

UNOFFICIAL COPY

97052077

DEPT-01 RECORDING \$49.00
 T#0012 TRAN 3822 01/23/97 15:01:00
 #3960 # RC #-97-052077
 COOK COUNTY RECORDER

**MEMORANDUM AND FIRST AMENDMENT TO
 MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS AND SECURITY AGREEMENT AND PARTIAL RELEASE**

49.00
ER

This MEMORANDUM AND FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT AND PARTIAL RELEASE (this "First Amendment") is made and entered into as of the 22nd day of January, 1997 by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement dated June 26, 1984 and known as Trust Number 61447 and GOLF-SKOKIE ASSOCIATES I, an Illinois limited partnership, (collectively, the "Mortgagor"), and BANK OF AMERICA ILLINOIS, an Illinois banking corporation (the "Mortgagee").

WITNESSETH: THAT

WHEREAS, Mortgagor and Mortgagee have executed that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated as of April 13, 1995 and recorded April 18, 1995 as document number 95-256011 in the recorder's office of Cook County, Illinois (the "Mortgage"); and

WHEREAS, the Mortgage secures a Note dated April 13, 1995, made by Mortgagor and payable to the order of Mortgagee, in the original principal amount of Twenty Million and No/100 Dollars (\$20,000,000.00), which note is concurrently herewith being amended by that certain First Amendment to Note dated as of the date hereof (as so amended, the "Note"); and

WHEREAS, the Mortgage encumbers certain real property legally described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Mortgagee has agreed to release a portion of the collateral securing the Mortgage, said portion being defined in the Mortgage as the "Hotel," and, in connection

This document prepared by and after recording should be returned to:

Barack, Ferrazzano, Kirschbaum & Perlman
 333 W. Wacker Drive, Suite 2700
 Chicago, Illinois 60606
 Attention: Catherine A. McNichols, Esq.

Permanent Index Nos.:
 10-15-100-015-0000
 10-15-100-016-0000
 10-15-100-017-0000

Property Address:
 4709-4761 Golf Road and 9599 Skokie
 Boulevard, Skokie, Illinois 60007

BOX 333-CTI

NO 262 48 5L

97052077

1 of 2

UNOFFICIAL COPY

therewith, Mortgagor and Mortgagee desire to amend the terms of the Mortgage, as hereinafter set forth;

NOW THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. All defined terms herein, unless otherwise specified herein, shall have the meaning ascribed to them in the Mortgage.

2. Mortgagee hereby releases, conveys, and quit claims unto Mortgagor, all of the right, title, interest, claim or demand whatsoever to the portion of the Mortgaged Premises described on Exhibit B attached hereto and made a part hereof, together with all the appurtenances and privileges thereunto belonging or appertaining, which Mortgagee may have acquired in, through or by the Mortgage. Mortgagor hereby acknowledges that the foregoing is a partial release only, and the Mortgage, as amended hereby, continues to be in full force and effect as to the other real estate and property described in the Mortgage and not expressly released by the immediately preceding sentence.

3. Notwithstanding anything to the contrary contained in the Mortgage, Mortgagee shall be under no further obligation to release any or all of the Mortgaged Premises, with the exception of the "Vacant Lot" (as defined in Section 15 of the Mortgage), pursuant to the terms of said Section 15, until the payment in full of all principal of and interest on, and other amounts due, under the Note and the payment and performance in full of all other indebtedness secured by the Mortgage.

4. The following provisions are hereby deleted from the Mortgage in their entirety: (a) Exhibit D to the Mortgage, and (b) the language in Section 14 and Section 15 of the Mortgage that is set forth on Exhibit C attached hereto and made a part hereof.

