Mortgagor will not in any other manner impair the security of this Mortgage for the payment of the indebtedness secured hereby, it being understood that any such impairment shall at the option of Mortgagee also constitute an Event of Default hereunder.

13. LEASE CONDITIONS.

Mortgagor will observe and perform all covenants, conditions, and agreements in any lease (for the purposes hereof the term "lease" when used herein shall include a sublease) now or hereafter affecting any portion of the mortgaged premises (other than the Garage Lease) on the part of the landlord to be observed and performed. If Mortgagor shall default in the performance of any of the terms, covenants, conditions, or obligations imposed upon landlord by any such lease, which default would give the lessee the right to terminate or cancel the said lease or make monetary advances and offset the same against future rentals, then, at the option of Mortgagee, the whole of the indebtedness secured by this mortgage, including all advances and payments by Mortgagee hereunder, shall become immediately due, payable, and collectible by foreclosure, or otherwise, without notice or demand.

Each lease for any part of the building, structure or improvements on the Property (the "Building"), including the Hotel Facilities, shall (i) be subject to the prior written approval of Mortgagee as to substance, scope and form, (ii) provide that, at the option of the Mortgagee, such lease shall be subordinate to the lien of this Mortgage, and (iii)



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contain a provision, satisfactory to Mortgagee, providing that the Mortgagee shall be entitled to receive from the tenant under such lease notice of any default by the landlord thereunder and shall have a reasonable opportunity to cure such default prior to the exercise by said tenant of its rights under such lease. In addition, neither Mortgagor nor its beneficiaries will, without the prior written consent of Mortgagee, amend, cancel, abridge, terminate, renew, extend or otherwise modify any existing or future lease of the said Building, or any part thereof, or accept any prepayment of rent or installments of rent for more than one (1) month in advance. Mortgagor, upon request, from time to time, will furnish to Mortgagee a statement in such reasonable detail as Mortgagee may request, certified by Mortgagor, at Mortgagee's election, by the beneficiaries of Mortgagor, of all leases relating to the Building; and, on demand, Mortgagor will furnish to Mortgagee executed counterparts of any and all such leases. Each lease relating to the Building or any part thereof shall provide that it shall not be subordinate to any lien other than the lien of the Existing Obligations and this Mortgage without the prior consent of the Mortgagee. Mortgagor will from time to time upon request made by Mortgagee, (a) have a memorandum of any or all leases of any part of the Building prepared in recordable form and executed and recorded, (b) have any or all leases of any part of the Building duly assigned (including, without limitation, the written acknowledgment and consent of the respective tenants thereto) to Mortgagee, its successors and assigns, and have such assignment recorded as additional security for the indebtedness secured hereby, and/or subordinated (and, if required by Mortgagee, with attornment agreements satisfactory to Mortgagee executed by the lessee) or made superior to this Mortgage as requested by Mortgagee, and (c) execute and furnish all documents and take any action that is necessary to accomplish the foregoing.

Without limitation of the foregoing each lease for any part of the Building other than the Hotel Facilities (a "Retail Space Lease") shall contain provisions, satisfactory to Mortgagee, requiring the tenant thereunder to pay as additional rent, its proportionate share of any increase in hard insurance premiums, real estate taxes and retail common area operating expenses attributable to the Net Rentable Area (as hereinafter defined) in the Building after a base year, said proportionate share to be a fraction, the numerator of which is the Net Rentable Area leased under such Retail Space Lease and the denominator of which shall be the total Net Rentable Area in the Building. As used herein the term "Net Rentable Area" shall mean the number of square feet in all space in the Building (excluding the space within the Hotel Facilities) designed for occupancy by retail or other tenants and shall be calculated from the exterior face of the Building to the center line of the interior walls of the demised premises unless the interior wall of the demised premises abuts a corridor, in which event the exterior line of the wall of the demised premises shall be used. Where demised premises abut common areas, the tenant space shall be measured to the limits of the premises described in the Retail Space Lease. Where demised premises abut elevator shaft enclosures, stair enclosures, or mechanical shaft enclosures, the tenant space shall be measured to the exterior surface of the enclosures.

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## 14. USE OF PREMISES.

