

# UNOFFICIAL COPY

71-22-009

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## EXHIBIT A

### PREMISES

#### PARCEL 1:

THAT PART OF LOT 2 LYING WEST OF A STRAIGHT LINE DRAWN IN A SOUTHERLY DIRECTION FROM A POINT ON THE NORTH LINE OF LOT 2, 11 3/4 INCHES EAST OF THE NORTH WEST CORNER OF SAID LOT 2 TO A POINT IN THE SOUTH LINE OF LOT 2, 9 5/8 INCHES EAST OF THE SOUTH WEST CORNER OF SAID LOT 2, ALL OF LOT 3 AND LOT 4 (EXCEPT THE WEST 19 FEET OF THE EAST 19 FEET) ALL OF LOTS 5, 6, 7, 8, 9 AND WEST 1/2 OF LOT 10 IN BLOCK 18 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

ALL THAT PART OF THE VACATED EAST AND WEST 18 FOOT PUBLIC ALLEY SOUTH OF AND ADJOINING THE SOUTH LINE OF LOTS 4 TO 6 BOTH INCLUSIVE LYING NORTH OF AND ADJOINING THE NORTH LINE OF LOTS 7 TO 9 INCLUSIVE AND LYING WEST OF AND ADJOINING A LINE 19 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 4 PRODUCED SOUTH 18 FEET IN THE SUBDIVISION OF BLOCK 18 OF KINZIE'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 17-10-126-001-0000      17-10-126-005-0000  
17-10-126-002-0000      17-10-126-008-0000  
17-10-126-003-0000

Street Address: 505 N. Michigan Avenue  
Chicago, Illinois 60611

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## SECOND AMENDMENT TO CONSOLIDATED, AMENDED AND RESTATED LOAN DOCUMENTS

71-22-00903

THIS SECOND AMENDMENT TO CONSOLIDATED, AMENDED AND RESTATED LOAN DOCUMENTS ("Amendment") is made as of this 5th day of June, 1990, by and among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Trustee"), not personally, but as Trustee under a Trust Agreement dated February 8, 1988, and known as Trust No. 100053-04 ("Land Trust"), CIMS LIMITED PARTNERSHIP, an Illinois limited partnership, the sole beneficiary and holder of the power of direction under the Land Trust ("Beneficiary" -- Land Trust and Beneficiary being collectively referred to herein as "Borrower"), INC United States (Holdings) Corp., a Delaware corporation ("Guarantor"), and BARCLAYS BANK PLC, a banking corporation organized under the laws of England, acting through its New York branch, a branch of Barclays Bank PLC licensed to do business in the State of New York ("Lender"),

### RECITALS

A. Lender entered into a commitment on or about December 23, 1987, to make a loan to Borrower in the original maximum principal amount of One Hundred Ten Million U.S. Dollars (U.S. \$110,000,000) (the "Construction Loan"), a portion of the proceeds of which were used by Borrower to acquire certain improved real property located in the County of Cook and State of Illinois, legally described in Exhibit A attached hereto and made a part hereof, and commonly known as 505 North Michigan Avenue, Chicago, Illinois (the "Real Estate").

B. The Real Estate is currently improved with a 41-story hotel tower with lobby, restaurant, banquet and meeting facilities (the "South Tower"), a 25-story hotel tower with lobby, restaurant, lounge, meeting and banquet facilities and commercial and retail space (the "North Tower") and certain common areas and facilities connecting the North Tower and the South Tower, including but not limited to a parking garage (collectively the "Premises").

C. The proceeds of the Construction Loan, in addition to being used to acquire the Premises, were used by Borrower to reconstruct, renovate, furnish and equip the Premises as two adjacent but independently operated hotels; the North Tower is now being managed by Inter-Continental Hotels Corporation, a Delaware corporation ("Inter-Continental"), as the 517 room "Forum Hotel Chicago" and the South Tower is now being managed by Inter-Continental as the 349 room "Chicago Inter-Continental

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Hotel" (the Premises as reconstructed and renovated and all equipment and fixtures required for the operation thereof, the Land and all privileges, appurtenances, easements, rights and hereditaments thereto are hereinafter referred to as the "Project").

D. Subject to the terms and conditions set forth in that certain Construction Loan Agreement dated as of February 16, 1988 (the "Construction Loan Agreement"), the Loan Modification Agreement dated as of August 31, 1989 (the "Modification Agreement") and the First Amendment to Loan Modification Agreement dated as of February 9, 1990 (the "First Amendment"), all of the foregoing between Borrower and Lender, Lender agreed, among other things, to make a loan in the maximum principal amount of up to TEN MILLION U.S. DOLLARS (U.S. \$10,000,000.00) (the "Operating Deficit Loan") to Borrower solely to fund operating deficits of the Project.