5. The following is hereby inserted in Section 14 of the Mortgage as the last paragraphs of said Section 14:

"In the event that Mortgagor desires to transfer its interest in the Mortgaged Premises, Mortgagor shall notify Mortgagee in writing of the identity of the proposed transferee and deliver to Mortgagee such additional financial and other information as Mortgagee may reasonably request in connection with such transfer and such transferee. Mortgagor acknowledges that Mortgagee shall have the right to grant or deny, in its sole and absolute discretion, its consent to such proposed transfer and that Mortgagor shall bear the reasonable fees and expenses of Mortgagee and its counsel in connection with the review of such proposed transfer. Any such proposed transfer shall be conditioned upon the consent of Mortgagee, which consent may be given or denied in Mortgagee's sole and absolute discretion, and upon delivery by Mortgagor and its proposed transferee of (i) all documentation necessary to evidence such transfer in form and substance reasonably acceptable to Mortgagee; (ii) all documentation which Mortgagee may reasonably request to evidence the new loan to the proposed transferee; (iii) all documentation which Mortgagee may request, in its sole and absolute discretion, to perfect or maintain

97052077

UNOFFICIAL COPY

perfection of a first priority security interest in the Mortgaged Premises, including, without limitation, the Office; (iv) a release instrument in form and content reasonably satisfactory to both Mortgagor and Mortgagee; (v) such new and updated title insurance as Mortgagee may reasonably request; and (vi) the payment by Mortgagor of any and all costs and expenses reasonably incurred by Mortgagee in connection with such transfer.

Notwithstanding the foregoing, if no Event of Default or event which, with the giving of notice or passage of time or both, would constitute an Event of Default or default under the Mortgage, the Note or any of the other Security Instruments, has occurred and is continuing, Mortgagee agrees that, upon the written request of Mortgagor, Mortgagee shall, upon satisfaction in full of all of the terms and conditions of the Escrow, as hereinafter defined, consent to the transfer by Mortgagor to the Transferee (as hereinafter defined) of the Mortgaged Premises, including, without limitation, the Office, in the form of (a) a conveyance of the Mortgaged Premises, including, without limitation, the Office, (b) an absolute assignment of the entire beneficial interest in a land trust which holds fee simple title to the Mortgaged Premises, including, without limitation, the Office, or (c) an absolute assignment of general partnership interests in any partnership borrower under the Loan (or any beneficiary of a land trust borrower under the Loan) or in any constituent partner of such partnership borrower, or any combination of the foregoing, provided that:

(i) the transferee of the Mortgaged Premises, including, without limitation, the Office, is a real estate investment trust ("REIT") or an "umbrella partnership" of which a REIT is the sole general partner or a single purpose entity wholly owned by the REIT or such umbrella partnership, and at the time of such transfer such REIT meets the following criteria (the "Transferee"):

(A) (1) the directors and principal officers of such REIT have substantial experience in the ownership, operation and leasing of similar properties, or (2) such REIT is a newly-formed REIT, the management and operation of which is performed by substantially the same persons who manage and operate the Office, and

(B) such REIT is self-managed and has (1) a total market capitalization of not less than \$500,000,000, (2) a total of shareholders' or partnership equity plus accumulated depreciation and minority interests on a GAAP book value basis, of not less than \$250,000,000, and (3) a ratio of total debt to total assets (excluding intangible assets and accounts receivable) of not more than 55% (total assets being defined for this purpose in accordance with GAAP and including accumulated depreciation and amortization);

(ii) Mortgagee has received thirty (30) days' prior written notice from Mortgagor of the proposed transfer and all information reasonably required by Mortgagee to determine whether the Transferee meets the criteria set forth in subparagraph (i) immediately above;

97052077

UNOFFICIAL COPY

(iii) Intentionally deleted;

(iv) Intentionally deleted;

(v) Mortgagor has deposited in the Escrow all documentation necessary to evidence such transfer in form and substance reasonably acceptable to Mortgagee;

