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 COOK COUNTY RECORDER

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9300

MORTGAGE

MADE BY

BRE/Swiss L.L.C.

TO

SNH NEW YORK, INC.

Dated: as of August 1, 1997

97574986

This instrument was prepared by and, after recording, return to:

Parker Chapin Flattau & Klimpl, LLP
 1211 Avenue of the Americas
 New York, New York 10036
 Att'n: Harvey Bonoparth, Esq.

Permanent Index No.: 17-10-318-025-0000

Common Address:

323 East Wacker Drive
 Chicago, Illinois

BOX 333-CTI

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THIS MORTGAGE AND THE LIEN HEREOF IS SUBORDINATE AND JUNIOR TO THAT CERTAIN PRIOR DEED OF TRUST ENCUMBERING THE SAME PROPERTY ENCUMBERED BY THIS MORTGAGE DESCRIBED IN AND PURSUANT TO ARTICLE 44 HEREOF.

MORTGAGE

THIS MORTGAGE (this "Mortgage") is made as of the 1st day of August, 1997, by BRE/Swiss L.L.C., a Delaware limited liability company having an office at c/o Blackstone Real Estate Advisors L.P., 345 Park Avenue, New York, New York 10154 (the "Mortgagor") to SNH New York, Inc., a New York corporation, having an office at 405 Park Avenue, New York, New York 10022 (the "Mortgagee").

WITNESSETH, that to secure the payment of all sums due or to become due under a certain Mortgage Note bearing even date herewith in the principal sum of **TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00)**, lawful money of the United States (such instrument, as the same may be hereafter amended, modified, extended, supplemented, renewed, replaced and/or restated from time to time, is hereinafter called the "Note"), the Mortgagor hereby mortgages and warrants to the Mortgagee, and grants to the Mortgagee a continuing security interest in and to:

ALL that certain plot, piece or parcel of land, situate, lying and being in the County of Cook, State of Illinois (hereinafter called the "Land"), more particularly bounded and described in Schedule A hereto annexed;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed on the Land (such buildings and improvements, the Land, all hereinafter referred to Building Equipment, condemnation awards, materials, appurtenances, rights and other property interests now or at any time hereafter made subject to the lien of this Mortgage, are hereinafter called the "Premises") and all materials intended for construction, reconstruction, alteration and repair of such buildings and improvements now or hereafter delivered to the Premises, all of which materials shall be deemed to be included in the Premises upon the delivery thereof to the Premises;

TOGETHER, ALSO, with all right, title and interest, if any, of the Mortgagor of, in and to the land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and of, in and to any strips or gores of land adjoining the Premises and all easements and appurtenances thereto;

TOGETHER, ALSO, with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, mineral rights, air rights, development rights and other rights, liberties and privileges of the Premises or in any way now or hereafter appertaining to the Premises, including any other claim at law or in equity as well as any

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after-acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof and therein;

TOGETHER, ALSO, with all of Mortgagor's right, title and interest in and to all fixtures, chattels and articles of personal property now or hereafter attached to or located in or upon the Premises, or used or usable in connection with any present or future operation or letting of the Premises or the activities at any time conducted therein (hereinafter called "Building Equipment"), including, but not limited to, furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler units and systems, washtubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other machinery, appliances, fittings, furniture, furnishings and fixtures of every kind used in the operation of the buildings standing or hereafter erected on the Premises, together with any and all replacements thereof and additions thereto, and all right, title and interest of the Mortgagor in and to any Building Equipment which may be subject to any security agreements, as defined in subdivision (1)(1) of Section 9-105 of the Uniform Commercial Code of the State of Illinois (hereinafter called "Security Agreements"), superior in lien to the lien of this Mortgage; it being understood and agreed that all Building Equipment is part and parcel of the Premises and appropriated to the use thereof and, whether affixed or annexed to the Premises or not, shall, for the purposes of this Mortgage, be deemed conclusively to be real estate and mortgaged hereby;

TOGETHER, ALSO, with all licenses, franchise agreements, and other agreements affecting the use, enjoyment or occupancy of the Land, the buildings and improvements thereon, or the Building Equipment or any portion thereof currently or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under the United States Bankruptcy Code, together with all receivables, revenues, rentals, receipts and payments, received from the rental of guest rooms, meeting rooms, beverage or food sales, and facilities, vending machines, telephone systems, guest laundry and all other payments received from guests or visitors of the Premises, and other items of revenue, receipts or income as identified in the Uniform System of Accounts for the Lodging Industry (9th Revised Edition, 1996) of the Hotel Association of New York City, Inc., as adopted by the American Hotel and Motel Association;

TOGETHER, ALSO, with (a) all unearned premiums, accrued, accruing or to accrue under any insurance policies now or hereafter obtained by the Mortgagor and the Mortgagor's interest in and to all proceeds which now or hereafter may be paid in connection with the conversion of the Premises or any portion thereof into cash or liquidated claims, together with the interest payable thereon and the right to collect and receive the same, including, but without limiting the generality of the foregoing, proceeds of casualty insurance, title insurance and any other insurance now or hereafter maintained with respect to the Premises or in connection with the use or operation thereof and (b) all awards, payments and/or other compensation, together with the interest payable thereon and the right to collect and receive the same which now or hereafter may be made with respect to the Premises as a result of (i) a taking by eminent domain, condemnation or otherwise, (ii) the change of grade of any street, road or avenue or the widening of any streets, roads or avenues adjoining or abutting the Premises, or (iii) any other injury to, or decrease in the value of, the Premises or any portion thereof, in any of the foregoing circumstances described in clause (i) or (ii) above, to the

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extent of the entire amount of the indebtedness outstanding as of the date of receipt by the Mortgagee of any such insurance proceeds or awards, notwithstanding that the entire amount of the indebtedness may not then be due and payable, and also to the extent of attorneys' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of any such insurance proceeds or awards; and the Mortgagor hereby assigns to the Mortgagee, and the Mortgagee is hereby authorized, subject to and in accordance with the provisions of this Mortgage, to collect and receive, all insurance proceeds and awards and to give proper receipts and acquittances therefor and to apply the same toward the indebtedness as herein set forth notwithstanding that the entire amount of the indebtedness may not then be due and payable; and the Mortgagor hereby agrees to make, execute and deliver, from time to time, upon demand, such further documents, instruments, or assurances as may be requested by the Mortgagee to confirm the assignment of the insurance proceeds and the awards to the Mortgagee, free and clear of any interest of the Mortgagor whatsoever therein and free and clear of any other liens, claims or encumbrances of any kind or nature whatsoever, except for the lien of the Prior Mortgage (hereinafter defined);

AND TOGETHER, ALSO, with all present and future accounts, contract rights, general intangibles, chattel paper, documents and instruments (including, but not limited to, plans and specifications, licenses, construction contracts, options, permits, public works agreements, bonds, deposits and payments, and premiums or refunds or returns of premiums, charges and fees thereunder) relating or appertaining to the Premises;

TO HAVE AND TO HOLD the Premises, including the Building Equipment and other property, privileges, rights, interests and franchises hereby granted or mortgaged, or intended so to be, unto the Mortgagee, its successors and assigns forever;

PROVIDED ALWAYS THAT, if the Mortgagor shall pay to the Mortgagee the sums of money due and owing under the Note and this Mortgage and all interest thereon at the rate(s) provided herein and in the Note, together with all advances and/or disbursements made hereunder to protect the security of this Mortgage, plus interest on such advances and/or disbursements at the rate provided for in Article 4 of this Mortgage, and all reasonable costs, charges and expenses, including reasonable attorneys' fees as hereinafter provided, then the Mortgagee may incur in collecting the same by foreclosure or otherwise, then this Mortgage and the estate hereby granted, shall cease, determine and be void and this Mortgage shall be released and discharged by the Mortgagee at the cost of the Mortgagor.

AND the Mortgagor covenants with the Mortgagee as follows:

1. **Payment of Indebtedness.** The Mortgagor will pay the principal, interest and all other sums set forth in the Note, at the times and in the manner herein and in the Note provided and if default shall be made in the payment of the said indebtedness or in the interest which shall accrue thereon, or of any part of either, and such default shall continue after notice and the expiration of any applicable grace period, the Mortgagee shall have power to sell the Premises, the Building Equipment and other property covered hereby according to law.

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2. **Insurance.** (a) The Mortgagor will keep or cause to be kept the buildings on the Land and the Building Equipment continuously (including during any period or periods of time that any buildings, structures or improvements are in the process of construction) insured for the benefit of the Mortgagee on a one hundred percent (100%) replacement cost basis (without deduction for physical depreciation) against all risk perils, including, but not limited to, insurance (with extended coverage endorsement) against (i) loss or damage by fire, windstorm, hail, explosion, malicious mischief, riot, riot attending a strike, civil commotion, aircraft, vehicle, smoke, sprinkler leakage and vandalism (ii) war risks as, when and to the extent such insurance is obtainable from the United States of America or an agency thereof, and (iii) loss by flood if the Premises are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as now or hereafter amended. The Mortgagor also shall maintain insurance for the benefit of the Mortgagee against loss of rentals and against damage caused by boilers or machinery, and when and to the extent reasonably required by the Mortgagee, against any other risk insured against by persons operating like properties in the locale of the Premises. Subject to the provisions of this Mortgage and the rights of the holder of the Prior Mortgage, the Mortgagor will assign to the Mortgagee the policies of such insurance and the right to receive the proceeds thereof and will deliver to the Mortgagee the originals of all required insurance policies, or certified copies of the same or other evidence of such insurance acceptable to Mortgagee. Upon the Mortgagor's default in taking out such insurance, or in so assigning and delivering the policies or other evidence thereof acceptable to Mortgagee, the Mortgagee may after notice (which need not be in writing) to the Mortgagor take out such insurance and the Mortgagor will reimburse the Mortgagee for any premiums paid by the Mortgagee for insurance so taken out by the Mortgagee together with interest thereon at the rate per annum specified in Article 4 hereof, and the same shall be added to the indebtedness secured hereby and be secured by this Mortgage.

(b) All such insurance shall be provided by policies written in terms (including without limitation, thirty (30) days prior written notice of cancellation, reduction or material change in coverage) and amounts, and by companies qualified to engage in the insurance business in Illinois, reasonably satisfactory to the Mortgagee, and losses thereunder shall be payable to the Mortgagee pursuant to a New York standard mortgagee endorsement and shall not be subject to contribution or assessment. Without limiting the requirement that the Mortgagee be named as loss payee under all such policies, subject to the provisions of this Mortgage and the rights of the holder of the Prior Mortgage, the Mortgagor agrees to assign, endorse over and deliver to the Mortgagee any checks that are payable to the Mortgagor in whole or in part and that represent payment of losses under any such policies, and upon failure to do so, the Mortgagor hereby appoints (said appointment being coupled with an interest and irrevocable) the Mortgagee as its attorney-in-fact for the purpose of so assigning, endorsing and/or delivering, and hereby authorizes the Mortgagee to so assign, endorse and/or deliver, any such check in the Mortgagor's name and stead.

