

# UNOFFICIAL COPY

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## AGREEMENT OF CONTINUING SUBORDINATION OF MORTGAGE

THIS AGREEMENT executed as of the 29th day of April, 1994, by and among SHERATON BLACKSTONE CORPORATION, a Delaware corporation ("Sheraton"), CHICAGO SHERATON CORPORATION, an Illinois corporation ("Chicago Sheraton"), CAL-O'HARE LIMITED PARTNERSHIP, a California limited partnership (the "Partnership"), DAVID ROBERTS ("Roberts"), RONALD I. ANSON ("Anson") and HENRY S. STONE ("Stone").

### RECITALS

A. American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust Agreement dated September 8, 1989 and known as Trust No. 109363-00 (the "Trust") holds title to certain real property legally described in Exhibit A attached hereto (the "Property").

B. The Partnership currently owns one hundred percent (100%) of the beneficial interest of the Trust. Cliffwood Management Company, a California corporation, is the sole general partner of the Partnership.

C. The Trust acquired the Property subject to (i) a loan held by Sheraton, said loan secured by Trust Deed and Security Agreement (the "Sheraton Trust Deed") dated May 30, 1985 and recorded May 31, 1985 as Document No. 85041099 made by LaSalle National Bank, a national banking association, as Trustee under Trust Agreement dated November 28, 1984 and known as Trust No. 109206 to Chicago Title and Trust Company, an Illinois corporation, to secure a note for \$29,500,000 ("Sheraton Mortgage Note"), as amended by First Amendment to Trust Deed and Security Agreement and Note ("Amendment") dated November 3, 1989 as Document No. 89524901, among other things reducing the principal note to \$27,500,000 (the "Sheraton Revised Note"), said Sheraton Trust Deed continuing to provide a first mortgage lien on the Property, (ii) a Subordination Agreement dated November 1, 1989 and recorded as Document No. 89619684 (the "Focus Subordination") with respect to a certain junior mortgage and security agreement against the Property dated July 21, 1986 between LaSalle National Bank, as trustee of Trust No. 109206 and Focus Real Estate Finance Company and related personal property lien documentation (the "Focus Loan Documents"), wherein the Focus Loan Documents are subordinated in all respects to the Sheraton Loan Documents (defined below), and (iii) certain other loan documents creating a lien on the personal property associated with the Property (the "Personal Property") (collectively, including the Sheraton Trust Deed, Sheraton Mortgage Note, Amendment, Sheraton Revised Note, and Focus Subordination, the "Sheraton Loan Documents").

D. Northwest Commerce Bank, an Illinois banking corporation ("Northwest"), made a loan to the Trust evidenced by a note dated March 7, 1990 ("Northwest Mortgage Note") in

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the original principal amount of \$2,700,000 secured by a Mortgage ("Northwest Mortgage") dated March 7, 1990 and recorded March 8, 1990 as Document No. 90105774, and secured by (i) certain other loan documents creating a lien on the Personal Property, (ii) a subordination of Mortgage Agreement dated March 7, 1990 and recorded as Document No. 90105777 (the "Additional Focus Subordination") wherein the Focus Loan Documents are subordinated in all respects to the Northwest Loan Documents (defined below), and (iii) a Collateral Assignment of Beneficial Interest under the Trust, all dated on or about March 7, 1990 (collectively, including the Northwest Mortgage and the Northwest Mortgage Note, the "Northwest Loan Documents"), to which the Sheraton Loan Documents and the first mortgage lien created thereby have been subordinated pursuant to a Subordination of Mortgage Agreement dated March 7, 1990 and recorded March 8, 1990 as Document No. 90105776 (the "Sheraton Subordination").

E. Pursuant to the terms of the Sheraton Subordination, Northwest, for full value received, sold and assigned each of its interests in the Northwest Loan Documents to Chicago Sheraton under a general Assignment dated March 30, 1993, including, without limitation, its interest in (i) the Northwest Mortgage pursuant to an Assignment of Mortgage dated March 30, 1993 and recorded March 31, 1993 as Document No. 93234847, (ii) the Northwest Mortgage Note pursuant to an Endorsement of Promissory Note dated March 30, 1993, and (iii) all the other loan documents creating a lien on the Personal Property, and the Collateral Assignment of Beneficial Interest under the Trust, pursuant to respective Assignments dated March 30, 1993 (collectively, the "Northwest Loan Assignment").