(vi) Mortgagor has deposited in a money lender's escrow governed by escrow instructions as typically prepared on behalf of Mortgagee by Mortgagee's counsel (the "Escrow"), all documentation which Mortgagee may reasonably request, to evidence the assumption of the Loan by the Transferee, which such Loan shall be recourse to Transferee, including, without limitation, (A) an endorsement to Mortgagee's title policy, which endorsement states that the mortgage on the Office remains a first and prior lien against the Mortgaged Premises, including, without limitation, the Office, after assumption by the Transferee; (B) the Transferee expressly assumes and acknowledges personal liability for the indebtedness under the Loan and all other obligations under any loan documents evidencing the Loan pursuant to assumption documents; provided that such assumption documents shall (1) not materially modify the business terms of the Loan documents, including, without limitation, interest rate, amortization and maturity date, and such Loan documents shall remain in substantially the same form, except as reasonably necessary to include representations and warranties relating to the requirements of subparagraph (i) above and covering customary matters relating to Transferee such as due organization, existence, good standing, and authority and the validity and enforceability of the assumption documents and any other loan documents signed by Transferee or any guarantor of the Loan; (2) provide that the transfer of any shares of REIT stock or partnership interests of any umbrella partnership shall not trigger any "due-on-sale" clause in any of such loan documents, and (3) include, in substitution for the guaranty then securing the Loan, a full repayment guaranty of the Loan from the REIT and umbrella partnership, in form and substance substantially similar to such existing guaranty except with respect to any modifications made pursuant to subsections (1)(x) and (1)(y) above; (C) the Transferee executes such documents as may be required by Mortgagee, in its sole and absolute discretion, to perfect or maintain perfection of a first priority security interest in the Mortgaged Premises, including, without limitation, the Office; and (D) a legal opinion from Transferee's attorneys in form and substance reasonably acceptable to Mortgagee;

(vii) Mortgagor pays all reasonable out-of-pocket costs and expenses incurred by Mortgagee in connection with such division, transfer and assumption, including all legal, accounting, appraisal and title insurance, whether or not such transfer is actually consummated."

6. Mortgagor hereby represents, warrants and covenants to Mortgagee that (a) the Mortgage continues to secure the indebtedness evidenced by the Note and any other Security Instrument (as defined in the Note), and (b) the Mortgage, as expressly amended by this First

97052077

UNOFFICIAL COPY

Amendment, shall continue in full force and effect, and as so amended, is hereby ratified, confirmed and approved.

7. The words "the Hotel Manager or the" are hereby deleted from clause (v) of Section 20(e) of the Mortgage.

8. Section 20(h) of the Mortgage is amended to read as follows:

"(h) The Office Manager shall, without the prior written consent of Mortgagee (which consent shall be granted by Mortgagee in its reasonable discretion), cease to be the manager of the Office or any transfer of a controlling interest in any corporate or partnership entity of the Office Manager except to any entity controlled by or affiliated with Samuel Zell."

9. The second full sentence of Section 48 of the Mortgage is deleted.

10. This instrument is executed by the undersigned American National Bank and Trust Company of Chicago, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of said Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that said Trustee merely holds title to the property herein described and has no agents, employees or control over the management of the property and no knowledge of other factual matters except as represented to it by the beneficiary(ies) of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of said Trustee in this instrument, all such liability being expressly waived by every person now or hereafter claiming any right or security hereunder; and the owner of any indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to said Trust estate for the payment thereof.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

97052071

UNOFFICIAL COPY


Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed as of the day and year first above written.