E. Borrower and Lender have entered into a term loan agreement dated as of April 26, 1990 (the "Term Loan Agreement"), pursuant to which Lender has agreed to make a loan to Borrower in the maximum principal amount of up to One Hundred Twenty-One Million Eight Hundred Thousand U.S. Dollars (U.S. \$121,800,000) (the "Loan") in order to enable Borrower to, among other things: (i) extend the maturity date of the Loan, (ii) borrow up to Ten million U.S. Dollars (U.S. \$10,000,000) to fund operating deficits of the Project (the "Operating Deficit Loan"), and (iii) defer payment of a portion of the Lender's fees to convert the Construction Loan to a term loan. Lender has also agreed to lower the interest rates on the Term Loan (as hereinafter defined) pursuant to the terms and conditions contained in the Loan Agreement. The Construction Loan and the Operating Deficit Loan (totaling U.S. \$120,000,000) are hereinafter the "Term Loan". The "Loan" shall hereinafter mean collectively the Term Loan and that portion of the lender's fees to convert the loan to a term loan and evidenced by the Deferred Fee Note (the "Deferred Fee Loan").

F. Borrower previously caused to be executed and delivered, among other things, the following documents and instruments which, as the same may be amended or restated as set forth below, currently secure, in part, the Loan:

(a) A Consolidated, Amended and Restated Mortgage, dated as of August 31, 1989, made by Land Trust for the benefit of Lender (the "Restated Mortgage"), securing the Note and encumbering the fee interest of the Land Trust in

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and to the Premises, which was recorded on September 1, 1989 with the Recorder's Office of Cook County as Document No. 89-413224 and filed with the Cook County, Illinois Registrar of Titles on September 5, 1989 as document LR 3822233, as the same may be amended by that certain Amendment to Consolidated, Amended and Restated Loan Documents dated as of April 26, 1990, made by Borrower and Lender and recorded on April 27, 1990, with the Recorder's Office of Cook County, Illinois, as Document No. 90-191897 and filed with the Cook County, Illinois, Registrar of Titles on April 27, 1990 as Document LR 3876427; and

(b) A Guaranty of Payment, dated as of April 26, 1990 (the "Payment Guaranty"), made by Guarantor, pursuant to which Guarantor guaranteed repayment of up to THIRTY MILLION U.S. DOLLARS (U.S. \$30,000,000) of the Loan, subject to the terms and conditions contained therein;

G. All terms not defined herein shall have the meanings set forth in the Loan Agreement.

H. Under the terms and conditions of the Loan Agreement, Borrower has covenanted and agreed to enter into a swap agreement or other hedging strategy acceptable to the Lender with respect to the Loan. Borrower intends to enter into an interest rate and currency exchange agreement (the "Swap Agreement") for ONE HUNDRED FIVE MILLION AND NO/100 U.S. DOLLARS (U.S. \$105,000,000) with Lender. Lender has agreed to accept the Swap Agreement, provided, however, Borrower and Guarantor execute and deliver this Second Amendment acknowledging that Borrower's obligations under the Swap Agreement are secured under the Mortgage and the Payment Guaranty, and the other Loan Documents.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and the Recitals set forth above and incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## AGREEMENTS

1. Borrower, Guarantor and Lender acknowledge and agree that the Mortgage, the Payment Guaranty and each of the other Loan Documents secures all of Borrower's obligations under the Swap Agreement. The Borrower's obligations under the Swap Agreement are and shall be deemed to be one of the "Obligations" set forth in Section 2 of the Mortgage and shall also be deemed to be one of the "Liabilities" set forth in Section 2 of the Payment Guaranty.

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2. All references to "Loan Documents" in the Mortgage, the Payment Guaranty and in each of the other agreements evidencing or securing the Loan shall hereafter be deemed to include the Swap Agreement.

3. No modification, waiver, amendment, discharge or change of this Amendment shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

4. This Amendment shall be construed, interpreted and governed by the internal laws and decisions of the State of Illinois (without giving effect to Illinois choice of law principles).

5. This Amendment shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and assigns.

6. This Amendment executed by American National Bank and Trust Company of Chicago 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 Bank hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay the Loan or any indebtedness accruing hereunder, all such liability, if any, being expressly waived by Lender, and that so far as said Trustee personally is concerned, the Lender shall look solely to the Premises and any other property subject to the Loan Documents for the payment thereof, by the enforcement of the liens created by the Mortgage and the other Loan Documents; provided, however, nothing herein shall affect or limit the personal liability of the Beneficiary or any guarantor under any of the Loan Documents.