Mortgagor will not make, suffer, or permit, without the prior written consent of the Mortgagee, (a) any use of the mortgaged premises for any purpose other than that for which the same are used or intended to be used as of the date of this Mortgage, (b) without limitation of the requirements set forth in Paragraph 5(b), any alterations, costing individually, or in the aggregate for any fiscal year, more than \$1,000,000.00, of the building, improvements, fixtures, apparatus, machinery or equipment on or hereafter created or located upon the said premises, or (c) any purchase or conditional sale, lease or agreement under which title is reserved in the vendor of any such fixtures, apparatus, machinery, equipment, or personal property to be placed in or upon any of the buildings, structures or improvements on the said premises except for those equipment leases in existence as of the date hereof. Mortgagor will execute and deliver, from time to time, and pay the cost of filing and recording, such further instruments as may be requested by Mortgagee to confirm or renew the lien and security interest of this Mortgage on any fixtures, machinery, apparatus and equipment described herein.

## 15. MORTGAGEE'S EXERCISE OF RIGHTS, ETC.

In the event that Mortgagee (a) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage, (b) takes other or additional security for the payment thereof, (c) waives or fails to exercise any right granted herein or under the Note, (d) with or without consideration, grants any release of any part of the mortgaged premises or of the whole or any part of any other security held for the payment of all or any part of the indebtedness secured hereby, (e) amends or modifies in any respect with the consent of Mortgagor any of the terms and provisions hereof or of the Note or of any other security for all or any part of the indebtedness secured hereby; then and in any such event, such act or omission to act shall not release Mortgagor, or any co-makers, sureties, or guarantors of this Mortgage or of the Note, under any covenant of this Mortgage or of the Note, nor preclude Mortgagee from exercising any right, power, or privilege herein granted or intended to be granted upon the occurrence of an Event of Default or otherwise and shall not in any way impair or affect the lien or priority of this Mortgage. No right or remedy of the Mortgagee shall be exclusive of, and each shall be in addition to, every other right or remedy now or hereafter existing at law or in equity. No delay in exercising or omission to exercise any right or remedy accruing on any default shall impair any such right or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such right or remedy may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee.

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16. RECORDED INSTRUMENTS.

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

17. CHARGES.

Mortgagor will promptly (a) pay and discharge any and all license fees or similar charges, with penalties and interest thereon which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and under or abutting the public sidewalks in front of or adjoining the mortgaged premises and (b) cure any violation of law and comply with any order of any governmental authority, agency or instrumentality in respect to the repair, replacement or condition of the sidewalks or curbs in front of or adjoining said premises. In the event of any default under either (a) or (b) of the preceding sentence, Mortgagee may (but shall not be obligated to) pay any and all such fees or similar charges, with penalties and interest thereon, and/or the charges for such repair or replacement, and all moneys expended by Mortgagee in connection therewith (including, but not limited to, legal expenses and disbursements), shall become immediately due and payable by Mortgagor with interest as described in Paragraph 10 hereof until paid and shall be secured by this Mortgage.

18. INTENTIONALLY DELETED.

19. VALUATION AND APPRAISEMENT.

All sums payable pursuant to the Note or hereunder shall be without relief from valuation and appraisal laws and with reasonable attorney's fees.

20. RELEASE AND WAIVER OF HOMESTEAD AND EQUITY OF REDEMPTION.

The Mortgagor hereby releases and waives (and each and every person who acquires title to or any interest in the mortgaged premises shall be deemed to have automatically waived, to the extent permitted by law) any and all rights under and by virtue of the homestead exemption laws of the State of Illinois, all rights to retain possession of the mortgaged premises after an Event of Default, and any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any sale or statutes or order, decree, or judgment of any court, on behalf of itself, the trust estate and all persons beneficially interested therein (if Mortgagor is a trustee), and each and every person acquiring any interest in or title to the mortgaged premises or any portion thereof, except decree and judgment creditors of the Mortgagor. If Mortgagor is a trustee, then Mortgagor represents that it has been and is authorized and empowered

by the trust instruments and by all necessary persons having the power of direction over it as such trustee to execute the foregoing waivers and releases.

## 21. USE OF PROCEEDS.

(a) Mortgagor represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in Paragraph 4(c) of Chapter 74 of the Illinois Revised Statutes, and that the indebtedness secured hereby constitutes a business loan which comes within the purview of said Paragraph 4(c).

