

This Instrument Was Prepared
By And When Recorded Should
Be Mailed To:

H. James Fox, Esq.
c/o Holleb & Coff
55 East Monroe Street
Suite 3900
Chicago, IL 60603-5896

1st AMERICAN TITLE order # CC104832
9/20/97
Jm

TEMPORARY CONSTRUCTION EASEMENTS AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENTS AGREEMENT (this "Agreement"), dated this 4th day of December, 1997, is between Harris Bank Palatine, N.A., as Successor Trustee to Harris Bank of Roselle, as Trustee under Trust Agreement dated May 11, 1993 and known as Trust Number 47528 ("Harris") and Marriott Senior Living Services, Inc. ("Marriott"). The following statements are a material part of this Agreement:

A. At the time of recording of this document, Harris is or will be the owner of the property described in Exhibit A attached hereto and made a part hereof by this reference and known as Lot 1.

B. At the time of recording of this document Marriott is or will be the owner of the property described in Exhibit B attached hereto and made a part hereof by this reference, and known as Lot 2.

C. Marriott has agreed to construct, or to cause to be constructed, certain improvements on the Marriott Property (the "Marriott Improvements") and Harris has agreed to construct, or to cause to be constructed, certain improvements on the Harris Property and certain improvements on the Marriott Property (the "Harris Improvements") as more fully set forth in Amendment No. 2 to Purchase and Sale Agreement between Harris and Marriott dated as of December 4, 1997 ("Contract"), which is incorporated herein as if fully restated.

D. The Marriott Improvements and the Harris Improvements are necessary to properly use the Marriott Property and the Harris Property.

E. Harris and Marriott have agreed in the Contract that Harris shall be entitled to recapture a portion of the costs of constructing the Harris Improvements, all as more fully set forth therein.

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F. Harris and Marriott have agreed that certain temporary easements are needed in order for each party to go upon the other's property in order to carry out the obligations of the Contract.

NOW THEREFORE, in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the following grants, agreements, covenants and restrictions are made:

1. The Recitals.

The recitals are incorporated as if fully restated herein.

2. Warranties of Title.

Marriott and Harris warrant to each other that each respective party has good and indefeasible fee simple title to the Marriott Property and Harris Property, respectively, and to the easement premises on their respective Lots; that each has the full right and lawful authority to grant these easements, and that each party shall and may peaceably have, hold and enjoy the easements.

3. Temporary Construction Easement Over Marriott Property.

Marriott hereby grants to Harris, and Harris's successors, assigns, agents, employees, contractors, and subcontractors (collectively "**Harris Parties**"), a temporary, non-exclusive easement, as an appurtenance to the Harris Property, over, upon, across, and under that portion of the Marriott Property as is reasonably necessary to complete the work described in the Contract for the purpose of altering, installing, constructing, surveying, reconfiguring, repairing, removing and restoring landscaping, roads, and paving to the extent the same are reasonably necessary to complete the work, together with the right of ingress and egress for persons, motor vehicles, materials, and equipment over, upon and across the Marriott Property to the extent necessary for the exercise by Harris and the Harris Parties (as such term is hereinafter defined) of the rights granted herein (the easements described in this paragraph are collectively referred to as the "**Marriott Temporary Easements**").

Harris hereby grants to Marriott, and Marriott's successors, assigns, agents, employees, contractors, and subcontractors (collectively "**Marriott Parties**"), a temporary, non-exclusive easement, as an appurtenance to the Marriott Property, over, upon, across, and under that portion of the Harris Property as is reasonably necessary to complete the work described in the Contract for the purpose of altering, installing, constructing, surveying, reconfiguring, repairing, removing and restoring landscaping, roads, and paving to the extent the same are reasonably necessary to complete the work, together with the right of ingress and egress for persons, motor vehicles, materials, and equipment over, upon and across the Harris Property to the extent necessary for the exercise by Marriott and the Marriott Parties of the rights granted herein (the

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easements described in this paragraphs are collectively referred to as the "Harris Temporary Easements").

4. Insurance.

Harris shall maintain comprehensive general liability insurance for bodily injury, death or property damage occurring in or upon the Marriott Property, during the period of construction by Harris and the exercise of Harris's rights in connection with the Marriott Temporary Easements, for limits not less than One Million and No/100 Dollars (\$1,000,000.00) with respect to any one occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the general aggregate. Such insurance shall name Marriott as an additional insured and shall provide for a minimum of thirty (30) days advance written notice of cancellation to all insureds thereunder. Marriott shall reimburse Harris for the costs of the insurance within five (5) business days after written demand for same, which demand shall include an invoice evidencing same.

In the event that Marriott elects to complete the work pursuant to the Contract, Marriott shall maintain comprehensive general liability insurance for bodily injury, death or property damage occurring in or upon the Harris Property, during the period of construction by Marriott and the exercise of Marriott's rights in connection with the Harris Temporary Easements, for limits not less than One Million and No/100 Dollars (\$1,000,000.00) with respect to any one occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the general aggregate. Such insurance shall name Harris as an additional insured and shall provide for a minimum of thirty (30) days advance written notice of cancellation to all insureds thereunder. Harris shall reimburse Marriott for the costs of the insurance within five (5) business days after written demand for same, which demand shall include an invoice evidencing same.

5. Running of Benefits and Termination.

All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, assignee-owners, tenants, employees and personal representatives of the parties. This temporary easement shall terminate on December 31, 2003.

