88179350

1890F

23 00

SECOND AMENDED AND RESTATED
ASSIGNMENT OF RENTS AND LEASES

From MORTON HOTEL PARTNERS, an Illinois limited partnership ("Assignor"), having offices located at 218 North Jefferson Street, Chicago, Illinois 60606 to THE INDIANA NATIONAL BANK, a national banking association ("Assignee"), having a place of business in Indianapolis, Indiana;

FOR VALUE RECEIVED, and intending to be legally bound, Assignor hereby grants, sells, assigns, transfers, sets over and delivers unto Assignee, its successors and assigns, all right, title and interest of Assignor in and to all the Leases (as hereinafter defined) covering all or any part of that certain premises and the improvements now or hereafter erected thereon (the "Premises") bounded and described in Exhibit A attached hereto and made a part hereof, together with all the Rents (as hereinafter defined) due and to become due to Assignor under the Leases.

TO HAVE AND TO HOLD the same unto Assignee, their successors and assigns, forever or for such shorter time as is hereinafter set forth, for the purpose of securing the performance and discharge by Assignor of the Obligations (as hereinafter defined).

Assignor hereby covenants, promises and agrees as follows:

1. As used in this Assignment, the following terms shall have the meanings indicated, unless the context otherwise

88179350

70-20-567 D1

requires:

(a) "Event of Default" shall mean (i) any Event of Default specified in Section 7.01 of the Loan Agreement (hereinafter defined), (ii) any default by Assignor in the performance or observance of any covenant contained in paragraph 4 hereof or (iii) any default by Assignor in the performance or observance of any other covenant, condition or provision hereof and such default under this clause (iii) shall not be cured within 30 days after written notice thereof to Assignor.

(b) "Leases" shall mean (i) all present and future Leases (including subleases) covering all or any portion of the Premises, (ii) all agreements for use or occupancy of any portion of the Premises, (iii) all modifications, extensions and renewals of any Lease and any and all further Leases, lettings or agreements (including rights in respect of tenants holding over and tenancies following attornment) of all or any part of the Premises, (iv) any and all guaranties of the performance of any lessee under any Lease, and (v) any extensions, modifications or supplements to any Lease (including any guaranty or other item included in this definition of "Lease").

(c) "Obligations" shall include (i) the prompt and punctual payment of each installment of interest, or of principal and interest coming due under that certain Second Amended and Restated Mortgage Note (the "Note") of even

date herewith in the principal amount of Ten Million Eight Hundred Thousand and No/100 Dollars ($10,800,000.00) (the "Note"), issued by Assignor to Assignee pursuant to a certain Second Amended and Restated Construction Loan Agreement (the "Loan Agreement") of even date herewith between Assignor and Assignee, and (ii) the performance of all obligations of Assignor under the Loan Agreement, under that certain Second Amended and Restated Real Estate Mortgage and Security Agreement (the "Mortgage") encumbering the Premises and securing the Note, and under each other instrument and document given by Assignor to Assignee to evidence, secure or support the indebtedness evidenced by the Note (the Note, the Loan Agreement, the Mortgage and each such other instrument and document being herein collectively called, the "Loan Documents").

(d) "Rents" shall include all rentals, security deposits and other sums of money due or becoming due to Assignor under any Lease, or other agreement for occupancy of the Premises, all of the rents, income receipts, revenues, issues and profits now due or which may hereafter become due to Assignor under any Lease and all monies due and to become due to Assignor under any Lease for services, materials or installations supplied, whether or not the same were supplied under the terms of any Lease, and all rights and remedies which Assignor may have against any tenant under the Leases or others in possession of any portion of the Premises for the collection or recovery of

monies so assigned hereby, and the proceeds of all such Rent, both cash and noncash; any damages following default by tenant under any Lease, any penalties or premiums payable by tenant under any Lease and the proceeds of any policy of insurance covering loss of rents resulting from destruction or damage to any portion of the Premises.

2. To induce Assignee to accept this Assignment and to advance funds on account of the Obligations, Assignor hereby represents and warrants to Assignee:

(a) That Assignor has full right and power to assign the Leases and Rents to Assignee, and has not executed any prior assignment of any of its rights under any Lease or to any portion of the Rents to any person other than Assignee;

(b) That Assignor has not done any act or thing which might prevent Assignee from enjoying the benefits of the Leases and Rents assigned hereby; and

(c) That no Rents have been or will be collected or accepted by Assignor more than one (1) month in advance of the time when the same become due under the terms of the Leases.

3. Assignor hereby covenants, promises and agrees that Assignor will from time to time, upon request by Assignee, execute and deliver to Assignee, properly acknowledged when appropriate, and record or file in the public records when appropriate, any and all writings, including without limitation further assignments of any Lease or Leases, financing statements and

88179350

other writings that Assignee may deem necessary or desirable to carry out the purpose and intent of this Assignment, or to enable Assignee to enforce any right or rights hereunder.