MORTGAGOR:


AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under Trust Agreement dated June 26, 1984 and known as Trust Number 61447

By: 
Name: J. LUTKUS
Title: TRUST OFFICER

GOLF-SKOKIE ASSOCIATES I, an Illinois limited partnership

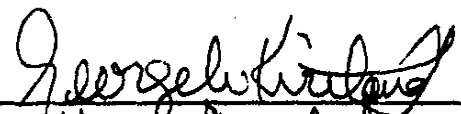
By: Samuel Zell Robert Lurie General Partners, an Illinois general partnership, its sole general partner

By: Zell General Partnership, Inc., an Illinois corporation, a general partner

By: 
Name: Donald J. Lieberstein
Its: Vice President

MORTGAGEE:

BANK OF AMERICA ILLINOIS, an Illinois banking corporation

By: 
Its: Vice President

97052071

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Anita M. Lutkus **TRUST OFFICER**, President of American National Bank and Trust Company of Chicago, known to me to be acting not personally but as Trustee under Trust Agreement dated June 26, 1984 and known as Trust Number 61447 and _____ Secretary of said Bank, are subscribed to the foregoing instrument as such _____ President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and said _____ Secretary then and there acknowledged that he/she, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and official seal, this 17th day of January, 1997.



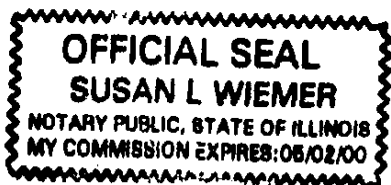
Cynthia K. Harris
Notary Public

My Commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald J. Liebenstein, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed, sealed and delivered the foregoing instrument as his/her own free and voluntary act, as the Vice President of Zell General Partnership, Inc., an Illinois corporation, a general partner of Samuel Zell Robert Lucie General partners, an Illinois general partnership, the general partner of Golf-Skokie Associates I, an Illinois limited partnership, and for the uses and purposes therein set forth.

Given under my hand and official seal, this 17th day of January, 1997



Susan L. Wiemer
Notary Public

My Commission expires: 5/2/00

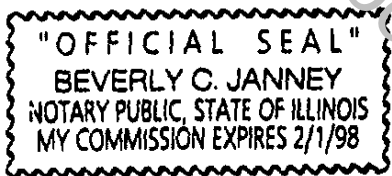
97052077

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that George W. Kirtland, Vice President of Bank of America Illinois, an Illinois banking corporation, and _____, _____ Secretary of said corporation, who are subscribed to the foregoing instrument as such Vice President and _____ Secretary, respectively, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and the said _____ Secretary then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation.

Given under my hand and official seal, this 21st day of January, 1998.



Beverly C. Janney
Notary Public

My Commission expires: 2-1-98

COOK County Clerk's Office

97052077

UNOFFICIAL COPY

EXHIBIT A

PARCEL 1:

THAT PART OF LOT 1 IN GOLF-SKOKIE ASSOCIATES SUBDIVISION, A PLAT OF WHICH WAS RECORDED DECEMBER 18, 1996 AS DOCUMENT 96 955 215, ALL IN COOK COUNTY, ILLINOIS, WHICH FALLS WITHIN THE FOLLOWING DESCRIBED TRACTS:

TRACT A:

THE NORTH 464.00 FEET OF THAT PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE EAST 992.13 FEET THEREOF TOGETHER WITH THE SOUTH 204.00 FEET OF THE NORTH 464.00 FEET OF THE WEST 81.00 FEET OF THE EAST 992.13 FEET OF SAID NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE AFORESAID SECTION 15, ALL TAKEN AS ONE TRACT, EXCEPTING FROM THE ABOVE DESCRIBED TRACT THAT PART THEREOF TAKEN FOR STREETS AND HIGHWAYS, TOGETHER WITH;

TRACT B:

THE WEST 338.051 FEET OF THE EAST 992.13 FEET OF THE SOUTH 117.00 FEET OF THE NORTH 282.00 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN EXCEPTING FROM THE ABOVE DESCRIBED TRACT THE SOUTH 22 FEET OF THE WEST 81 FEET THEREOF, TOGETHER WITH;

TRACT C:

THE WEST 338.051 FEET OF THE EAST 992.13 FEET OF THE NORTH 165.00 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM THE ABOVE DESCRIBED TRACT THAT PART THEREOF TAKEN FOR STREETS AND HIGHWAYS), TOGETHER WITH;