(c) Regardless of the types or amounts of insurance required and approved by the Mortgagee, subject to the provisions of this Mortgage and the rights of the holder of the Prior Mortgage, the Mortgagor will assign to the Mortgagee all policies of insurance acquired by the Mortgagor to insure against any loss or damage to the Premises, as additional security for the

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payment of the indebtedness secured hereby and deliver to the Mortgagee the originals of such policies, certified copies of the same or other evidence of insurance acceptable to Mortgagee.

(d) The Mortgagee shall be entitled to retain and apply the proceeds of any insurance, whether against fire or other hazard, to the payment of the indebtedness secured hereby, as hereinafter provided. Notwithstanding any of the provisions of this Article 2 to the contrary and subject to the rights of the holder of the Prior Mortgage, if the Premises is damaged by fire or other casualty and the cost to repair such damage is less than \$200,000.00, then provided that no default shall have occurred and is then continuing beyond the expiration of any applicable notice and cure period, the Mortgagor shall have the right to adjust such loss, and the insurance proceeds relating to such loss may, if not in excess of \$50,000.00, be paid over directly to the Mortgagor, and if in excess of \$50,000.00, may, in accordance with clause (h) below, be paid over to the Mortgagor. If any such damage occurs and the cost to repair such damage exceeds the limit set forth above, or if a default shall have occurred and is then continuing beyond the expiration of any applicable notice and cure period, then the Mortgagor authorizes and empowers the Mortgagee, at the Mortgagee's option and in the Mortgagee's reasonable discretion, as attorney-in-fact for the Mortgagor, to make proof of loss, to adjust and compromise any claim under any insurance policy and to appear in and prosecute any action arising from any policy and the insurance proceeds or any part thereof received by the Mortgagee may be applied by the Mortgagee, to the principal and interest due or to become due under the Note, or if the Mortgagee, in its sole discretion, shall so elect, the Mortgagee may hold any or all of such proceeds for application to the payment of the cost of the restoration or repair of the property damaged, or released to the Mortgagor. In the event the Mortgagee elects to release such proceeds to the Mortgagor, or if the Mortgagor shall otherwise receive any of such proceeds, the Mortgagor shall be obligated to use such proceeds to restore or repair the Premises.

(e) Not less than fifteen (15) days prior to the expiration date of each policy furnished by the Mortgagor pursuant to this Article, the Mortgagor will deliver to the Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Mortgagee.

(f) The Mortgagor will at all times maintain in full force and effect such comprehensive general liability insurance as the Mortgagee may from time to time reasonably request, including blanket contractual, personal injury, broad form property damage, products liability, completed operations, fire legal liability and owned, non-owned and hired automobile coverage, with combined single limits per occurrence for bodily injury and property damage liability arising from all activities on or relating to the Premises, and written by companies qualified to engage in the insurance business in Illinois, reasonably satisfactory to the Mortgagee and naming the Mortgagee as an additional insured.

(g) The Mortgagor shall keep or cause to be kept in full force and effect worker's compensation insurance as required by law and employer's liability coverage in amounts and written by companies qualified to engage in the insurance business in Illinois, reasonably satisfactory to the Mortgagee.

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(h) In the event that the Premises shall be damaged or destroyed in whole or in part by fire or other casualty covered by insurance and the cost to repair such damage exceeds \$50,000.00, the Mortgagor shall give prompt written notice to the Mortgagee and, provided (i) the Mortgagor is not in default, after notice and the expiration of any applicable grace period, under this Mortgage or the Note, (ii) the Mortgagor, promptly after the insurance claims are settled, proceeds with the restoration, replacement, rebuilding or repair (hereinafter collectively referred to as "restoration") of the Premises as nearly as possible to the condition they were in immediately prior to such fire or other casualty regardless of the sufficiency of the insurance proceeds therefor, (iii) in the Mortgagee's reasonable judgment, the restoration can be completed within nine (9) months and, in any event, at least six (6) months prior to the maturity date of the Note and (iv) the Mortgagee shall have approved the plans and specifications for the restoration, which approval shall not be unreasonably withheld, then, notwithstanding the provisions of paragraph (d) of this Article 2, all insurance proceeds received by the Mortgagee on account of such damage or destruction, less the actual costs, fees and expenses, if any, incurred in connection with adjustment of the loss, shall be disbursed from time to time by the Mortgagee to the Mortgagor upon the written request of the Mortgagor and subject to satisfaction as a condition to each and any such disbursement with the provisions of the next sentence. Each request by the Mortgagor shall be accompanied by (1) a title company or official search or other evidence reasonably satisfactory to the Mortgagee showing that there has not been filed with respect to the Premises, any vendor's, contractor's, mechanic's, laborer's or materialman's statutory or similar lien that has not been discharged of record, except such liens as are being discharged upon payment of the sum requested, (2) a certificate of an architect or engineer reasonably satisfactory to the Mortgagee or other evidence satisfactory to the Mortgagee to the effect that all materials installed and work and labor performed (except those that are to be paid for with the proceeds of the requested disbursement) in connection with the restoration have been paid for in full, that such work has been performed substantially in accordance with plans and specifications therefor approved by the Mortgagee and with all governmental requirements with respect thereto, and (3) evidence reasonably satisfactory to the Mortgagee that at all times the undisbursed portion of the net amount of such insurance proceeds shall be sufficient to pay in full for the balance of the cost of restoration. The excess, if any, of such proceeds, after disbursement to the Mortgagor as hereinabove provided, shall be applied by the Mortgagee toward payment of the then outstanding indebtedness secured hereby.

It is intended that, any condition herein to the contrary notwithstanding, no trust shall be created by the receipt by the Mortgagee of any proceeds of insurance, but only a debtor-creditor relationship between the Mortgagee and the Mortgagor for not in excess of an amount equal to such proceeds, nor shall the Mortgagee have any obligation to pay any interest thereon.

3. Alterations, Demolition, Etc. No building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered without the prior written consent of the Mortgagee, except that the Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such Building Equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal, any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any Security Agreement, and by such removal and replacement the Mortgagor shall be deemed to have subjected such Building Equipment to the

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lien of this Mortgage, or (b) any net cash proceeds received from such disposition shall, subject to the rights of the holder of the Prior Mortgage, and to the extent not deposited in a separate bank account reserved for future purchase of replacement equipment or other capital improvements, which bank account shall, subject to the rights of the holder of the Prior Mortgage, be pledged to the Mortgagee to secure the Note, be paid over promptly to the Mortgagee to be applied to the last installments due on the indebtedness secured hereby, without, however, any charge for prepayment.

4. **Alternate Interest Rate.** In the event of any default in the performance of any of the Mortgagor's covenants or agreements herein, the Mortgagee may, after the expiration of any applicable cure period and notice to the Mortgagor, at the option of the Mortgagee, perform the same and the cost thereof, with interest thereon from the date of payment of such cost by the Mortgagee at the default rate of interest specifically set forth in the Note, or if no such default rate is specifically set forth in the Note at a rate equal to two (2%) percent per month (but, in any event, not in excess of the maximum rate allowed by law to be charged to the Mortgagor), shall immediately upon demand be due from the Mortgagor to the Mortgagee and secured by this Mortgage. Notwithstanding the foregoing, if a default occurs in a required payment or performance under this Mortgage the Mortgagee may make such payment or take such action as provided in the preceding sentence at any time after such default and prior to the expiration of any applicable grace period or notice to the Mortgagor if the Mortgagee determines that emergency action is necessary within ten (10) days to protect the Premises or the lien of this Mortgage, and in such instance the Mortgagee will endeavor to give Mortgagor prior notice (which may be by telephone or telecopy) of any such payment or action; provided, however, that the failure to give such notice shall not affect the validity of the payment or action or the Mortgagor's reimbursement obligations with respect thereto. No payment made or action taken by Mortgagee or its designee shall be deemed or construed to be a waiver, cure or satisfaction of the underlying default, which default shall be deemed to be continuing until such time (if ever) as the Mortgagor has (i) resumed the payment, performance and satisfaction required by this Mortgage and the other Loan Documents (as herein after defined) and (ii) repaid to Mortgagee or such other party to whom the Mortgagee has requested direct payment respecting such payments and actions all sums advanced for such payments and actions, together with interest thereon. If the principal sum of the Note shall not be paid at its maturity, or on its acceleration pursuant to Article 20 hereof, interest thereon shall thereafter be computed and paid at the rate per annum specified in this Article 4.

5. **Impositions.** (a) The Mortgagor will pay, prior to the date the same shall be delinquent or shall accrue any interest or penalty, all taxes, assessments, water rates, sewer rents and other charges now or hereafter levied against the Premises or any part thereof, and also any and all license fees or similar charges which may be imposed by the municipality in which the Premises are situated for the use of vaults, chutes, areas and other space beyond the lot line and on or abutting the public sidewalks in front of or adjoining the Premises or any part thereof, together with any penalties or interest on any of the foregoing, and in default thereof the Mortgagee may pay the same and the Mortgagor will immediately, upon demand, repay the same with interest thereon from the date of payment of same by the Mortgagee at the rate per annum specified in Article 4 hereof and the same shall be added to the indebtedness secured hereby and be secured by this Mortgage. Upon request of the Mortgagee, the Mortgagor will exhibit to the Mortgagee receipts for the payment of all items specified in this Article prior to the date when the same shall become delinquent.

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(b) The Mortgagor will not claim any credit on or make any deduction from the interest or principal of the Note or other sums due thereunder by reason of the payment of any taxes levied or to be levied upon the Premises or any part thereof.