7. If any suit is brought against Borrower under this Amendment or any of the Loan Documents, Lender shall look exclusively to the following sources for the satisfaction of the obligations of Borrower or the Affiliated Parties in respect of the Loan:

(a) the Premises and the accounts receivable, contract rights, rents, issues, profits and income therefrom;

(b) any funds or property held pursuant to any of the Loan Documents including any letters of credit;

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(c) insurance proceeds and condemnation awards paid or payable in respect of the Premises, and any other proceeds of the Premises; and

(d) the personal liability of any guarantor or indemnitor to the extent of its guaranty or indemnity agreements, including, without limitation, the liability of Guarantor under the Payment Guaranty and the Completion Guaranty.

Lender agrees that it shall not seek to enforce any claim or judgment for deficiency from other assets of Beneficiary or any of the Affiliated Parties after recourse to the items described above; provided, however, that Beneficiary shall be liable for all loss or damage to Lender caused by or arising out of any fraud or misrepresentation by Borrower or Beneficiary or; out of Borrower's or Beneficiary's misapplication of (i) insurance proceeds or condemnation awards in respect of the Premises or any portion thereof (or any payments or settlements in lieu of either) or (ii) revenues derived from the operation of the Premises or any portion thereof in violation of the provisions of any of the Loan Documents.

8. The parties intend this Amendment to operate as a modification of the Mortgage, the Payment Guaranty and the other Loan Documents and do not intend that a new Mortgage or Payment Guaranty be created hereby.

9. Except to the extent specifically modified herein, the Mortgage, the Payment Guaranty and the other Loan Documents shall remain in full force and effect, fully enforceable in accordance with their terms and are hereby affirmed and ratified.

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IN WITNESS WHEREOF, Borrower, Guarantor and Lender executed this Agreement as of the day and year first set forth above.

**BORROWER:**

**LAND TRUST:**

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under Trust Agreement dated February 8, 1988, and known as Trust No. 100053-04

  
\_\_\_\_\_  
AHEK ASSISTANT SECRETARY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BENEFICIARY:**

CIMS LIMITED PARTNERSHIP, an Illinois limited partnership

By: Illinois Hotels Corp., a Delaware corporation and General Partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**GUARANTOR:**

IHC UNITED STATES (HOLDINGS) CORP., a Delaware corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**LENDER:**

BARCLAYS BANK PLC

By: \_\_\_\_\_  
Its: REG - Director

This instrument was prepared by and after recording return to:  
Laurel L. Kroack, Hopkins & Sutter, Three First National Plaza,  
Chicago, Illinois 60602.

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STATE OF ILLINOIS )  
 )SS  
COUNTY OF COOK )

**L. M. SOVIENSKI**

I, L. M. SOVIENSKI, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that V. MICHAEL WHELAK, a Vice President of American National Bank and Trust Company of Chicago, a national banking association, which is the Trustee under the Trust Agreement described under the foregoing instrument, and Gregory S. Kasprzyk, a ASSISTANT Secretary of said Association, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as such officers of said association, and affixed the corporate seal of said association thereto, as their own free and voluntary act and as the free and voluntary act of the association, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

**MAY 9 1991**

L. M. Sovienksi  
Notary Public

My Commission Expires:

\_\_\_\_\_

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STATE OF New Jersey )  
COUNTY OF Bergen )SS

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that John J. Tibbs, Vice President of Illinois Hotels Corp., a corporation which is a general partner of CIMS Limited Partnership, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as John J. Tibbs such Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of May, 1991.

Barbara J. Meyer  
Notary Public

My Commission Expires:

BARBARA J. MEYER  
A Notary Public of New Jersey  
My Commission Expires May 8, 1992

County Clerk's Office

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STATE OF New Jersey )  
COUNTY OF Bergen )SS

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that John J. Tibbs, Vice President of IHC United States (Holdings) Corp., a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as John J. Tibbs such Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 3rd day of May, 1991.

Barbara J. Meyer  
Notary Public

My Commission Expires:

BARBARA J. MEYER  
A Notary Public of New Jersey  
My Commission Expires May 8, 1992

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STATE OF New York )  
COUNTY OF New York )SS

I, Anne J Kaplan, a Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that James McCarthy of Barclays Bank PLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes set forth therein.

GIVEN under my hand and Notarial Seal this 22<sup>nd</sup> day of April, 1991.

Anne J Kaplan  
Notary Public

My Commission Expires:

ANNE J KAPLAN  
NOTARY PUBLIC, State of New York  
No. 41162, Exp. 11/18/92  
Qualified in Cook County  
Commission Expires January 31, 1992

Qualified in New York County  
Registered with the City of New York

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Property of Cook County Clerk's Office

DEPT-01 RECORDING IN \$23.00  
1#3333 TRAN 2651 06/05/91 16:07:00  
47209 4 C \* 91-270775  
COOK COUNTY RECORDER

91270775

*18*  
*Amend*  
*147/961*

**EXPIRES**

03964722

1991 MAY 15 PM 2:43  
CAROL MOSELEY BRAUN  
REGISTRAR OF TITLES

03964722

*93 of*

DELIVER TO  
C. MOSELEY

*Box 333*