TRACT D:

THE SOUTH 182.00 FEET OF THE NORTH 464.00 FEET OF THAT PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF THE WEST LINE OF THE EAST 911.13 FEET THEREOF, AND LYING WEST OF THE WEST LINE OF THE EAST 654.079 FEET THEREOF, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOT 2 OF IN GOLF-SKOKIE ASSOCIATES SUBDIVISION, A PLAT OF WHICH WAS RECORDED DECEMBER 18, 1996 AS DOCUMENT 96 955 215, ALL IN COOK COUNTY, ILLINOIS, WHICH FALLS WITHIN THE FOLLOWING DESCRIBED TRACTS:

TRACT A:

THE WEST 315.949 FEET OF THE EAST 654.079 FEET OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM THE ABOVE DESCRIBED TRACT THAT PART THEREOF TAKEN FOR STREETS AND HIGHWAYS), TOGETHER WITH;

97052077

UNOFFICIAL COPY

EXHIBIT A CONTINUED

TRACT B:

THE SOUTH 19 FEET OF THE NORTH 502 FEET OF THE WEST 7 FEET OF THE EAST 661.079 FEET OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2, AS CREATED BY THE GRANT AND DECLARATION OF EASEMENTS, USES AND COVENANTS DATED FEBRUARY 14, 1995 AND RECORDED FEBRUARY 15, 1995 AS DOCUMENT 95109429 MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 26, 1984, LASALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 30, 1977 AND KNOWN AS TRUST NUMBER 52792 AND THE CENTRE EAST METROPOLITAN AUDITORIUM, EXPOSITION AND OFFICE BUILDING AUTHORITY, FOR THE FOLLOWING PURPOSES:

(1) VEHICULAR AND PEDESTRIAN ACCESS OVER THAT PART OF THE FOLLOWING DESCRIBED LAND, IDENTIFIED ON EXHIBIT A-4 THERETO AS THE CROSSHATCHED AREA LABELED "SKOKIE BOULEVARD ACCESS":

LOT 2 OF THE PERFORMING ARTS CENTER SUBDIVISION BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF

SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

(2) PARKING OF PRIVATE PASSENGER AUTOMOBILES WITHIN THOSE PORTIONS OF PARCEL 2, IDENTIFIED ON EXHIBIT A-2 THERETO, WHICH ARE FROM TIME TO TIME UTILIZED FOR THE PARKING OF PRIVATE PASSENGER AUTOMOBILES:

THE EAST 338.13 FEET OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 (EXCEPT THAT PART THEREOF TAKEN FOR STREETS AND HIGHWAYS) OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

ALSO

THAT PART OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF THE EAST 654.079 FEET AND LYING SOUTH OF THE NORTH 464.0 FEET THEREOF (EXCEPT THAT PART THEREOF TAKEN FOR STREET AND HIGHWAYS), IN COOK COUNTY, ILLINOIS

PARCEL 4:

NON-EXCLUSIVE EASEMENTS FOR

THE USE AND BENEFIT OF PARCELS 1 AND 2 AS CREATED BY THE GRANT AND DECLARATION OF EASEMENTS AND COVENANTS, DATED NOVEMBER 21, 1996 AND RECORDED NOVEMBER 27, 1996 AS DOCUMENT 96905235 MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 26, 1984 AND KNOWN AS TRUST NUMBER 61447 AND LA SALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 30, 1977 AND KNOWN AS TRUST NUMBER 52792.