F. Sheraton, Chicago Sheraton, and the Partnership entered into a certain restructuring agreement dated March 15, 1994 (the "Restructuring Agreement") for their mutual benefit and for the benefit of Roberts, Anson, and Stone, under which, among other things, the terms of the Sheraton Mortgage Note and the Northwest Mortgage Note are modified pursuant to a certain Consolidating Second Amendment, Amendment to Mortgage, and Amendment and Restatement of Notes to be executed simultaneously herewith ("Consolidating Second Amendment"), and as a condition of the Restructuring Agreement, this continuing subordination of the Focus Loan Documents to both the Sheraton Loan Documents and the Northwest Loan Documents is to be executed, delivered and recorded.

**NOW, THEREFORE**, in consideration of the foregoing and of other good and valuable considerations, receipt of which is hereby acknowledged, the parties hereby agree as follows:

Notwithstanding the execution, delivery and recording of the Consolidating Second Amendment and the Restructuring Agreement the terms, conditions and continuing validity of the Focus Subordination and the Additional Focus Subordination are hereby restated, ratified and confirmed in all respects.

Roberts and Stone by unrecorded assignment, have assigned all of their right, title and interest in the Focus Loan Documents to Anson and pending recordation thereof, join herein to give effect to all of the provisions hereof. The Partnership, Roberts, Anson, and Stone specifically acknowledge and jointly and severally (a) subordinate the Focus Loan Documents to each and all of (i) the Sheraton Loan Documents and (ii) the Northwest Loan Documents, and

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(b) indemnify and hold harmless Sheraton and Chicago Sheraton from any and all damages, loss, claims, demands, actions and causes of action resulting from any assertions of priority of the Focus Loan Documents, or any of them, over either the Sheraton Loan Documents or the Northwest Loan Documents, or any of them.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be duly executed by their proper and duly authorized officers, or individually, as the case may be, as of the day and year first written above. The Trust, although not a direct party hereto, has signed below to indicate its understanding of the foregoing and its acceptance of and agreement with all the terms and provisions hereof.

SHERATON BLACKSTONE CORPORATION, a  
Delaware corporation

By: 

Title: Treasurer

CHICAGO SHERATON CORPORATION, an  
Illinois corporation

By: 

Title: Treasurer

CAL-O'HARE LIMITED PARTNERSHIP, a  
California limited partnership

By: Cliffwood Management Company, General  
Partner

By: 

President

  
David Roberts

  
Ronald I. Anson

  
Henry S. Stone

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AGREED:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee as aforesaid

By: [Signature]
Title: [Signature]

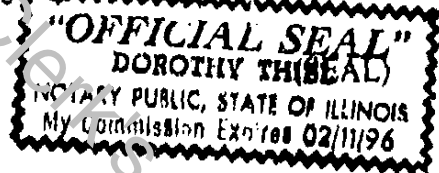
STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

I, Dorothy Thiel, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that J. MICHAEL WELAN and [Signature], personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRESIDENT and [Signature], respectively of American National Bank and Trust Company of Chicago (the "Bank"), appeared before me this day in person and severally 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, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 13 day of July, 1994

Notary Public

My commission expires:



STATE OF Massachusetts COOK COUNTY, ILLINOIS
COUNTY OF Suffolk SS
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I, Felicia McCarthy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Brendan J. Feunoy, the Treasurer of Sheraton Blackstone Corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Treasurer, appeared before me this day in person and severally 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.

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GIVEN under my hand and notarial seal, this 29 day of April, 1994.

John M. McCarthy  
Notary Public

My commission expires:

May 12, 2000

(SEAL)

STATE OF Massachusetts )  
 ) SS.  
COUNTY OF Suffolk )

I, John McCarthy, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Brian J. Furlong, the Treasurer of Chicago Sheraton Corporation, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Treasurer, appeared before me this day in person and severally 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 29 day of April, 1994.