(c) Upon the occurrence and continuance of a default hereunder which has not been cured after the expiration of any applicable grace period or notice thereof, the Mortgagee may, at its option to be exercised by twenty (20) days written notice to the Mortgagor, require that the Mortgagor deposit with the Mortgagee, on the first day of each and every month, a sum equal to one-twelfth (1/12) of the annual real estate taxes, assessments, water rates, sewer rents and other charges specified in this Article 5 (hereinafter collectively referred to as "taxes") plus one-twelfth (1/12) of the premiums required to keep in force for one year the insurance specified in Article 2 hereof. If such deposits shall be so required, the Mortgagor shall also deposit with the Mortgagee, at least thirty (30) days prior to the respective due dates of each installment of such taxes and each insurance premium, such additional amount as may be determined by the Mortgagee in order to provide the Mortgagee with funds sufficient to pay such installment or premium. If such deposits shall be so required, the Mortgagor shall deposit with the Mortgagee the necessary funds so that the Mortgagee, at all times until the full payment and satisfaction of this Mortgage, shall have on hand sufficient deposits covering the accrued amounts of such taxes and insurance premiums. Any funds held by the Mortgagee hereunder in excess of those necessary to cover the accrued amounts of such taxes and insurance premiums shall be credited towards future deposits required to be made under this section (c). Said funds shall bear interest and may, unless prohibited by law, be commingled with other funds of the Mortgagee. The Mortgagee shall have no obligation to use said funds to pay any installment of taxes prior to the last day on which payment thereof may be made without penalty or interest or to pay an insurance premium prior to the due date thereof. If the whole of said principal sum and interest shall be declared due and payable by the Mortgagee pursuant to Article 20 hereof, all such deposits may, at the option of the Mortgagee, be applied in reduction of said principal sum and/or interest, as the Mortgagee shall elect. The Mortgagor will furnish to the Mortgagee bills and other requests for payment in sufficient time to enable the Mortgagee to pay such taxes, assessments, levies, charges and fees as provided above. Upon an assignment of this Mortgage permitted pursuant to Article 28, the Mortgagee shall have the right to pay over the balance of such deposits in its possession to the assignee and, upon the acknowledgment of receipt of such amounts by such assignee, the Mortgagee shall thereupon be completely released from all liability with respect to such deposits and the Mortgagor or owner of the Premises shall look solely to the assignee or transferee in reference thereto. This provision shall apply to every transfer of such deposits to a new assignee. Upon full payment and satisfaction of this Mortgage or at any prior time, at the election of the Mortgagee, the balance of the deposits in its possession shall be paid over to the record owner of the Premises and no other party shall have any right or claim thereto in any event. The Mortgagor agrees, at the Mortgagee's request, to make the aforesaid deposits with such servicer or financial institution as the Mortgagee shall from time to time designate. In addition, the Mortgagee from time to time may waive, and after such waiver may reinstate, the provisions of this section (c) requiring monthly deposits if at the time of such reinstatement a default has occurred and is then continuing beyond the expiration of any applicable notice and cure period.

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(d) The Mortgagee may, at its option, at intervals of not less than one year, procure tax, water, sewer rental, assessment and/or Building Department searches with respect to the Premises, for which searches the Mortgagor shall be charged the actual costs thereof. The Mortgagor shall pay such costs within ten (10) days after demand and if not so paid, at the election of the Mortgagee, said costs may be deducted from any deposits held by the Mortgagee under section (c) above. In addition, at the request of the Mortgagee and provided that the same is available, the Mortgagor shall subscribe, at the Mortgagor's expense, to an independent tax service that will periodically report to the Mortgagee on the tax status of the Premises.

(e) Notwithstanding any of the provisions of section (c) above to the contrary, the Mortgagee shall not have the right to require deposits pursuant to section (c) above to the extent that the holder of the Prior Mortgage is holding deposits made by the Mortgagee with respect to the payment of such taxes, assessments, levies, charges and fees.

6. Receiver. The holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver. Such entitlement shall be without notice and without regard to the adequacy of any security for the indebtedness secured hereby and any such receiver shall have the right, inter alia, to enter upon the Premises.

7. Estoppel Certificate. The Mortgagor, within ten (10) Business Days (as defined in the Note) after receipt of request from the Mortgagee, will furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the mortgage debt.

8. Notice and Demand. Except as otherwise required by statute, any notice, demand, request or other communication required or permitted to be given under this Mortgage to the Mortgagor or the Mortgagee shall be in writing, signed by the party giving it and conclusively deemed to have been properly given to and received by the Mortgagor or the Mortgagee as the case may be, and to be effective (a) if sent by tested telex or cable, or hand-delivered against receipt therefor, or by telecopy or other facsimile transmission, on the day on which delivered to the Mortgagor or the Mortgagee, as the case may be, at the respective addresses first above written, or, if such day of delivery is not a business day, on the first business day thereafter, or (b) if sent by registered or certified mail, return receipt requested, postage prepaid, on the third day after the day on which deposited in any post office station or letter box, addressed to the Mortgagor, or the Mortgagee, as the case may be, at the respective addresses first above written. Addresses of notice to any such party may be changed by written notice to the other parties and to the persons, if any, receiving copies, except that any such notice changing addresses shall not be effective until actually received by the other party(ies).

9. Warranty of Title, Etc. (a) The Mortgagor warrants and represents to the Mortgagee that the Mortgagor has good title to the Premises and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Mortgagor possesses a fee simple estate in the Land and the improvements located thereon and that it owns the Premises free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage (the "Permitted Exceptions"). Mortgagor

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shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

(b) The Mortgagor shall execute and deliver, from time to time, such further instruments (including further Security Agreements) as may be requested by the Mortgagee to confirm the lien of this Mortgage on any Building Equipment. Without the prior written consent of the Mortgagee, the Mortgagor shall not create or cause or permit to exist any lien on, or security interest in the Building Equipment including any purchase money interest therein.

(c) The Mortgagor, upon request, shall, subject to the rights of the holder of the Prior Mortgage, make, execute and deliver any and all instruments sufficient in the Mortgagee's reasonable discretion for the purpose of confirming the assignment to the Mortgagee of awards for the taking by eminent domain of the whole or any part of the Premises or any easement, right or appurtenance therein or thereto, including any awards for changes of grade of streets, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

(d) The Mortgagor shall not further encumber the Premises and hereby (i) represents as a special inducement to the Mortgagee to make the loan secured hereby that, as of the date hereof, there are no encumbrances to secure debt junior to this Mortgage and (ii) covenants that there are to be none as of the date when this Mortgage becomes of record and thereafter will be none, except, in either case, encumbrances having the prior written consent of the Mortgagee. The Mortgagor shall have no right to permit the holder of any subordinate mortgage or other subordinate lien, whether or not consented to by the Mortgagee, to terminate any lease of all or a portion of the Premises whether or not such lease is subordinate (whether by law or the terms of such lease or a separate agreement) to the lien of this Mortgage without first obtaining the prior written consent of the Mortgagee. The holder of any subordinate lien shall have no right, whether by foreclosure of its mortgage or lien or otherwise, to terminate any such lease, whether or not permitted to do so by the Mortgagor or as a matter of law, and any such attempt to terminate any such lease without first obtaining the prior written consent of the Mortgagee shall be ineffective and void. In addition, but not with respect to the Prior Mortgage, by placing a mortgage, lien or encumbrance of any type, whether voluntary or involuntary, against the Premises, the holder thereof shall be deemed to have agreed, without any further act or documentation being required, that its mortgage, lien or encumbrance shall be subordinated in lien priority to any future increases, amendments, consolidations or extensions to this Mortgage (including, without limitation, amendments that increase the interest rate on the Note, provide for future advances secured by this Mortgage or provide for the release of portions of the Premises with or without consideration).

10. **Single or Multiple Parcel Option.** In case of a foreclosure sale, the Premises, or so much thereof as may be affected by this Mortgage, may be sold in one parcel and as an entirety or in such parcels, manner or order as the Mortgagee, in its sole discretion, may elect.

11. **Mortgagee's Expenses.** If any action or proceeding be commenced, including an action to foreclose this Mortgage or to collect the indebtedness secured hereby, in which the Mortgagee becomes a party or participates in order to protect its interest in the Premises, all sums

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paid by the Mortgagee for the expense of so becoming a party or participating (including reasonable counsel fees and disbursements) shall promptly, upon demand, be paid by the Mortgagor, together with interest thereon from the date of payment of such sums by the Mortgagee at the rate per annum specified in Article 4 hereof, and such sums and interest shall be a lien on the Premises, prior to any right or title to, interest in, or claim upon, the Premises subordinate to the lien of this Mortgage, and shall be added to the indebtedness secured hereby and be secured by this Mortgage and evidenced by the Note. In any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured hereby, the provisions of law respecting the recovery of costs (including counsel fees and disbursements), disbursements and allowances shall apply in addition to the foregoing.

12. Proper Use, Care and Maintenance. (a) The Mortgagor will maintain the Premises in good condition and repair, will not commit or suffer any waste thereof or the conduct of any nuisance or unlawful occupation or business on, or use of, the Premises, and will comply with, or cause to be complied with, all restrictions of record and all laws, statutes, ordinances and requirements of any governmental or quasi-governmental authority or agency relating in any way to the Premises. Subject to the provisions of the Prior Mortgage and the receipt by the Mortgagor of insurance proceeds and condemnation awards pursuant to Article 2(h) hereof or as otherwise provided herein, the Mortgagor will promptly repair, restore, replace or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in Article 13. The Mortgagor will not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Premises or any part thereof. The Mortgagor will not take or permit any action or condition to exist with respect to the Premises which will in any material manner impair the security of this Mortgage, including without limitation any action or condition that would partially or wholly invalidate the insurance on the Premises.

(b)(i) The Mortgagor will not place or permit to be placed on the Premises any hazardous substances (including, without limitation, solid wastes, toxic materials, radon or asbestos) or use or permit the use of the Premises in a manner that would violate any applicable federal, state, or local law, statute, ordinance or regulation, court or administrative order or decree, of any governmental or quasi-governmental authority or agency or any private agreement pertaining to environmental matters or hazardous substances (hereinafter collectively called "Environmental Requirements"), or give rise to liability for hazardous substances under any applicable Environmental Requirement or otherwise. The Mortgagor further covenants and agrees that it will not use or permit the use or operation of the Premises in a manner that would constitute a dangerous, unhealthy or noxious use thereof, nor will the Mortgagor permit conditions to exist with respect to the Premises which would create a dangerous, unhealthy or noxious condition thereon. Further, if at any time a notice, letter or other communication (a "Violation Notice") is received by the Mortgagor from any governmental or quasi-governmental authority or agency stating that the operation or use of the Premises violates any applicable Environmental Requirements or that there are materials located on the Premises that, under any Environmental Requirements, require special handling in collection, storage, treatment or disposal, or that create a dangerous, unhealthy or noxious condition thereon, then the Mortgagor shall, prior to the date which is fifteen (15) days before the expiration of any grace period provided in said Violation Notice (and if no grace period is provided in said Violation

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Notice, then within thirty (30) days after receipt thereof), take or cause to be taken, at its sole expense, such actions as may be necessary to comply with said notice, letter or other communication and all of Environmental Requirements. The Mortgagor will not permit any federal, state or local environmental or hazardous waste lien to be levied against the Premises, regardless of whether such lien is subordinate to the lien of this Mortgage. Failure of the Mortgagor to comply with all Environmental Requirements shall be a default under this Mortgage.

(ii) To enforce the Mortgagor's obligations under this Section (b) and confirm its compliance with the same, the Mortgagee may, at its option, from time to time as it deems necessary in its reasonable discretion, conduct or cause to be conducted an environmental audit (which may include, without limitation, test borings of the ground and chemical analyses of air, water and waste discharges) of the Premises or portions thereof, for which audits the Mortgagor shall be charged the actual costs thereof. The Mortgagor shall pay such costs within ten (10) days after written demand and upon failure to so pay same, same shall be added to the indebtedness secured hereby and shall be secured by this Mortgage. Notwithstanding the foregoing, Mortgagee shall not be required to pay the costs of more than one (1) environmental audit within any five (5) year period, unless such audit was conducted within one year following the receipt of a Violation Notice which does not relate to a violation caused by Swissotel Management (USA) L.L.C., or Mortgagee had reasonable grounds for believing that an Environmental Requirement had been violated.