97052077

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

PARCEL 1:

THAT PART OF LOT 1 IN GOLF-SKOKIE ASSOCIATES SUBDIVISION, A PLAT OF WHICH WAS RECORDED DECEMBER 18, 1996 AS DOCUMENT 96 955 215, ALL IN COOK COUNTY, ILLINOIS, WHICH FALLS WITHIN THE FOLLOWING DESCRIBED TRACTS:

TRACT A:

THE NORTH 464.00 FEET OF THAT PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE EAST 992.13 FEET THEREOF TOGETHER WITH THE SOUTH 204.00 FEET OF THE NORTH 464.00 FEET OF THE WEST 81.00 FEET OF THE EAST 992.13 FEET OF SAID NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE AFORESAID SECTION 15, ALL TAKEN AS ONE TRACT, EXCEPTING FROM THE ABOVE DESCRIBED TRACT THAT PART THEREOF TAKEN FOR STREETS AND HIGHWAYS, TOGETHER WITH;

TRACT B:

THE WEST 338.051 FEET OF THE EAST 992.13 FEET OF THE SOUTH 117.00 FEET OF THE NORTH 282.00 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN EXCEPTING FROM THE ABOVE DESCRIBED TRACT THE SOUTH 22 FEET OF THE WEST 81 FEET THEREOF, TOGETHER WITH;

TRACT C:

THE WEST 338.051 FEET OF THE EAST 992.13 FEET OF THE NORTH 165.00 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM THE ABOVE DESCRIBED TRACT THAT PART THEREOF TAKEN FOR STREETS AND HIGHWAYS), TOGETHER WITH;

TRACT D:

THE SOUTH 182.00 FEET OF THE NORTH 464.00 FEET OF THAT PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF THE WEST LINE OF THE EAST 911.13 FEET THEREOF, AND LYING WEST OF THE WEST LINE OF THE EAST 654.079 FEET THEREOF, ALL IN COOK COUNTY, ILLINOIS.

97052077

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

DELETED LANGUAGE

- (1) The following language is hereby deleted from Section 14 of the Mortgage:

"In the event that Mortgagor desires to transfer its interest in a portion of the Real Property, which includes the Office located thereon, Mortgagor shall notify Mortgagee in writing of the identity of the proposed transferee and deliver to Mortgagee such additional financial and other information as Mortgagee may request in connection with such transfer and such transferee. Mortgagor acknowledges that Mortgagee shall have the right to grant or deny, in its sole and absolute discretion, its consent to such proposed transfer and that Mortgagor shall bear the reasonable fees and expenses of Mortgagee and its counsel in connection with the review of such proposed transfer. Any such proposed transfer shall be conditioned upon the consent of Mortgagee, which consent may be given or denied in Mortgagee's sole and absolute discretion, and upon delivery by Mortgagor and its proposed transferee of (i) all documentation necessary to evidence such transfer in form and substance reasonably acceptable to Mortgagee; (ii) all documentation which Mortgagee may reasonably request to evidence the new loan to the proposed transferee; (iii) all documentation which Mortgagee may request, in its sole and absolute discretion, to perfect or maintain perfection of a first priority security interest in the Office; (iv) a partial release instrument in form and content reasonably satisfactory to both Mortgagor and Mortgagee; (v) appraisals pursuant to Paragraph 50 hereof of the Office and the Hotel; (vi) such new and updated title insurance as Mortgagee may reasonably request; (vii) a principal amortization payment in an amount equal to the greater of (A) sixty-five (65%) of the outstanding principal balance of the Loan, and (B) an amount sufficient so that the outstanding principal balance of the Loan, after such transfer, does not exceed forty (40%) percent of the current value, based on such appraisal, of the Hotel; (viii) the outstanding principal balance of the new loan to such transferee not exceeding sixty (60%) percent of the current value, based on such appraisal, of the Office; and (ix) the payment by Mortgagor of any and all costs and expenses reasonably incurred by Mortgagee in connection with such transfer.