(b) All agreements between the Mortgagor and the Mortgagee (including without limitation this Mortgage, the Note, and any other documents securing all or any part of the indebtedness secured hereby) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing all or any part of the indebtedness secured hereby, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois, and if for any reason whatsoever, Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the principal of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

## 22. MANAGEMENT.

Mortgagor will maintain and operate, or cause to be maintained and operated, (i) the Leased Premises as a parking garage primarily for the benefit of the Hotel Facilities, (ii) the Hotel Facilities as a first-class Marriott convention hotel and (iii) the balance of the Property as a first-class retail building. Mortgagor will at all times cause to be maintained in effect all licenses, permits and other authorizations necessary or appropriate in connection with the foregoing.

## 23. SEVERABILITY OF CLAUSES.

The rights of Mortgagee arising under the clauses and covenants contained in this Mortgage, the Note and in any other documents securing the indebtedness secured hereby or any part thereof shall be separate, distinct and cumulative and none of them shall be in exclusion of the others and no act of Mortgagee shall be construed as an election to proceed under any one provision herein or in such other documents to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

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24. NO WAIVER.

A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof or of the Note or any other documents given by Mortgagor to secure the indebtedness secured hereby, or any part thereof, shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Mortgage and of such other documents shall survive and continue to remain in full force and effect.

25. MODIFICATION.

No change, amendment, modification, cancellation or discharge hereof, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

26. NOTICES.

All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing. All such notices, demands and requests by Mortgagee to Mortgagor shall be deemed to have been properly given if served in person or if sent by United States registered or certified mail, postage prepaid, addressed to Mortgagor at: American National Bank & Trust Co. of Chicago, Trustee under Trust No. 28443, 33 North LaSalle Street, Chicago, Illinois 60602, with copies to: 540 Hotel Venture, c/o Rubloff, Incorporated, 111 West Washington Street, Chicago, Illinois 60602 and to Marriott Corporation, 10400 Fernwood Road, Bethesda, Maryland 20058, or to such other address as Mortgagor may from time to time designate by written notice to Mortgagee given as herein required. All notices, demands and requests by Mortgagor to Mortgagee shall be deemed to have been properly given if served in person or if sent by United States registered or certified mail, postage prepaid, addressed to Mortgagee at: The Tandem Insurance Group, Inc., 1700 Broadway, New York, New York 10019, with a copy to The Equitable Life Assurance Society of the United States, Mortgage and Real Estate Department, 401 North Michigan Avenue, Chicago, Illinois 60611, Attention: Division Manager, or to such other address as Mortgagee may from time to time designate by written notice to Mortgagor given as herein required.

Notices, demands and requests given by mail in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder two (2) days after the time such notice, demand or request shall be deposited in the mails.

27. DEFINITION OF TERMS.

Whenever used in this instrument, unless the context shall otherwise clearly require, the term "Mortgagor" shall include the heirs, executors, administrators, legal representatives, successors and assigns, as the case may be, of Mortgagor, and all persons claiming by, through, or under Mortgagor; the term "Mortgagee" shall include the legal representatives, successors and assigns of Mortgagee; the term "person" shall

include any individual, partnership, corporation, trust, unincorporated association or government, or any agency or political subdivision thereof, or any two or more of the foregoing acting in concert; the singular shall include the plural, and the plural, the singular; the gender used shall include the other genders.

28. ADDITIONAL ACTS, ETC.

Mortgagor and the beneficiaries will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Mortgagee shall reasonably require for accomplishing the purposes of this Mortgage; provided, however, all said documents shall be subject to the rights of the holders of the Existing Obligations. Without limitation of the foregoing, Mortgagor and the beneficiaries shall, subject to the rights of the holders of the Existing Obligations, assign to Mortgagee, upon request, as further security for the indebtedness secured hereby, the interests of the Mortgagor (and if Mortgagor is a trustee, of Mortgagor and the beneficiaries thereof) in all agreements, contracts, licenses and permits affecting the mortgaged premises, such assignments to be made by instruments satisfactory to Mortgagee, but no such assignment shall be construed as a consent by the Mortgagee to any agreement, contract license or permit or to impose upon Mortgagee any obligations with respect thereto.

29. RELEASES.

The right is hereby reserved by Mortgagee to make partial release or releases of the mortgaged premises, or of any other security held by Mortgagee with respect to all or any part of the indebtedness secured hereby, without notice to, or the consent, approval or agreement of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity of or priority of this Mortgage on the portion of said premises not so released.