(iii) The Mortgagor further represents and warrants that it has received no written notices from any governmental or quasi-governmental authorities or agencies with respect to Environmental Requirements or environmental issues affecting the Premises. The Mortgagor shall send to the Mortgagee copies of all notices, letters or other communications respecting the Premises that are either received by the Mortgagor from any governmental or quasi-governmental authority or agency concerning Environmental Requirements or environmental issues affecting the Premises or sent by the Mortgagor to any such authority or agency regarding the same, within ten (10) days after such receipt or transmittal by the Mortgagor.

(iv) If the Mortgagor has received a Violation Notice with respect to any Environmental Requirements and the Mortgagor has failed to take or cause to be taken the actions which may be necessary to comply with all Environmental Requirements, within the relevant period provided in section (b)(1) above, the Mortgagee may, but shall not be obligated to, perform or cause to be performed any remedial action, including, but not limited to, removal and clean-up, which the Mortgagee in its sole discretion believes necessary to comply with Environmental Requirements and the Mortgagee may make advances or payments towards performance or satisfaction of such Environmental Requirements, but shall be under no obligation to do so. The Mortgagor shall execute and deliver, promptly after request, such instruments as the Mortgagee may deem necessary to permit the Mortgagee to take any such action. All sums so advanced or paid and all expenses incurred by the Mortgagee, including, without limitation, reasonable counsel fees, fines or other penalty payments and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, shall within ten (10) days after demand be paid by Mortgagor and, if not paid within such ten (10) day period, shall bear interest at the rate per annum set forth in Article 4 of this Mortgage from the date the same were first advanced or paid by the Mortgagee until the date

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paid, and all sums so advanced or paid and expenses incurred, with interest as aforesaid, shall be added to the indebtedness secured hereby and shall be secured by this Mortgage.

(v) The Mortgagor hereby agrees to indemnify, hold harmless, reimburse, and, upon request of the Mortgagee, defend the Mortgagee from and against any third party claims involving hazardous substances or similar claims involving the use or condition of the Premises but only to the extent such use or condition did not exist prior to the date of this Mortgage (excluding any condition of the Premises in existence prior to the date of this Mortgage) and for any and all liability or responsibility that may at any time be imposed upon the Mortgagee by reason of the operation or use of the Premises or any portion thereof after the date of this Mortgage by the Mortgagor or any operator or tenant thereof or any other persons or organizations or by reason of the Premises or any portion thereof not complying fully with all Environmental Requirements.

(vi) The provisions of this Section (b) shall survive the payment of the indebtedness secured hereby and the release and/or assignment of this Mortgage and/or any such guaranty.

13. **Eminent Domain.** Notwithstanding any taking by eminent domain or other governmental action causing injury to, or decrease in value of, the Premises and creating a right to compensation therefor, including, without limitation, the change of the grade of any street, the Mortgagor shall continue to pay interest, computed at the rate reserved in the Note, on the entire unpaid principal amount thereof, until the award or compensation for such taking or other action shall have been actually received by the Mortgagee, and subject to the provisions of the Prior Mortgage and the further provisions of this Article 13, such award or compensation need not be applied by the Mortgagee in reduction of principal but may be applied in such proportions and priority as the Mortgagee, in the Mortgagee's sole discretion, may elect, to the payment of principal, interest or other sums secured by this Mortgage and/or to payment to the Mortgagor, on such terms as the Mortgagee may specify, for the sole purpose of altering, restoring or rebuilding any part of the Premises that may have been altered, damaged or destroyed as a result of any such taking or other action. If, prior to the receipt by the Mortgagee of such award or compensation, the Premises shall have been sold on foreclosure of this Mortgage, subject to the provisions of the Prior Mortgage and the further provisions of this Article 13, the Mortgagee shall have the right to receive said award or compensation to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, together with reasonable counsel fees and the costs and disbursements incurred by the Mortgagee in connection with the collection of such award or compensation. Notwithstanding any of the provisions of this Article 13 to the contrary and subject to the rights of the holder of the Prior Mortgage, provided that no default shall have occurred and is then continuing beyond the expiration of any applicable notice and cure period, the award relating to such loss shall be paid over to the Mortgagor to be applied to the cost of restoration to the Premises, in accordance with and pursuant to the procedure set forth in Article 2(h) hereof. If any such taking occurs and a default shall have occurred and is then continuing beyond the expiration of any applicable notice and cure period, or any of the conditions contained in Article 2(h) have not been satisfied, then the award or any part thereof received by the Mortgagee may be applied by the Mortgagee, to the principal and interest due or to become due under the Note, or if the Mortgagee, in its sole discretion, shall so elect, the

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Mortgagee may hold any or all of such award for application to the payment of the cost of the restoration or repair of the property taken, or released to the Mortgagor. In the event the Mortgagee elects to release such award to the Mortgagor, or if the Mortgagor shall otherwise receive any of such award, the Mortgagor shall be obligated to use such award to restore or repair the Premises.

14. **Inspection; Permitted Contests; Management.** (a) The Mortgagee and any persons authorized by the Mortgagee shall have the right to enter and inspect the Premises at all reasonable times and upon reasonable prior notice.

(b) After prior written notice to Mortgagee, and provided no default shall then exist under this Mortgage, the Note or any other Loan Document, after the expiration of any applicable grace period and notice, Mortgagor at its expense may contest, or cause to be contested by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any taxes, any "legal requirement" (as hereinafter defined) or "insurance requirement" (as hereinafter defined) or any lien, encumbrance or charge with respect to the Premises (including, without limitation, liens of mechanics, materialmen, suppliers or vendors), provided that (a) in the case of any unpaid taxes, lien, encumbrance or charge, such proceedings shall suspend the collection thereof from Mortgagor, Mortgagee, the Premises and any rent or other income therefrom and shall not result in the appointment of a receiver with respect to the collection of any such rent or income, (b) neither the Premises nor any rent or other income therefrom nor any part thereof or interest thereon would be in any danger of being sold, forfeited, lost or materially interfered with, (c) in the case of a legal requirement, neither Mortgagor nor Mortgagee would be in any danger of any criminal liability or, with respect to Mortgagee, any civil liability, for failure to comply therewith, (d) Mortgagor shall have furnished such security, if any, as may be required in the proceedings or as may reasonably be deemed necessary by Mortgagee to protect the lien of this Mortgage, (e) the continued nonpayment of the whole or any part of any taxes, assessment or charge will not result in the delivery of a tax deed to the Premises or any part thereof because of such non-payment, (f) the payment of any sums required to be paid under this Mortgage or the Note (other than any unpaid taxes, lien, encumbrance or charge at the time being contested in accordance with this subsection) shall not be interfered with or otherwise affected, and (g) in the case of any insurance requirement, the failure of Mortgagor to comply therewith shall not affect the validity of any insurance required to be maintained by Mortgagor under this Mortgage. As used herein, (i) the term "insurance requirements" shall mean all provisions of any insurance policy maintained by Mortgagor covering or applicable to the Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Premises or any part thereof or any use or condition of the Premises or any part thereof and (ii) the term "legal requirements" shall mean all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, written directives, directions and requirements of all government departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Premises or any part thereof (whether to the use, operations, ownership or otherwise), or any of the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, or any use or condition of the Premises or any part thereof.

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(c) As security for the indebtedness secured by this Mortgage, the Mortgagor hereby grants to the Mortgagee a security interest in all of its rights under any agreement for the management or operation of the Premises or any part thereof, now existing or hereafter created.

(d) Any agreement entered into hereafter by the Mortgagor or any agent of the Mortgagor with any "broker," as defined in the Real Estate License Act of 1983, 225 ILCS 455/1 et seq., for the purpose of selling, leasing or otherwise conveying an interest in the Premises shall contain a "no lien" provision whereby such broker waives and releases any and all lien rights that such broker or anyone claiming by, through or under such broker may have pursuant to the Commercial Broker Lien Act, 770 ILCS 15/1 et seq. The Mortgagor shall cause such broker to enter into a Subordination Agreement with the Mortgagee, in recordable form, whereby such broker subordinates present and future lien rights and those of any party claiming by, through or under such broker, to the lien of this Mortgage.

15. Reporting Requirements. In the event that the Hotel Management Agreement (as defined in the Note) covering the Premises is cancelled, terminated or otherwise expires, then the Mortgagor shall prepare and deliver to the Mortgagee the same financial reports and statements which are required to be delivered by the Operator to the Owner pursuant to Section 10.4 of said Hotel Management Agreement, all in accordance with and pursuant to the terms and provisions of said Agreement.

16. Assignment of Leases, Etc. Subject to the rights of the holder of the Prior Mortgage, the Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the indebtedness secured hereby, the rents, issues and profits of the Premises, together with all leases and other documents evidencing such rents, issues and profits now or hereafter in effect and any and all deposits held as security under said leases, and shall, upon demand, deliver to the Mortgagee an executed counterpart of each such lease or other document. Nothing contained in the foregoing sentence shall be construed to bind the Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such lease or other document or otherwise to impose any obligation on the Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises), except that the Mortgagee shall be accountable for money actually received pursuant to such assignment. The Mortgagor hereby further grants to the Mortgagee the right (a) to enter upon and take possession of the Premises for the purpose of collecting the said rents, issues and profits, (b) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to the Mortgagee, (c) to let the Premises, or any part thereof, and (d) to apply said rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. Such assignment and grant shall continue in effect until the indebtedness secured by this Mortgage is paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of the Mortgagor to the entry upon and taking possession of the Premises by the Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. The Mortgagee, however, hereby waives the right to enter upon and take possession of the Premises for the purpose of collecting said rents, issues

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and profits, and the Mortgagor shall be entitled to collect and receive the same until the occurrence of a default by the Mortgagor under any of the covenants, conditions or agreements contained in this Mortgage, the Note or any other Loan Document (hereinafter defined) and the continuance of such default after the expiration of any applicable grace period and notice. The Mortgagor agrees to use said rents, issues and profits in payment of principal and interest becoming due on this Mortgage and the Prior Mortgage and in payment of taxes, assessments, water rates, sewer rents and carrying charges becoming due against the Premises. Such rights of the Mortgagor to collect and receive said rents, issues and profits may be revoked by the Mortgagee upon any such default by the Mortgagor and its continuance as provided above by giving not less than five (5) days written notice of such revocation, served personally upon or sent by registered or certified mail to the record owner of the Premises.

17. **Rental Value; Possession.** In the event of any default under this Mortgage, the Mortgagor will pay monthly in advance to the Mortgagee, on its entry into possession pursuant to Article 16 hereof, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Premises or of such part thereof as may be in the possession of the Mortgagor, and upon default in any such payment, will vacate and surrender possession of the Premises or such part thereof, as the case may be, to the Mortgagee or to such receiver and, in default thereof, may be evicted by summary proceedings.