Notwithstanding the foregoing, if no Event of Default or event which, with the giving of notice or passage of time or both, would constitute an Event of Default or default under the Mortgage, the Note or any of the other Security Instruments, has occurred and is continuing, Mortgagee agrees that, upon the written request of Mortgagor, Mortgagee shall, upon satisfaction in full of all of the terms and conditions of the Escrow, as hereinafter defined, consent to the division of the Loan (by release of the Office and making a new loan secured by the Office to Mortgagor) so that the Hotel and the Office secure separate indebtedness (the "Hotel Loan" and the "Office Loan") and the transfer by Mortgagor to the Transferee (as hereinafter defined) of the Office in the form of (a) a conveyance of the entire Office, (b) an absolute assignment of the entire beneficial interest in a land trust which holds fee simple title to the Office, or (c) an absolute assignment of general partnership interests in any partnership borrower under the Office Loan (or any beneficiary of a land trust borrower under the Office Loan) or in any constituent partner of such partnership borrower, or any combination of the foregoing, provided that:

67652077

UNOFFICIAL COPY

(i) the transferee of the Office is a real estate investment trust ("REIT") or an "umbrella partnership" of which a REIT is the sole general partner or a single purpose entity wholly owned by the REIT or such umbrella partnership, and at the time of such transfer such REIT meets the following criteria (the "Transferee"):

(A) (1) the directors and principal officers of such REIT have substantial experience in the ownership, operation and leasing of similar properties, or (2) such REIT is a newly-formed REIT, the management and operation of which is performed by substantially the same persons who manage and operate the Office, and

(B) such REIT is self-managed and has (1) a total market capitalization of not less than \$500,000,000, (2) a total of shareholders' or partnership equity plus accumulated depreciation and minority interests on a GAAP book value basis, of not less than \$250,000,000, and (3) a ratio of total debt to total assets (excluding intangible assets and accounts receivable) of not more than 55% (total assets being defined for this purpose in accordance with GAAP and including accumulated depreciation and amortization);

(ii) Mortgagee has received thirty (30) days' prior written notice from Mortgagor of the proposed transfer and all information reasonably required by Mortgagee to determine whether the Transferee meets the criteria set forth in subparagraph (i) immediately above;

(iii) Mortgagee has received appraisals pursuant to Paragraph 50 hereof of the Office and the Hotel. Mortgagor shall have the right to determine, in its sole and absolute discretion, and shall notify Mortgagee in writing of such determination at least thirty (30) days prior to the division of the Loan, the outstanding principal amount of each of the Hotel Loan and the Office Loan, provided that (A) when the Loan is divided as provided below the aggregate principal amount of the Hotel Loan and the Office Loan is equal to or less than the then outstanding principal balance of the Loan immediately prior to such division; and (B) Mortgagor and Transferee make the principal reduction payments described in subsection (vii) below;

(iv) Mortgagor has deposited in a money lender's escrow governed by escrow instructions as typically prepared on behalf of Mortgagee by Mortgagee's counsel (the "Escrow") all documents and instruments which Mortgagee may reasonably request to evidence the division of the Loan and each of the Hotel Loan and the Office Loan, including, without limitation, (A) such new and updated title insurance as Mortgagee may reasonably request; (B) such loan documents as Mortgagee may request, in its sole and absolute discretion, to perfect or maintain perfection of a first priority security interest in the Office and the Hotel; (C) such other loan documentation as Mortgagee may reasonably request, including, without limitation, notes, mortgages, consents, security agreements and guaranties; provided that such loan documents shall be in substantially the

07052077

UNOFFICIAL COPY

same form and contain substantially the same business terms, including, without limitation, interest rate, amortization and maturity date, as the Note, the Mortgage and any of the applicable Security Instruments;

(v) Mortgagor has deposited in the Escrow all documentation necessary to evidence such transfer in form and substance reasonably acceptable to Mortgagee;