John M. McCarthy  
Notary Public

My commission expires:

May 13, 2000

(SEAL)

STATE OF )  
CALIFORNIA ) SS.  
COUNTY OF )  
Los Angeles

I, Susan Franklin, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ronald T. Anson, the President of the General Partner of Cal-O'Hare Limited Partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such general partner, appeared before me this day in person and severally 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 Partnership, for the uses and purposes therein set forth.

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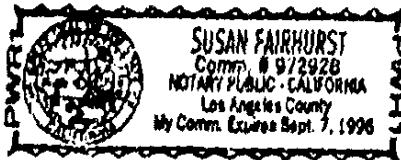
GIVEN under my hand and notarial seal, this 26 day of April, 1994

Susan Fairhurst  
Notary Public

My commission expires:

9/7/96

(SEAL)



STATE OF CALIFORNIA )  
                                  ) SS.  
COUNTY OF Los Angeles )

I, Anthony Kleppe, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID ROBERTS, who is 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 severally acknowledged that he signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26 day of April, 1994.

Anthony Kleppe  
Notary Public

My commission expires:

7/22/96

(SEAL)



STATE OF CALIFORNIA )  
CALIFORNIA ) SS.  
COUNTY OF Los Angeles )

I, Susan Fairhurst, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that RONALD I. ANSON, who is 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 severally acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26 day of April, 1994

Susan Fairhurst  
Notary Public

My commission expires:

9/7/96

(SEAL)



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STATE OF )  
CALIFORNIA ) SS.  
COUNTY OF )

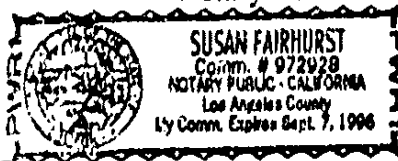
*Los Angeles*  
I, Susan Fairhurst, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that HENRY S. STONE, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26 day of April, 1994.

Susan Fairhurst  
Notary Public

My commission expires:

9/7/96



(SEAL)

This instrument was prepared by  
and after recording return to:

Walter M. Pieciewicz, Esq.  
Peterson & Ross  
200 East Randolph Drive  
Suite 7300  
Chicago, IL 60601-6969

Permanent Real Estate Tax Index Nos.  
09-32-203-005-000  
09-32-206-017-000  
09-32-212-015-000

Street Address:  
6810 North Mannheim Road  
Rosemont, IL 60018

**BOX 333-CTI**

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## EXHIBIT A

### Legal Description

#### PARCEL 1:

THE SOUTH 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART TAKEN FOR MANNHEIM ROAD) AND THAT PART CONVEYED TO THE ILLINOIS STATE TOLL HIGHWAY COMMISSION BY DEED RECORDED AS DOCUMENT NO. 16738863), (AND EXCEPT THAT PART TAKEN IN CASE NO. 64 L 21263), IN COOK COUNTY, ILLINOIS

#### PARCEL 2:

THAT PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE WEST LINE OF MANNHEIM ROAD AND NORTH OF THE NORTH LINE OF THE ILLINOIS TOLL HIGHWAY DRAWN FROM A POINT IN THE EAST LINE OF SAID SOUTHEAST 1/4, 315.2 FEET SOUTH OF THE EAST 1/4 CORNER OF SAID SECTION 32 TO A POINT IN THE NORTH LINE OF SAID EAST 1/2 OF THE SOUTHEAST 1/4, 844.84 FEET MEASURED ON THE SAID NORTH LINE EAST OF THE NORTHWEST CORNER OF SAID EAST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 32, (EXCEPT THAT PART TAKEN IN CASE NO. 64 L 21263), IN COOK COUNTY, ILLINOIS

#### PARCEL 3:

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

#### PARCEL 4:

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

Permanent Real Estate Tax Index Nos. 09-32-203-005-000;  
09-32-206-017-000; and 09-32-212-015-000

#### Street Address:

6810 North Mannheim Road  
Rosemont, IL 60018

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