18. **Leasing Requirements.** (a) Unless expressly permitted under the Prior Mortgage or consented to by the holder of the Prior Mortgage, the Mortgagor has no right or power, as against the Mortgagee without its prior written approval, (i) to enter into, cancel or terminate any leases or subleases of the Premises or any part thereof, provided that the Mortgagor may terminate a lease upon the default by the tenant thereunder or if the payment received by the Mortgagor with respect to such termination is applied to the costs of releasing the premises demised under such lease, (ii) to abridge, extend, renew or otherwise modify any of such leases or subleases or any of the terms, provisions or covenants thereof in any manner that would increase the landlord's obligations thereunder in any material way or eliminate or diminish any material or substantial right or remedy of the landlord thereunder or otherwise have any material impact upon the value of the lease or the security intended by this Mortgage, or (iii) to accept prepayments of installments of rent to become due thereunder for any period in excess of one (1) month, and the Mortgagor shall not do any of the foregoing without such approval.

(b) Unless expressly permitted in the Prior Mortgage or consented to by the holder of the Prior Mortgage, the Mortgagor shall not enter into a lease of all or substantially all of the Premises (an "Underlying Lease") unless (i) said Underlying Lease shall expressly provide that the leasehold estate created thereby shall be subject and subordinate to the leasehold estates of subtenants created by leases existing when such Underlying Lease was entered into (hereinafter referred to as "Existing Subleases"), notwithstanding any clause in any such Existing Sublease purporting to subordinate such Existing Sublease and the rights of the subtenant thereunder to ground or underlying leases, (ii) said Underlying Lease shall require that each lease of space in the Premises thereafter made ("Future Subleases"; Existing Subleases and Future Subleases, collectively "Subleases") and each renewal of any Existing Sublease shall provide that, (A) in the event of the termination of the Underlying Lease, the Sublease shall not terminate or be terminable by the

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subtenant, (B) in the event of any action for the foreclosure of this Mortgage, the Sublease shall not terminate or be terminable by the subtenant by reason of the termination of the Underlying Lease unless the subtenant is specifically named and joined in any such action and unless a judgment is obtained therein against the subtenant and (C) in the event that the Underlying Lease is terminated as aforesaid, the subtenant shall attorn to the lessor under the underlying lease or to the purchaser at the sale of the Premises on such foreclosure, as the case may be, and (iii) the lessee in said Underlying Lease shall agree, and be authorized by the Mortgagor, to direct and require the subtenants and other occupants of space in the Premises to pay to the Mortgagee on its entry into possession pursuant to Article 16 hereof, or to a receiver appointed to collect the rents, issues and profits of the Premises, the rents payable by them under the terms of their subleases or occupancy agreements upon being notified by the Mortgagee of any default under this Mortgage that has continued beyond the expiration of any application notice and cure period and of the Mortgagee's entry into possession of the Premises, or of the appointment of any such receiver, with the same force and with like effect as if said Underlying Lease had not been entered into and the Mortgagor were entitled to receive such space rents directly.

(c) Unless the Mortgagor is prohibited in the Prior Mortgage, the Mortgagor will (i) fulfill or perform in all material respects each and every condition and covenant of each lease or sublease now or hereafter affecting the whole or any part of the Premises to be fulfilled or performed by the lessor thereunder, and (ii) enforce, short of termination thereof, the performance or observance of each and every material covenant and condition thereof by the lessee thereunder to be performed or observed. The Mortgagor will give prompt notice to the Mortgagee of any written notice of default by the lessor thereunder received by the Mortgagor together with a complete copy of any such notice.

19. Separate Confirmatory Assignments: Upon notice and demand, the Mortgagor shall, from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered to the Mortgagee, in form reasonably satisfactory to the Mortgagee, one or more separate assignments (confirmatory of the general assignment provided in Article 16 hereof) of the lessor's interest in any lease or sublease now or hereafter affecting the whole or any part of the Premises, or one or more agreements, restricting the Mortgagor's right or power, as against the Mortgagee, without its consent, to cancel, abridge or otherwise modify, or accept prepayments of installments of rent to become due under, any lease or sublease hereafter in existence. The Mortgagor shall pay to the Mortgagee the reasonable expenses incurred by the Mortgagee in connection with the preparation and recording of any such assignment or agreement.

20. Acceleration: Defaults. The whole of the indebtedness evidenced by the Note and/or secured by this Mortgage shall be accelerated and become due, at the option of the Mortgagee, upon the occurrence of any of the following (each, an "Event of Default"):

(a) after default in the payment of any installment of principal or interest for five (5) days after receipt of notice that the same is due and payable under the Note or hereunder; or

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(b) subject to Article 14(b) hereof, after default in the payment, as provided in Article 5 hereof, of any tax, water rate, sewer rent, assessment or vault license fee, it being understood and agreed that an assessment which has been made payable in installments at the application of the Mortgagor or any lessee of the Premises shall, nevertheless, for the purposes of this clause, be deemed due and payable in its entirety on the date the first installment becomes a lien; or

(c) after default after notice and demand, in maintaining, assigning and delivering the policies of insurance herein required to be maintained, as hereinbefore provided; or

(d) upon the actual waste, removal or demolition of any building or other property on the Premises, or any portion thereof, except as permitted by Article 3; or

(e) upon assignment by the Mortgagor of the whole or any part of the rents, issues or profits arising from the Premises to any person other than the holder of the Prior Mortgage without the written consent of the Mortgagee; or

(f) if a default shall occur and be continuing beyond the expiration of any applicable notice and grace period (if any) expressly provided for in respect thereof with respect to any covenant, obligation or agreement on the part of the Owner in any of the Hotel Management Agreements; or

(g) after failure to comply with any order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Premises, including, without limitation, those matters specified in Article 12 hereof, within the shorter of (i) three (3) months from the issuance thereof or (ii) the period within which compliance is required under such order or notice; or

(h) after thirty (30) days notice to the Mortgagor, in the event of the passage of any law deducting from the value of the Premises or any portion thereof for the purposes of taxation, any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Mortgage or the Note, unless such tax shall and may lawfully be paid by the Mortgagor; or

(i) if the Mortgagor shall fail to make payment of any other sum required to be paid hereunder within the period required by specific provision of this Mortgage, or, if no such period is so provided, by not later than ten (10) days after written notice; or

(j) if the Mortgagor shall fail to comply with any other covenants or conditions contained in this Mortgage and, except with respect to failure to comply with its covenants to take out and maintain insurance as set forth in Article 2 of this Mortgage, as to which no notice, grace or demand shall be required, except as set forth in said Article 2, and except with respect to failure to pay money, such failure shall continue unremedied for the period within which performance is required to be made by specific provision of this Mortgage, or, if no such period is so provided, for a period of thirty (30) days after written notice thereof shall have been given by the Mortgagee

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or, with respect to any such default which shall be of such a nature, that it can be cured or remedied by the Mortgagor but cannot reasonably be cured or remedied within thirty (30) days or within the period within which performance is required to be made by specific provision of this Mortgage, if the Mortgagor shall not as promptly as reasonably possible within such thirty (30) day period commence to cure such default and exercise due diligence and continuous effort to remedy the same and, in any event, cure or remedy the same within sixty (60) days after the expiration of the initial cure period provided above; or

(k) if the Mortgagor shall (i) fail or be unable to pay its debts generally as they become due, (ii) conceal, remove or transfer any of its assets and properties in violation or evasion of any applicable bankruptcy, fraudulent conveyance or similar applicable law, (iii) make a general assignment for the benefit of its creditors, (iv) apply for or consent to the appointment of a receiver, trustee, assignee, custodian, sequestrator, liquidator or similar official for itself or any of its assets and properties, (v) commence a voluntary case for relief as a debtor under the United States Bankruptcy Code, (vi) file with or otherwise submit to any governmental authority any petition, answer or other document seeking (A) reorganization, (B) an arrangement with creditors or (C) to take advantage of any other present or future applicable law respecting bankruptcy, reorganization, insolvency, readjustment of debts, relief of debtors, dissolution or liquidation, (vii) file or otherwise submit any answer or other document admitting or failing to contest the material allegations of a petition or other document filed or otherwise submitted against it in any proceeding under any such applicable law, (viii) be adjudicated a bankrupt or insolvent, or (ix) take any action for the purpose of effecting any of the foregoing; or

(l) any case, proceeding or other action shall be commenced against the Mortgagor for the purpose of effecting, or an order, judgment or decree shall be entered by any court of competent jurisdiction approving (in whole or in part), anything specified in clause (l) of this Article, or any receiver, trustee, assignee, custodian, sequestrator, liquidator or other official shall be appointed with respect to the Mortgagor, or shall be appointed to take or shall otherwise acquire possession or control of all or a substantial part of the assets and properties of the Mortgagor, and any of the foregoing shall continue unstayed and in effect for any period of sixty (60) days; or

(m) if judgment for seventy-five thousand \$75,000 dollars or more shall be rendered against the Mortgagor and not be discharged or bonded pending appeal within thirty (30) days from the entry thereof; or

(n) if any representation, warranty or statement contained in any writing delivered to the Mortgagee prior to or simultaneously with the execution and delivery hereof shall prove to be incorrect in any respect and shall continue to be incorrect for thirty (30) days after written notice thereof from the Mortgagee to the Mortgagor and the existence of the facts which cause such representation, warranty or statement to be untrue have a material adverse affect on the value of the collateral granted to Mortgagee under this Mortgage; or

(o) if, without the prior written consent of the Mortgagee, in each instance obtained, (i) the Premises or any part thereof shall be sold or otherwise transferred or further encumbered by the Mortgagor or (ii) any direct or indirect ownership interest in Mortgagee (other

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than that of Swissôtel Holding, Inc.) is sold or otherwise transferred (either through one or a series of transfers) or pledged, hypothecated or otherwise transferred as security for debt (other than under the PM Pledge (as defined in the Asset Purchase Agreement)), including, where the Mortgagor or any partner or constituent member of Mortgagor is a partnership, limited liability company, joint venture, syndicate or other group, the withdrawal, resignation or retirement of any such partner or member or the appointment of any new, or other, substitute partner or member, and where the Mortgagor or any partner or constituent member of Mortgagor is a corporation, the dilution of the present stockholding or corporate control by issuance of new or treasury stock or by conversion of any non-voting stock or other securities to voting stock; and provided that in determining whether to grant or withhold its consent under this clause (o), the Mortgagee, without limitation on the generality of the requirement of such consent, may not only consider the character and financial ability of the proposed purchaser, transferee or encumbrancer but may also condition its consent on change in the terms of payment of the Note (including, without limitation, an earlier scheduled maturity date or an increase in the rate of interest payable thereunder); provided, however, that direct or indirect ownership interests in Mortgagor may be transferred without the prior written consent of the Mortgagee if (A) such transfer is in the ordinary course of business of Blackstone Real Estate Advisors L.P. or its Affiliates (as defined in the Hotel Management Agreement), (B) after giving effect to such transfer, the Mortgagor and each direct member in Mortgagor (other than Swissôtel Holding, Inc.) shall continue to be controlled by, and an Affiliate (as defined in the Hotel Management Agreements) of, Blackstone Real Estate Advisors L.P.; and (C) each direct member in Mortgagor (excluding Swissôtel Holding, Inc.) shall have executed a PM Pledge (as defined in the Asset Purchase Agreement, which is defined in the Note) with respect to its ownership interest in Mortgagor, and all of the ownership interests in Mortgagor (excluding that of Swissôtel Holding, Inc.) are subject to PM Pledges; or