(vi) Mortgagor has deposited in the Escrow all documentation which Mortgagee may reasonably request, to evidence the assumption of the Office Loan by the Transferee, which such Office Loan shall be recourse to Transferee, including, without limitation, (A) an endorsement to Mortgagee's title policy, which endorsement states that the mortgage on the Office remains a first and prior lien against the Office after assumption by the Transferee; (B) the Transferee expressly assumes and acknowledges personal liability for the indebtedness under the Office Loan and all other obligations under any loan documents evidencing the Office Loan pursuant to assumption documents; provided that such assumption documents shall (1) not materially modify the business terms of the Office Loan documents, including, without limitation, interest rate, amortization and maturity date, and such Office Loan documents shall remain in substantially the same form, except as reasonably necessary (x) to reflect the then existing internal lending requirements of Mortgagee and/or (y) to include representations and warranties relating to the requirements of subparagraph (i) above and covering customary matters relating to Transferee such as due organization, existence, good standing, and authority and the validity and enforceability of the assumption documents and any other loan documents signed by Transferee or any guarantor of the Office Loan; (2) provide that the transfer of any shares of REIT stock or partnership interests of any umbrella partnership shall not trigger any "due-on-sale" clause in any of such loan documents, and (3) include, in substitution for the guaranty then securing the Office Loan, a full repayment guaranty of the Office Loan from the REIT and umbrella partnership, in form and substance substantially similar to such existing guaranty except with respect to any modifications made pursuant to subsections (1)(x) and (1)(y) above; (C) the Transferee executes such documents as may be required by Mortgagee, in its sole and absolute discretion, to perfect or maintain perfection of a first priority security interest in the Office; and (D) a legal opinion from Transferee's attorneys in form and substance reasonably acceptable to Mortgagee;

(vii) (A) Mortgagor has deposited in the Escrow, and Mortgagee receives upon consummation of the division of the Loan and the assumption of the Office Loan by Transferee, an amount, if any, sufficient to reduce the principal balance of the Hotel Loan to the lesser of (1) thirty-five (35%) percent of the outstanding principal balance of the Loan prior to the division of the Loan, and (2) forty (40%) percent of the current value of the Hotel, based on the appraisal of the Hotel referred to in subparagraph (iii) above (the "Hotel Loan Payment"); and (B) Transferee has deposited in the Escrow an amount, if any, sufficient to reduce the principal balance of the Office Loan to sixty (60%) percent of the current value of the Office, based on the appraisal of the Office referred to in subparagraph (iii) above (the "Office Loan Payment"); and

97052077

UNOFFICIAL COPY

(viii) Mortgagor pays all reasonable out-of-pocket costs and expenses incurred by Mortgagee in connection with such division, transfer and assumption, including all legal, accounting, appraisal and title insurance, whether or not such transfer is actually consummated.

Upon the satisfaction of all of the terms and conditions contained in the Escrow and provided above and in accordance with the terms of the Escrow, Mortgagee agrees to direct the escrow agent of the Escrow (the "Escrowee") to (A) record all documents related to the division of the Loan; (B) wire the Hotel Loan Payment, if any, to Mortgagee; (C) record all documents related to the transfer of the Office to Transferee; (D) record all documents related to the assumption of the Office Loan by the Transferee; and (E) wire the Office Loan Payment, if any, to Mortgagee; provided, however, that under no circumstances shall the Escrowee record any documents pursuant to subsections (A), (C) or (D) herein unless Escrowee is irrevocably committed to, and actually does thereafter promptly, wire the Hotel Loan Payment and the Office Loan Payment, if any, to Mortgagee."

(2) The following language is hereby deleted from Section 15 of the Mortgage:

"Subject to and upon full compliance with the release restrictions set forth herein and on Exhibit D attached hereto and made a part hereof, Mortgagee shall, within a reasonable time after receipt from Mortgagor of a fully completed request for reconveyance in form and substance acceptable to Mortgagee, release a portion of the Real Property, together with that portion of the Mortgaged Premises located thereon, from the lien of this Mortgage and the Security Instruments upon the payment to Mortgagee of the applicable amount specified on Exhibit D. Mortgagor agrees to pay any and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Mortgagee in connection with such releases and to pay all costs and expenses (including, without limitation, any taxes) of recordation or filing applicable thereto."