4. Except as otherwise expressly permitted by the Mortgage, Assignor will not, without the prior written consent of Assignee pledge, transfer, mortgage or otherwise encumber or assign the Leases or the Rents, except for the lien of the Junior Mortgage as defined in the Mortgage which lien shall at all times be junior and subordinate hereto.

5. Assignee shall not be obligated to perform or discharge any obligation of Assignor under any of the Leases, or under or by reason of this Assignment. Assignor hereby agrees to indemnify and defend Assignee against, and hold Assignee harmless from, (i) any and all liability, loss or damage which Assignee may or might incur under any of the Leases or under or by reason of this Assignment and (ii) any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation on Assignee's part to perform or discharge any obligation under any of the terms of any of the Leases. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate (or the Default Rate if Assignor is in default hereunder or under the Loan Documents) specified in the Note, shall be added to the

Obligations secured hereby and Assignor shall reimburse Assignee therefor, immediately upon demand.

6. Notwithstanding this Assignment or any exercise by Assignee of any of Assignee's rights hereunder, or any law, usage or custom to the contrary, Assignor shall retain full responsibility for the care, control, management and repair of the Premises, and Assignor hereby agrees to indemnify and defend Assignee against, and hold Assignee harmless from, (i) any and all liability, loss or damage which Assignee may or might incur by reason of any deficiency or alleged deficiency (except as to any acts or omissions of the Assignee or its agents while Assignee is a mortgagee in possession) in the care, control, management or repair of the Premises or any part thereof and (ii) any and all claims and demands whatsoever which may be asserted against Assignee by reason thereof. Should Assignee incur any liability, loss or damage described in the preceding sentence, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the rate (or the Default Rate if Assignor is in default hereunder or under the Loan Documents) specified in the Note, shall be added to the Obligations secured hereby and Assignor shall reimburse Assignee therefor, immediately upon demand.

7. Any Event of Default hereunder shall constitute and be deemed to be an Event of Default under each of the Loan Docu-

ments, and shall entitle Assignee to exercise any and all of the rights and remedies thereunder.

8. These presents shall not be deemed or construed to constitute Assignee as a mortgagee in possession of the Premises nor to obligate Assignee to take any action hereunder, nor to incur any expenses or perform or discharge any obligation, duty or liability hereunder or under the Leases. However, should Assignor fail to make any payment or to perform any obligation of Assignor hereunder, then Assignee, but without obligation so to do and without notice to or demand on Assignor and without releasing Assignor from any obligation herein, may make or do the same including specifically, without limiting Assignee's general powers, appearing in and defending any action purporting to affect the security hereof or the rights or powers of Assignee and performing any obligation of Assignor in any of the Leases contained, and in exercising any such powers paying necessary costs and expenses, employing counsel and incurring and paying reasonable attorneys' fees; and Assignor will pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the Default Rate set forth in the Note, and the same shall be added to the Obligations secured hereby and shall be secured by all the security given for any of the Obligations.

9. Upon the occurrence of an Event of Default, Assignee, at its option, without notice, may: make, enforce, modify or accept a surrender of any of the Leases; obtain and evict tenants; fix or modify rents; make any alterations, renovations,

repairs and replacements to the Premises which Assignee deems necessary or desirable for the successful operation of the Premises; bring or defend any suits in connection with the Premises, Leases or Rents in their own name or in the name of assignor; and do any acts which Assignee deems proper to protect the security hereof until all Obligations secured hereby are paid or performed in full, and, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any Obligations secured hereby in such order as Assignee may determine. The collection of the Rents, and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or affect any notice of default hereunder.

10. Notwithstanding any agreement, law, custom or usage to the contrary, Assignor hereby assigns to Assignee any award made hereafter to it in any court procedure involving any of the tenants in any bankruptcy, insolvency, or reorganization proceedings in any state or Federal court; and any and all payments made by the tenants in lieu of rent. Assignor hereby appoints Assignee as its irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment.

11. Notwithstanding any provision herein to the contrary, this Assignment of Rents and Leases is intended to be an absolute assignment from Assignor to Assignee and not merely the granting of a security interest. The Rents and Leases are hereby assigned absolutely by Assignor to Assignee; neverthe-

less, as long as Assignor shall not be in default hereunder or under any of the Loan Documents, Assignor shall have the right to collect upon, but not prior to, accrual, the Rents and to retain, use and enjoy the same.