(p) if the Mortgagor shall default under the terms, conditions or provisions of any other mortgage or encumbrance on the Premises, whether or not consented to by the Mortgagee, and such default shall be material and shall continue beyond the expiration of any applicable notice and cure period, or the holder of such mortgage or encumbrance has accelerated the indebtedness payable thereunder or exercised any remedy provided for in such mortgage or encumbrance following the occurrence of a default thereunder; or

(q) if a lien for the performance of work or the supply of materials is filed against the Premises or any portion thereof which shall not be discharged or bonded within ninety (90) days from the filing thereof; or

(r) if a default shall occur and be continuing beyond the expiration of any applicable notice and grace period (if any) expressly provided for in respect thereof under (i) any instrument or document given to evidence, guarantee, secure, or executed and delivered in connection with, all or any portion of the indebtedness secured by this Mortgage or evidenced by the Note, or (ii) the mortgages and deeds of trust (the "Affiliated Mortgages") described in Schedule B annexed hereto and a part hereof, or any instrument or document given to evidence, guarantee, secure or executed and delivered in connection with, all or any portion of the indebtedness secured by the Affiliated Mortgages or evidenced by the notes secured by said Affiliated Mortgages (this Mortgage,

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the Note and all of the foregoing documents in clauses (i) and (ii) hereof are herein referred to as the "Loan Documents").

Furthermore, if any of the foregoing defaults shall occur, the Mortgagee may, at the Mortgagee's option, foreclose this Mortgage for any portion of the debt or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Mortgage for the balance of the debt not then due.

In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the mortgaged real estate, or for the appointment of a receiver, the Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-110) et seq., as amended from time to time ("IMFL"), to be placed in possession of the Premises or at its request to have a receiver appointed, and such receiver, or the Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage or by law, all powers and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of IMFL.

21. Legal Tender. Any payment made in accordance with the terms of this Mortgage by any person at any time liable for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage, or by any subsequent owner of the Premises, or by any other person whose interest in the Premises might be prejudiced in the event of a failure to make such payment, or by any stockholder, officer or director of a corporation that at any time may be liable for such payment or may own or have such an interest in the Premises, shall be deemed, as between the Mortgagee and all persons who at any time may be liable as aforesaid or may own the Premises, to have been made on behalf of all such persons.

22. No Obligation, Waiver or Release. (a) The Mortgagor acknowledges and agrees that the rights, powers, privileges, remedies and interests conferred upon the Mortgagee in respect of the Premises by this Mortgage and any other documents pertaining to the loan secured hereby and applicable law are solely to enable the Mortgagee to protect and preserve its security interests therein as well as to realize upon it in accordance with this Mortgage and such other documents, all in such manner as the Mortgagee in its discretion may elect, and shall not impose upon the Mortgagee any duty or other obligation to exercise or enforce any such right, power, privilege, remedy or interest. Any exercise or other enforcement of any such right, power, privilege, remedy or interest, if undertaken by the Mortgagee in its discretion, may be delayed, discontinued or otherwise not pursued or exhausted for any reason whatsoever (whether intentionally or otherwise). Without limiting the generality of the foregoing, the Mortgagee shall be under no duty or obligation to protect or preserve the Premises or any portion thereof, perform any obligation or duty of the Mortgagor in respect of the Premises or any portion thereof, or take any action to mitigate or otherwise reduce any damage or other loss or to otherwise collect, exercise or enforce any claim, right or other interest arising under or with respect to the Premises or any portion thereof.

(b) Any failure by the Mortgagee to insist upon the strict performance by the Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Mortgagee, notwithstanding any such failure, shall have

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the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by the Mortgagor. Neither the Mortgagor nor any person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor, or of any other person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and the Mortgagee extending the time of payment or modifying the terms of the Note or this Mortgage without first having obtained the consent of the Mortgagor or such other person, and in the latter event, the Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee.

(c) Regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien or encumbrance on the Premises, the Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for the indebtedness and grant such extensions and indulgences in relation to the indebtedness secured hereby as the Mortgagee may determine, without the consent of the holder of any such subordinate lien or encumbrance and without any obligation to give notice of any kind thereto and without, as to the security or the remainder thereof, in anywise impairing or affecting the lien hereof or the priority thereof over any subordinate lien or encumbrance.

(d) The Mortgagee may resort for the payment of the indebtedness secured hereby to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

23. **Special Taxes.** If at any time the United States of America, any state thereof or any governmental subdivision of such state, having jurisdiction, shall require internal revenue stamps to be affixed to the Note, or other tax paid on or in connection therewith, the Mortgagor will pay the same with any interest or penalties imposed in connection therewith.

24. **Security Agreement.** When and if the Mortgagor and the Mortgagee shall become, respectively, debtor and secured party in any Uniform Commercial Code Financing Statement affecting Building Equipment or other property referred to or described herein, this Mortgage shall be deemed the Security Agreement as defined in the Uniform Commercial Code of the State of Illinois and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed (a) herein, (b) by general law or (c) as to such part of the security that is also reflected in said Financing Statement, by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Mortgagee's sole election. The filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this declaration and hereby stated intention of the parties hereto, that all items of Building Equipment and

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other property used in connection with the production of income from the Premises (furniture only excepted) or adapted for use therein or which are described or reflected in this Mortgage are, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as, part of the real estate irrespective of whether or not (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (A) the rights in or the proceeds of any fire and/or hazard insurance policy, (B) any award in eminent domain proceedings for a taking or for loss of value or (C) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Premises, whether pursuant to a lease or otherwise, shall never be construed as in any way altering any of the rights of the Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (A), (B) or (C) that notice of the Mortgagee's priority of interest, to be effective against a particular class of persons, including but not limited to the Federal government and any subdivisions or entity of the Federal government, must be filed in the Uniform Commercial Code records. Pursuant to Section 9-402(2) of said Uniform Commercial Code the Mortgagor hereby authorizes the Mortgagee, without the signature of the Mortgagor, to execute and file Financing Statements if the Mortgagee shall determine, in its reasonable discretion, that such are necessary or advisable in order to perfect its security interest in any fixtures, chattels or articles of personal property covered by this Mortgage, and shall pay to the Mortgagee on demand any expenses incurred by the Mortgagee in connection with the preparation, execution and filing of such statements and any continuation statements that may be filed by the Mortgagee. In addition to the Mortgagee's other rights and remedies hereunder, upon an Event of Default occurring, the Mortgagee, as the secured party under this Section 24, may, at its sole option and in its sole discretion, proceed against the Building Equipment under Part 5 of the Uniform Commercial Code, 810 ILCS 5/9-501 et seq., or may, pursuant to 810 ILCS 5/9-501(4), proceed against both the real property covered by this Mortgage and the Building Equipment together, in accordance with the Mortgagee's rights and remedies under this Mortgage and pursuant to IMFL.

25. Waiver of Exemptions, Marshalling, Redemption, Reinstatement, Etc.

(a) The Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Premises or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; and the Mortgagor hereby expressly waives all benefit or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and

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all who may claim under it, waives, to the extent that it lawfully may, all right to have the Premises marshalled upon any foreclosure hereof, and further waives and releases all technical procedural errors, defects and imperfections in any proceeding instituted by the Mortgagee hereunder.

(b) The Mortgagor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default and any and all rights of redemption from judgment, as allowed under Section 15-1601(b) of IMFL, and any and all rights of reinstatement under Section 15-1602 of IMFL, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under the Mortgagor and on behalf of each and every person acquiring any interest in the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption and reinstatement of the Mortgagor and all such other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law. The Mortgagor acknowledges that the Premises do not contain agricultural real estate, as said term is defined in Section 15-1201 of IMFL, or residential real estate, as said term is defined in Section 15-1219 of IMFL. To the fullest extent permitted by applicable law, the Mortgagor, on its own behalf and on behalf of all persons claiming or having an interest (direct or indirect) by, through or under the Mortgagor hereby waives any claims based on allegations that the Mortgagee has failed to act in a commercially reasonable manner or has acted in bad faith with respect to any matters whatsoever arising out of or in any way connected with this Mortgage or any of the other Loan Documents.

26. Joint and Several Liability. If the Mortgagor consists of more than one party, such parties shall be jointly and severally liable under any and all obligations, covenants and agreements of the Mortgage contained herein.

27. Cumulative Rights. The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others. No act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

28. Assignment by Mortgagee. Notwithstanding anything to the contrary contained herein, this Mortgage, the Note and any of the other documents evidencing or securing the indebtedness evidenced by the Note may not be assigned to any person or entity other than Swissotel Holding, Inc., a Delaware corporation, until one (1) year after the date of this Mortgage; provided, however, if notice of any indemnification claim in excess of \$50,000.00 permitted to be made pursuant to the Asset Purchase Agreement (as defined in the Note) has been received by Mortgagee within said one (1) year period and such claim is being diligently pursued (a "Claim"), then not until the earlier of (i) the date that a sum not less than the amount of such Claim is deposited with an independent party selected by Mortgagee and approved by Mortgagor, which approval shall not be unreasonably withheld, in escrow, to be held as security for said Claim; (ii) the date that such Claim has been resolved to the satisfaction of all parties; and (iii) sixty (60) days following the date of the entry of a final judgment in a judicial proceeding commenced with respect to such Claim.

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29. **Business Purpose Loan.** The Mortgagor covenants that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph (l)(c) of Section 4 of Act 205 of Chapter 815 of the Illinois Compiled Statutes, as amended from time to time, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said Paragraph.

30. **Specific Defined Terms.** Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "lease" shall mean "tenancy, subtenancy, lease or sublease," the word "sublease" shall mean "subtenancy, sub-subtenancy, sublease or sub-sublease" the word "Mortgagor" shall mean "Mortgagor and any subsequent owner or owners of the Premises" and shall be construed as if it read "Mortgagors" whenever the sense of this Mortgage so requires, the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage," and the word "person" shall mean "any individual, corporation, partnership or unincorporated association."

31. **No Oral Amendment.** This Mortgage cannot be changed or terminated orally but only by a writing signed by both the Mortgagor and the Mortgagee.