30. BINDING ON SUCCESSORS AND ASSIGNS.

All of the terms, covenants, conditions, and agreements herein set forth shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns, as the case may be, of the parties hereto.

31. NO MERGER.

It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the mortgaged premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

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32. EXCULPATORY CLAUSE.

This Mortgage is executed by Mortgagor 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 said Mortgagor hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by the Mortgagee and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the Note secured by this Mortgage shall be construed as creating any liability on said Trustee in its individual capacity or in the beneficiary of Trust No. 28443 (or in any of the partners of said beneficiary) personally to pay said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder or to perform any covenant either expressed or implied herein contained, all such liability, if any, being expressly waived.

33. APPLICABLE LAW.

This Mortgage shall be governed by the laws of the State of Illinois, which laws shall also govern and control the construction, enforceability, validity and interpretation of this Mortgage.

34. INVALIDITY.

Any provision of this Mortgage which is unenforceable or invalid or contrary to law or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case, all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage the same as though any such invalid portion had never been included herein.

35. UNIFORM COMMERCIAL CODE.

Without limitation of any other provision of this Mortgage, to the extent applicable, Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State of Illinois.

36. NON-MERGER OF ESTATES - MORTGAGE ON FEE OF LEASED PREMISES.

Unless Mortgagee shall consent otherwise in writing, the fee title to the Leased Premises and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the ownership of both such estates by the same party. Without limitation of any other provision hereof, if at any time hereafter Mortgagor shall acquire fee simple title to the Leased Premises, this Mortgage shall, without further action of the parties hereto, be and become a mortgage on the Leased Premises with the same priority, force and effect as if Mortgagor had owned the Leased Premises on the date hereof. Notwithstanding anything in the foregoing which may appear to be to the contrary, it is expressly understood and confirmed that the terms "premises" and "mortgaged premises" include the "Leased Premises" for all

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purposes of this Mortgage and that each and every provision hereof applies to said Leased Premises unless expressly stated to the contrary.

37. NO PARTNERSHIP.

Mortgagor acknowledges and agrees that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or its beneficiaries or with any of the partners of said beneficiaries. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the indebtedness secured hereby or on account of receiving the contingent interest provided for in the Notes, or otherwise.

38. SUBORDINATION.

The lien of this Mortgage and the rights of the Mortgagee hereunder in the indebtedness secured hereby are junior and subordinate in all respects to (i) the lien of the Existing Mortgage and the rights of said Mortgagee thereunder; (ii) the indebtedness secured thereby (including, without limitation, the Existing Notes); and (iii) all other instruments, agreements, documents or things securing the Existing Notes.

PROVIDED, NEVERTHELESS, that if Mortgagor shall pay to Mortgagee the indebtedness secured hereby, and any and all other sums which may become payable by Mortgagor hereunder, and shall fully keep and perform the terms, covenants, conditions, and agreements by Mortgagor to be kept and performed in this Mortgage, in the Note, in the Assignment of Rents and Lease Agreement, in the Junior Assignment of Landlord's Interest In Lease, in the Security Agreement and in any other instrument to which reference is expressly made in this Mortgage, then this Mortgage and the estate hereby granted shall cease, determine, and be void, and said Mortgage shall thereupon be released by the Mortgagee at the cost and expense of Mortgagor (all claims for statutory penalties, in case of Mortgagee's failure to release, being hereby waived).

IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago, as Trustee, Mortgagor herein, has caused these presents to be signed by its Vice President and its Corporate Seal to be hereunto affixed and attested by its Secretary Secretary as of the day and year first above written.

[SEAL]

American National Bank and Trust Company of Chicago, as trustee

By: [Signature]  
Vice President

ATTEST:

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[Signature]  
Assistant Secretary

STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF COOK        )

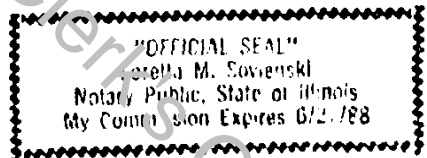
I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named [Name] President and ASSISTANT Secretary of the American National Bank and Trust Company of Chicago, as Trustee, Mortgagor, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such [Name] President and ASSISTANT Secretary, respectively, appeared before me this [Day] in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said [Name] Secretary then and there acknowledged that said [Name] Secretary, as custodian of the corporate seal of said Bank, caused the corporate seal of said Bank to be affixed to said instrument as said [Name] Secretary's own free and voluntary act and as the free and voluntary act of said Bank, as Trustee aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 29<sup>th</sup> day of October, 1987.