12. Upon the occurrence of an Event of Default, Assignee, upon notice to Assignor, may elect to have all Rents assigned hereunder paid directly to Assignee and Assignee may notify the tenants or any other party or parties in possession of the Premises to pay all of the Rents directly to Assignee, for which this Assignment shall be sufficient warrant. Upon such notice from Assignee to the tenants, the tenants are hereby authorized and directed to pay all Rents directly to Assignee, unless or until Assignee otherwise directs the tenants. Each tenant's account with Assignor shall be credited with the amount of all Rents so paid by such tenant to Assignee. Assignor covenants and agrees to release and hold harmless all tenants from any claim on account of any such payments made directly to Assignee.

13. Assignee may take or release other security, may release any party primarily or secondarily liable for any Obligations secured hereby, may grant extensions, renewals or indulgences with respect to such Obligations, and may apply any other security therefor held by them to the satisfaction of such Obligations without prejudice to any of their rights hereunder. The rights of Assignee to collect said Obligations and to enforce any other security therefor held by them may be

88179350

exercised by Assignee either prior to, simultaneously with or subsequent to any action by them hereunder. The failure of Assignee to avail themselves of any of the terms, covenants and conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee shall have the full right, power and authority to enforce this assignment or any of the terms, covenants or conditions hereof, at any time or times that Assignee shall deem fit.

14. This Assignment of Rentals and leases shall terminate and become void automatically upon the Mortgage being satisfied and discharged of record, or upon the recording of any instrument releasing all of the Premises from the lien of the Mortgage.

15. As used herein, each gender shall include the other genders, the singular number shall include the plural, and conversely.

16. If Assignor is more than one person (or entity), the obligations of Assignor hereunder are joint and several.

17. All notices required or permitted to be given hereunder shall be deemed to have been duly given if given in the manner set forth in the Mortgage.

18. Notwithstanding that The Management Group, Inc. has become a general, rather than a limited partner, in Morton Hotel Associates, the general partner of the Assignee, nothing contained in this Agreement shall cause The Management Group, Inc. to be personally liable to perform any of the obligations imposed upon the Assignee or Morton Hotel Associates under the

terms of this Agreement, and neither Assignee nor any participant in the Obligations shall sue for or obtain a judgment of liability of any kind against The Management Group, Inc. under the terms of this Agreement.

19. This Second Amended and Restated Assignment of Rents and Leases completely amends, restates and supersedes, in its entirety, that certain Amended and Restated Assignment of Rents and Leases, dated April 9, 1987, executed by and between Assignor and Assignee and recorded April 10, 1987 in the Office of the Recorder of Cook County, Illinois, as Document No. 87190733.

WITNESS the due execution hereof this 11th day of April, 1988.

MORTON HOTEL PARTNERS,
an Illinois limited partnership

By Its General Partner
MORTON HOTEL ASSOCIATES,
an Illinois limited partnership

By S.A., INC., a Nevada corporation,
A General Partner

By: Paul Stepan
Richard Cohler, President by
Paul H. Stepan, attorney-in-fact
for Richard Cohler

88179350

COOK COUNTY, ILLINOIS
FILED FOR RECORD
1988 APR 28 PM 3:06

88179350

8 8 1 7 9 3 5 0

ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)SS:
COUNTY OF COOK)

Before me, a Notary Public in and for said County and State, personally appeared Paul H. Stepan as attorney-in-fact for Richard Cohler, known to me to be the President of S.A., Inc., a General Partner of Morton Hotel Associates, the General Partner of Assignor, and acknowledged the execution of the foregoing Second Amended and Restated Assignment of Rents and Leases for and on behalf of said Assignor.

WITNESS my hand and Notarial Seal this 11th day of April, 1988.

Notary Public-Signature

LILLIAN I. LESPIER
Notary Public-Printed Name

" OFFICIAL SEAL "
LILLIAN IVETTE LESPIER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12/29/91

My Commission Expires:

County of Residence:
Cook

This instrument prepared by Richard L. Johnson, attorney-at-law, JOHNSON, GROSS, DENSBORN & WRIGHT, 1000 Market Square Center, 151 N. Delaware Street, Indianapolis, Indiana 46204.

88179350

" OFFICIAL SEAL "
LILLIAN IVETTE LESPIER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12/29/01

EXHIBIT A

***PARCEL 1:

The North half of Lot 27 (except that part taken for street) in Block 124 in the School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

The South half of Lot 27 and all of Lot 28 and the North 10 feet of Lot 29 in subdivision of Block 124 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 3:

Lot 6 in Knights Subdivision of Lots 30, 31 and 32 in Ogden's Subdivision of Block 124 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 4:

The South 30 feet of Lot 29 in Ogden's Subdivision of Block 124 aforesaid (except parts from both tracts taken for opening Dearborn Street) in Cook County, Illinois.***

Tax I.D. #s
17-16-245-010
17-16-245-011
17-16-245-012

88179350

Mail To: Diane Kortzendorf
Johnson, Smith, Densborn, Wright + Heath
151 N. Delaware Street
Indianapolis, IN 46204