32. **Preservation of Lien; Further Assurances.** (a) The Mortgagor (i) shall keep this Mortgage a valid mortgage lien upon the Premises, (ii) shall not at any time create or allow to accrue or exist any debt, lien or charge which would be prior to or on a parity with the lien of this Mortgage upon any part of the Premises, and (iii) shall not cause or permit the lien of this Mortgage to be diminished or impaired in any way.

(b) The Mortgagor agrees to do such further acts and things and to execute and deliver such statements, assignments, agreements, instruments and other documents (including without limitation replacement and/or substitute notes for the Note) as the Mortgagee at any time may reasonably request in connection with the administration, maintenance, enforcement or transfer of this Mortgage and any other documents related hereto, to evidence, confirm, perfect or protect any lien or security interest granted or required to have been granted hereunder or under any of such other documents, or in order better to assure and confirm unto the Mortgagee its rights, powers and remedies hereunder and under such other documents.

33. **Compliance with Illinois Mortgage Foreclosure Law.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with IMFL.

(b) If any provision of this Mortgage shall grant to the Mortgagee (including the Mortgagee acting as mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of default under this Mortgage or the other Loan Documents which are more limited than the powers, rights or remedies that would otherwise be vested in the Mortgagee or in such receiver under IMFL.

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in the absence of said provision, the Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in IMFL to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee which are of the type referred to in Sections 15-1510 or 15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the obligations secured by this Mortgage and/or by the judgment of foreclosure.

34. **Fees and Expenses.** The Mortgagor shall pay all reasonable fees and charges incurred by the Mortgagee after the date of this Mortgage in connection with the loan evidenced by the Note and secured by this Mortgage, including, without limitation, all amounts described in Section 11 above and the reasonable fees and disbursements of the Mortgagee's attorneys, fees and expenses relating to any assignment, release, discharge, satisfaction or splitting of the lien hereof, and any consent required or action taken hereunder or under any of the loan instruments, examination of title, title insurance premiums, surveys and mortgage recording, documentary, transfer or other similar taxes and revenue stamps, and in default thereof the Mortgagee may pay the same and the Mortgagor will repay the same within ten (10) days after demand and, if not paid within such ten (10) day period, such amounts shall bear interest from the date paid or incurred at the rate per annum specified in Article 4 hereof and the same shall be added to the indebtedness secured hereby and be secured by this Mortgage.

35. **Splitting of Lien.** This Mortgage and the Note at any time until the same shall be fully paid and satisfied, upon the request of the Mortgagor but at the sole election of the Mortgagee, may be split or divided into two or more notes and two or more mortgages constituting liens on the Premises or portions thereof in such principal amounts as may be agreed upon, but in no event to exceed the aggregate principal amount evidenced by the Note and secured, or which under any contingency may be secured, by this Mortgage. The Mortgagor, upon request of the Mortgagee, shall execute, acknowledge and deliver to the Mortgagee and/or its designee or designees such documents as may be necessary to effectuate the foregoing, including, without limitation, such supplemental or substitute mortgages, assignments of rents and leases and security agreements and supplemental or substitute notes as the Mortgagee may require. If the Mortgagor requests such splitting, then the Mortgagor shall pay all expenses in connection with the making and recording of such documents, including, without limitation, recording fees, mortgage recording taxes, if any, the reasonable fees and disbursements of the Mortgagee's attorneys, fees and expenses relating to examination of title and title insurance premiums, if any.

36. **Covenants Running With The Land.** The covenants contained in this Mortgage shall run with the land and bind the Mortgagor, the heirs, personal representatives, successors and assigns of the Mortgagor and all subsequent encumbrancers, tenants and subtenants of the Premises and shall inure to the benefit of the Mortgagee and the successors and assigns of the Mortgagee.

37. **Multiple Actions.** To the extent permitted by law, the Mortgagee shall have the right from time to time to sue for any sums, whether interest, damages for failure to pay principal

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or any installment thereof, taxes, installments of principal, or any other sums required to be paid under the terms of this Mortgage as the same become due, without regard to whether or not the principal sum or any other sums secured by this Mortgage and evidenced by the Note shall be due and without prejudice to the right of the Mortgagee thereafter to bring an action to foreclosure, or any other action, for a default or defaults by the Mortgagor existing at the time such earlier action was commenced.

38. **Unenforceable Provisions Severable.** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby.

39. **Mortgagor's Representations.** The Mortgagor represents, warrants and covenants that: the Mortgagor is duly organized and legally existing and is in good standing under the laws of the state of its organization and duly qualified to transact business in the State of Illinois; the execution and delivery of, and performance under, this Mortgage are within the Mortgagor's powers and have been duly authorized by all requisite action on the part of the Mortgagor's members and managers; except as previously disclosed to the Mortgagee in writing, there are no judicial or administrative actions, suits or proceedings pending or threatened against or affecting the Mortgagor or the Premises; the Note, this Mortgage and all other instruments executed by the Mortgagor securing the payment of the Note constitute the legal, valid and binding obligations of the Mortgagor enforceable in accordance with their terms; the Mortgagor is now and, after giving effect to this Mortgage, will be in a solvent condition; no bankruptcy or insolvency proceedings are pending or contemplated by or against the Mortgagor; all reports, statements and other data furnished by the Mortgagor to the Mortgagee in connection with the loan evidenced by the Note are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the same not misleading; the Mortgagor is the lawful owner of good and marketable title to the Premises and has the right and authority to grant a continuing security interest in, bargain, sell, transfer, assign and mortgage the Premises; except with respect to the debt secured by the Prior Mortgage, there is no Financing Statement covering the Premises or the proceeds thereof on file in any public office; the execution and delivery of this Mortgage and the Note do not contravene, result in a breach of or constitute a default under any contract or agreement to which the Mortgagor is a party or by which the Mortgagor or any of its properties may be bound and do not violate or contravene any law, order, decree, rule or regulation to which the Mortgagor is subject.

40. **ERISA.** The Mortgagor is not directly or indirectly, through any of its partners, members or any other person or entity owning a beneficial interest in the Mortgagor or in any of its partners, a "Plan" (as such term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder, ("ERISA")) and except with respect to any Existing Plans (hereinafter defined) the Mortgagor is not directly or indirectly a party to or bound by the provisions of a Plan; the Premises do not constitute assets of a Plan; the Mortgagor shall not directly or indirectly engage in any transaction that would cause the indebtedness secured hereby or the exercise of any of the Mortgagee's rights under any of

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the documents evidencing, securing, guaranteeing or executed and delivered in connection with said indebtedness to become a prohibited transaction under ERISA; the Mortgagor is in compliance with, and until said indebtedness is repaid in full, the Mortgagor will continue to comply with, ERISA and shall not directly or indirectly establish, maintain, participate in or permit to exist any Plan for any of the Mortgagor's or any of its affiliates' employees except for any such Plans in existence on the date hereof and disclosed to the Mortgagee in writing on or prior to such date ("Existing Plans") and as to any such Existing Plans, the Mortgagor shall not, and shall not cause or permit any of its affiliates to, incur or continue any accumulated funding deficiency or withdrawal liability.

41. **No Joint Venture.** Nothing contained in the Note or this Mortgage shall be deemed or construed to create a partnership or joint venture or any other relationship between the Mortgagor and the Mortgagee, or cause the Mortgagee to be responsible in any way for the debts or obligations of the Mortgagor, it being the intention that the only relationship between the Mortgagee and the Mortgagor with respect to the Note and this Mortgage is that of lender and borrower. The Mortgagor and the Mortgagee expressly disclaim any sharing of liabilities, capital or operating losses or costs or expenses of owning, holding, operating, maintaining, managing, repairing or disposing of the Premises, and any rights of the Mortgagee to control, manage or operate the Premises, except in the capacity of lender pursuant to and under this Mortgage prior to the appointment of a receiver or foreclosure of this Mortgage and expiration of any redemption period.

42. **Party Beneficiary.** This Mortgage and the Note are for the direct benefit only of the Mortgagee and no provision shall be deemed or construed to create a third party beneficiary relationship obligating the Mortgagee to any third party. The making by the Mortgagee of any advance of the proceeds of the loan secured hereby under no circumstances shall be considered or deemed an approval or acceptance by the Mortgagee of any work performed or improvements constructed prior thereto. Although the Mortgagee may inspect plans and specifications, project cost estimates and budgets, the course of developmental activities and other matters pertaining to the Premises and/or the indebtedness secured hereby, such inspections are solely for the benefit and protection of the Mortgagee and neither the Mortgagor nor any third party shall have any right to rely thereon.

43. **Reasonableness.** If at any time the Mortgagor believes that the Mortgagee has not acted reasonably in granting or withholding any approval or consent hereunder, as to which approval or consent either the Mortgagee has expressly agreed to act reasonably, or absent such agreement, a court of law having jurisdiction over the subject matter would require the Mortgagee to act reasonably, then the Mortgagor's sole remedy shall be to seek injunctive relief or specific performance and no action for monetary damages shall be maintained.

44. **Prior Mortgage.** This Mortgage is subject and subordinate to the mortgage listed and identified on Schedule C attached hereto (the "Prior Mortgage"), but, subject to the provisions of that certain Subordination and Intercreditor Agreement of even date herewith between the Mortgagee and the holder of the Prior Mortgage, shall not be subject to any extension, renewal or modification thereof or increase therein unless made with the express written consent of the Mortgagee. The Mortgagor will make all payments required by the Prior Mortgage on or prior to the date when failure to make any such payments would entitle any holder thereof to accelerate the

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principal amount secured thereby and will not fail to keep, observe and perform all of the other covenants, conditions and agreements contained therein if such failure would entitle any holder of the Prior Mortgage to accelerate the principal amount secured thereby. Mortgagor shall not, without Mortgagee's prior written consent in each instance, refinance, replace, extend, renew, modify, increase or consolidate any Prior Mortgage or acquire, by way of subrogation or otherwise, any right or interest, direct or indirect, legal or beneficial, in any Prior Mortgage. Any default which shall continue beyond any applicable notice and grace period of any mortgagor under any Prior Mortgage shall constitute a default of the Mortgagor under this Mortgage. The Mortgagor shall send to the Mortgagee copies of any and all notices of default, demand or acceleration received from the holder of the Prior Mortgage, promptly after they are received. If the Hotel Management Agreement covering the Premises is cancelled, terminated or otherwise expires, then commencing immediately upon notice from the Mortgagee, the Mortgagor shall send to the Mortgagee: (i) copies of all letters of transmittal or other communications sent by the Mortgagor to the holder of the Prior Mortgage, including transmittal of sums required to be paid thereunder, at the same time that they are sent to any such holder; (ii) copies of all notices, letters and other communications (in addition to notices of default, demand and acceleration provided for in the preceding sentence) received from the holder of the Prior Mortgage, promptly after they are received; and (iii) proof of payment of all sums required to be paid by the Mortgagor to the holder of the Prior Mortgage, including but not limited to payments of principal, interest, taxes, assessments and insurance premiums, promptly after such payments are made. The Mortgagor shall execute and deliver, promptly after a request by the Mortgagee, such instruments as the Mortgagee may deem necessary to permit the Mortgagee to cure any default under the Prior Mortgage and preserve the interest of the Mortgagor in the Premises. The curing by the Mortgagee of any such default under the Prior Mortgage shall not, however, constitute the curing of a default under this Mortgage which occurred by virtue of the failure of the Mortgagor to perform any covenant or agreement contained in the Prior Mortgage.