6. Default.

If there is a failure by either party to perform, fulfill or observe any agreement contained within this Agreement, to be performed, fulfilled or observed by it, continuing for thirty (30) days, or in situations involving potential danger to the health or safety of persons in, on or about or substantial deterioration or impairment of use of the Marriott Property and/or the Harris Property in each case after written notice, the aggrieved party may, at its election, cure such failure or breach on behalf of the defaulting party or seek any remedies available in equity or at law, but in no event have the right to terminate this Agreement. Any amount which the party so electing shall expend for such purpose, or which shall otherwise be due by either party to the

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other, shall be paid to the party to whom due on demand, without context, upon delivery of its invoice, together with interest at the lower of (1) the rate of twelve percent (12%) per annum, or (2) the maximum rate permissible from time to time under applicable law, from the date of the expenditure or the date when it shall have become due to the date of payment in full. The provisions of this paragraph shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time on the land of the defaulting party and the rights of the holder or holders of any mortgages or deeds of trust. The obligations of each party shall be limited to its interest in its respective property.

7. Construction.

The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Harris or Marriott is carried out.

8. Notice.

Marriott's address is Marriott International, Inc., Department 52/923, 10400 Fernwood Road, Bethesda, Maryland 20817, Attention: Kevin E. Montano, Esq., and Marriott International, Inc., Department 51/931, 60, 10400 Fernwood Road, Bethesda, Maryland 20817, Attention: Elizabeth Corr Smedley, Esq., with a copy to Venable, Baetjer and Howard, LLP, 2010 Corporate Ridge, Suite 400, McLean, Virginia 22102, Attention: Elizabeth Corr Smedley, Esq. Harris's address is c/o Terrestriis Development Company, 1301 West 22nd Street, Suite 210, Oak Brook, Illinois 60521, Attention: Dennis A. Cortesi, with a copy to Holleb & Coff, 55 East Monroe Street, Suite 4100, Chicago, Illinois 60603, Attention: H. James Fox, Esq. Any party may lodge written notice of change of address. All notices shall be sent by certified mail, return receipt requested, to the addresses provided for in this paragraph and shall be deemed given when placed in the mail.

9. Trustee Exculpation. This Agreement is executed by Harris, not personally but as Successor Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Successor Trustee, and no personal liability shall be asserted or be enforceable against said Successor Trustee, because or in respect of this Agreement, all such liability, if any, being expressly waived by each party hereto.

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SEE EXCERPT ONLY FIRST ATTACHED
HERE TO AND MAKE A COPY OF THE

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TO INDICATE THEIR CONSENT TO THIS AGREEMENT, Marriott and Harris, or their authorized representatives or officers, have signed this document.

HARRIS BANK PALATINE, N.A.,
as Successor Trustee aforesaid

MARRIOTT SENIOR LIVING
SERVICES, INC.

By: _____

Name: _____

Title: _____

By: Michael J. Gracopelli

Name: Michael J. Gracopelli Jr.

Title: Vice President

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, DAVID P. TRIMBLE, a Notary public in and for ^{Office of David Trimble} said County in the State aforesaid, do hereby certify that Michael J. Broderick, Inc., Vice President of MARRIOTT SENIOR LIVING SERVICES, INC., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he ~~she~~ signed and delivered the said instrument as his ~~her~~ own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of December, 1997.

(David P. Trimble)
Notary Public

SEAL

My commission expires:
1/1/98

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TO INDICATE THEIR CONSENT TO THIS AGREEMENT, Marriott and Harris, or their authorized representatives or officers, have signed this document.

**HARRIS BANK PALATINE, N.A.,
as Successor Trustee aforesaid**

**MARRIOTT SENIOR LIVING
SERVICES, INC.**

By: [Signature]

By: _____

Name: [Signature]

Name: _____

ATTEST: [Signature]
Title: [Signature]
Dana M. King, Trust Officer

Title: _____

SEE EXCULPATORY PAPER ATTACHED
HERETO AND MADE A PART HEREOF

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EXCULPATORY RIDER

This instrument is executed by the Harris Bank Palatine, N.A. as Trustee under the provisions of a Trust Agreement dated 5-11-93 and known as Trust no. 13078, not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of the power of direction of said Trust and Harris Bank Palatine, N.A. warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, notwithstanding anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreements of said Trustee are each and every one of them not made with the intention of binding Harris Bank Palatine, N.A. in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against the Harris Bank Palatine, N.A. on account of any representations, Warranties, (including but not limited to any representations and/or warranties in regards to potential and/or existant Hazardous Waste) covenants, undertakings and agreements contained in the instrument, (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, all such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or State Environmental or Hazardous Waste laws) hereunder being specifically limited to the Trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any costs, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses, arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming, under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature, in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the Trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempted, nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.

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EXHIBIT "A"

Property of Cook County Clerk's Office

LOT 1 IN THE PLAT OF SUBDIVISION OF PARCEL "I" IN HOFFMAN ESTATES, COOK COUNTY, ILLINOIS,
RECORDED IN COOK COUNTY, ILLINOIS, ON NOVEMBER 17TH, 1997 AS DOCUMENT 97857293,
BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 41 NORTH,
RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING IN COOK COUNTY, ILLINOIS.

PIN: Part of 07-07-401-005

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EXHIBIT "B"

Property of Cook County Clerk's Office

LOT 2 IN THE PLAT OF SUBDIVISION OF PARCEL "I" IN HOFFMAN ESTATES, COOK COUNTY, ILLINOIS,
RECORDED IN COOK COUNTY, ILLINOIS, ON NOVEMBER 17TH, 1997 AS DOCUMENT 97857293,
BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 41 NORTH,
RANGE 30 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING IN COOK COUNTY, ILLINOIS.

PIN: Part of 07-07-401-005