[Signature]  
Notary Public

This instrument was prepared by:

Daniel J. Perlman  
Katten Muchin & Zavis  
525 West Monroe  
Suite 1600  
Chicago, Illinois 60606



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COOK COUNTY CLERK'S OFFICE

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## EXHIBIT A

Block 22 (except the East 75 feet thereof taken for the widening of North Michigan Avenue) in Kinzie's Addition to Chicago, being the North fraction of Section 10, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Common Address: 540 N. Michigan Ave.  
Chicago, IL

PIN 17 10 <sup>C.F.O.</sup> 120 002 P# 3, 4

17 10 <sup>C.N.O.</sup> 120 003 all

17 10 121 005 all  
C.F.O.

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## EXHIBIT B

### DESCRIPTION OF GARAGE LEASE

1. Landlord: General Parking Corporation, an Illinois corporation.
2. Tenant: American National Bank and Trust Company of Chicago, a Trustee under Trust Agreement dated June 24, 1969 and known as Trust No. 28443.
3. Date of Lease: June 16, 1976.
4. Term: Forty (40) years with four (4) successive renewal terms of ten (10) years each.
5. There are no amendments, modifications or side agreements to said lease except (1) an amendment dated July 13, 1976, a true and correct copy of which has been furnished to Mortgagee and (2) an amendment dated August 31, 1982, a true and correct copy of which has been furnished to Mortgagee.

### DESCRIPTION OF LEASED PREMISES

Sub-lots 1 to 4, both inclusive, and a tract of land marked private alley West of and adjoining said Sub-lots 3 and 4, all in E. C. Larned's Subdivision of lots 1 and 2 and the East 1/2 of lot 3 in Block 23 in Kinzie's Addition to the City of Chicago in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois, *C. N. P.*  
17-10-120-003 all D

#### ALSO:

The West 1/2 of lot 3 and all of lot 4 in Block 23 in Kinzie's Addition to the City of Chicago, all in Cook County, Illinois.

*C. E. D.*  
17-10-120-002 ~~lot~~ 3, 4,

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EXHIBIT C

Existing Notes

1. Series A Construction-Permanent Note Secured By A Mortgage in the amount of \$27,000,000.00 dated July 14, 1976 made by American National Bank and Trust Company of Chicago, as Trustee under Trust No. 28443 payable to the order of Metropolitan Life Insurance Company.
2. Series A Construction-Permanent Note Secured By A Mortgage in the amount of \$10,385,000.00 dated July 14, 1976 made by American National Bank and Trust Company of Chicago, as Trustee under Trust No. 28443 payable to the order of The Equitable Life Assurance Society of the United States.
3. Series A Construction-Permanent Note Secured By A Mortgage in the amount of \$14,954,000.00 dated July 14, 1976 made by American National Bank and Trust Company of Chicago, as Trustee under Trust No. 28443 payable to the order of The Equitable Life Assurance Society of the United States.
4. Series A Construction-Permanent Note Secured By A Mortgage in the amount \$1,661,000.00 dated July 14, 1976 made by American National Bank and Trust Company of Chicago, as Trustee under Trust No. 28443 payable to the order of The Equitable Life Assurance Society of the United States.

Existing Mortgage

1. Mortgage dated July 14, 1976 and recorded July 15, 1976 as Document 23560380 made by American National Bank and Trust Company, as Trustee to Continental Illinois National Bank and Trust Company of Chicago, to secure four notes totalling \$54,000,000.00 as assignment of a fractional interest in said Mortgage as set forth in Assignment dated July 14, 1976 and recorded July 15, 1976 as Document 23560389 made by Continental Illinois National Bank and Trust Company of Chicago to The Equitable Life Assurance Society of the United States, a corporation of New York and Assignment dated May 25, 1978 and recorded May 25, 1978 as Document 24463777 from Continental Illinois National Bank and Trust Company of Chicago to Metropolitan Life Insurance Company of an undivided fifty percent interest in said Mortgage and to The Equitable Life Assurance Society of the United States the entire remaining balance of assignor's interest in said Mortgage.

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