45. Prior Mortgage. This Mortgage is subject and subordinate to that certain Mortgage of even date herewith by Mortgagor to Swissotel Ventures, Inc. in the principal sum of \$75,000,000.00.

46. Purchase Money Mortgage. This Mortgage is a purchase money mortgage given to secure indebtedness of the Mortgagor to the Mortgagee which indebtedness represents a portion of the consideration payable by the Mortgagor to the Mortgagee for the conveyance of the Premises.

47. [INTENTIONALLY OMITTED]

48. Miscellaneous Illinois Provisions.

(a) The Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the obligations secured hereby, or any part thereof or any

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deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation), to any and all leases of all or any part of the Premises upon the execution by the Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated, of a unilateral declaration to that effect.

(b) It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof 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. In addition, it being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge with any other mortgage in favor of the Mortgagee encumbering all or any portion of the Premises and the lien thereof, it is hereby further understood and agreed that should the Mortgagee acquire any additional or other lien with respect to the Premises, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge with any such other mortgage and the lien thereof, toward the end that this Mortgage may be foreclosed as if owned by a stranger to any such other mortgage and the lien thereof.

49. Limited Recourse. Notwithstanding any other provision of this Mortgage (except for any liability arising out of or attributable to any Recourse Act, as defined below), the Note or any certificate or document delivered pursuant to the Note or this Mortgage or in connection with the indebtedness evidenced by the Note, the following provisions shall apply:

(i) None of (A) any member, officer, employee, agent or affiliate of the Mortgager, or (B) any member, partner, principal, tenant in common, officer, director, trustee, beneficiary, shareholder, employee, agent or affiliate of any of the persons referenced in the preceding clause (A) (the foregoing persons referenced in the immediately preceding clauses (A) and (B) are herein collectively called "Exculpated Persons") shall have any personal liability for:

(1) the payment of any indebtedness evidenced by the Note (whether in respect of principal, interest or fees); or

(2) the payment or performance of any other obligation under the Note, this Mortgage or under any of the other certificates or documents delivered pursuant thereto or in connection with the indebtedness evidenced by the Note; and

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(ii) No judgment for payment of money or damages including, without limitation, a deficiency judgment shall lie against any Exculpated Person in any suit or action, including, without limitation, a suit or action to foreclose the lien of this Mortgage, or realize upon the security of any of the other documents evidencing or securing the indebtedness evidenced by the Note, and any judgment in any such suit or action or other suit or action to realize upon such security shall be enforceable against the Exculpated Persons only to the extent of:

(1) such Exculpated Person's interest in the collateral pledged to the Mortgagee as security for the indebtedness evidenced by the Note and other security realized upon; and

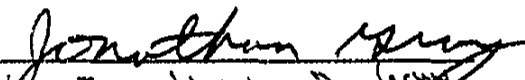
(2) the income from the same from the time of appointment of a receiver therefor for the benefit of the Mortgagee or commencement of such suit or action, whichever is earlier;

provided, however, that nothing contained in this Article shall impair the validity of the indebtedness evidenced by the Note or, subject to the foregoing limitation on deficiency and money judgments, be construed to prevent the Mortgagee from commencing a suit or action on the Note if the same is required under applicable law in conjunction with or as a part of a suit or action to foreclose or otherwise realize upon the security of this Mortgage or any other document securing the indebtedness evidenced by the Note. As used herein, a "Recourse Act" means the occurrence of any one or more of the following: (a) any fraudulent act of the Mortgagor or any Exculpated Person; (b) any misapplication of or failure to apply or use any income, rents, insurance proceeds or condemnation awards or proceeds of any taking under power of eminent domain or conveyance in lieu thereof in accordance with the terms of this Mortgage; (c) any intentional waste of the Premises; or (d) the liability, if any, of Mortgagor arising out of or pursuant to Article 12(b)(v) of this Mortgage.

50. Headings. The headings herein are for convenience only and shall not limit or define the meaning of the provisions of this Mortgage.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor the day and year first above written.

BRE/Swiss L.L.C.

By: 
Name: Jonathan D. Gray
Title: V.P.

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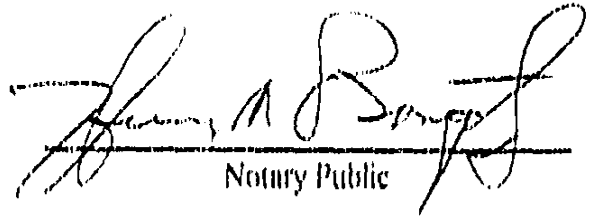
STATE OF NEW YORK)

§ 88.1

COUNTY OF NEW YORK)

On the 1st day of August, 1997, before me personally came Jacobson D. Gray to me known, who, being by me duly sworn, did depose and say that he resides at 345 Park Ave. NY, NY; that he is the ~~managing member~~ of BNS 15155 LLC, the limited liability company described in and which executed the foregoing instrument; that the execution of the instrument by Jacobson D. Gray was duly authorized according to the operating agreement; that such ~~member~~ executed the instrument on behalf of said limited liability company pursuant to said authorization and that he signed his name thereto by like authority.

* - Vice President



Notary Public

HARVEY M. BONERATH
 Notary Public, State of New York
 No. 02808378480
 Qualified in Westchester County
 Commission Expires September 30, 1999

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HTNAR3M00 M73/RAH
Mortgage State of New York
00485520HCO 0M
Qualified in Westchester County
County Exhibit Schedule 307.000

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Schedule A

Parcel 1:

A parcel of land, being a part of the lands lying east of and adjoining Fort Dearborn addition to Chicago, being the whole of the south west fractional 1/4 of section 10, Township 39 north, Range 14 east of the third principal meridian, in Cook County, Illinois, located and described as follows:

Commencing on the east line of North Columbus Drive, 110 feet wide, (as said North Columbus Drive was dedicated and conveyed to the City of Chicago by instrument recorded in the Recorder's Office of Cook County, Illinois on June 5, 1972 as Document Number 21925615) at a point which is 768.878 feet, measured along said east line, north from the point of intersection of said east line, (extended south) with the north line of East Randolph Street, (as said East Randolph Street was dedicated and conveyed to the City of Chicago by instrument recorded in said Recorder's Office on December 11, 1979, as Document Number 25276446), and running thence east along a line perpendicular to said east line of North Columbus Drive (said perpendicular line being also the north line of the arcade level park as said arcade level park is located and defined in the amendatory lake front ordinance passed by the City Council of the City of Chicago on September 17, 1969), a distance of 381.738 feet; thence north along a line perpendicular to said last described course, a distance of 146.625 feet, to the point of beginning for the parcel of land hereinafter described; thence continuing north along said last described perpendicular line, a distance of 141.107 feet to an intersection with the southerly line of East Wacker Drive as said East Wacker Drive was dedicated and conveyed to the City of Chicago by the aforesaid instrument recorded as Document Number 21925615; thence westwardly along said southerly line of East Wacker Drive (said southerly line being here a straight line deflecting 85 degrees 24 minutes 29 seconds to the left from a northward extension of the last described course), a distance of 12.571 feet; thence continuing westwardly along said southerly line of East Wacker Drive, said southerly line being here the arc of a circle which is tangent to the last described course, is convex to the south and has a radius of 1840.488 feet, a distance of 162.710 feet; thence continuing westwardly along said southerly line of East Wacker Drive, said southerly line being here a straight line which is tangent to the last described course, a distance of 47.914 feet to an intersection with a line of 160.571 feet, measured perpendicularly, east from and parallel with said east line, and northward extension thereof, of North Columbus Drive; thence south along said parallel line a distance of 170.325 feet to a point which is 146.625 feet north from the aforementioned north line of the arcade level park; thence east along a line perpendicular to said last described course, a distance of 221.167 feet, to the point of beginning.

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Parcel 2:

Perpetual and non-exclusive easement to install, use, maintain, repair and replace underground storm sewer, sanitary sewer, water, gas and electric lines in the 15 foot wide strip of land (herein called "Utility Easement Area") to serve Parcel 1 from the existing 66 foot utility easement, as created by instrument titled "Easements, Covenants and Restrictions" recorded June 30, 1986 as document number 86267044, over the following described land:

A parcel of land, being a part of the lands lying east of and adjoining Fort Dearborn addition to Chicago, being the whole of the south west fractional 1/4 of Section 10, Township 39 north, Range 14 east of the third principal meridian, in Cook County, Illinois, which parcel of land is bounded and described as follows:

Commencing on the east line of North Columbus Drive (as said North Columbus Drive was dedicated and conveyed to the City of Chicago by instrument recorded in the Recorder's Office of Cook County, Illinois, on June 5, 1972 as document number 21925615) at a point which is 844.72 feet, measured along said east line, north from the point of intersection of said east line, extended south, with the north line, extended east, of East Randolph Street; and running thence east along a line perpendicular to said east line of North Columbus Drive (said perpendicular line being also the north line of a certain strip of land, 66 feet wide, conveyed to the City of Chicago for public utilities by instrument recorded in said Recorder's Office on May 14, 1962 as document number 18474522) a distance of 170.571 feet to the point of beginning at the south west corner of the hereinafter described parcel of land; thence north along a line parallel with said east line of North Columbus Drive, a distance of 70.783 feet; thence east along a line perpendicular to the last described line, a distance of 15.00 feet; thence south along a line parallel with said east line of North Columbus Drive, a distance of 70.783 feet to said north line of the strip of land conveyed to the City of Chicago for public utilities; thence west along said line a distance of 15.00 feet to the point of beginning.

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Schedule B

Affiliated Mortgages: Mortgage dated even date herewith by Mortgagor to Mortgagee securing the Note and in the maximum principal amount of \$15,000,000 and encumbering the NY Hotel (as defined in the Asset Purchase Agreement); Mortgage dated even date herewith by Mortgagor to Swissotel Ventures, Inc. in the principal amount of \$75,000,000 and encumbering the Premises; Mortgage dated even date herewith by Mortgagor to Swissotel Ventures, Inc. in the principal amount of \$75,000,000 and encumbering the MA Hotel (as defined in the Asset Purchase Agreement); and Deed to Secure Debt dated even date herewith by Mortgagor to Swissotel Ventures, Inc. in the principal amount of \$75,000,000 and encumbering the GA Hotel (as defined in the Asset Purchase Agreement).

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Schedule C
Prior Mortgage

Deed of Trust, Security Agreement And Fixture Filing dated even date herewith
in the principal sum of \$250,000,000 made by Mortgngor to Citicorp Real Estate, Inc.

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