HVS

APPENDIX 1

Data Collection Checklist

SUBJECT PROPERTY _____

MAILING ADDRESS _____

MUNICIPALITY _____

COUNTY _____

TELEPHONE NUMBER _____

REFERENCE NUMBER _____

DATE OF STUDY _____

OPENING DATE OF PROJECT _____

1. CLIENT DATA

Company Name _____

Business Address _____

_____

Telephone Number _____

Financial Records

- ☐ Balance sheets (last three years)
- ☐ Profit and loss statements with supporting statements (last three years)
- ☐ Occupancy and average rate, by month (last three years)
- ☐ Operating budgets and projections
- ☐ All contracts or agreements entered into by client:
  - Union contracts
  - Leases (ground)
  - Management contracts
  - Franchise agreements
  - Title reports
  - Stock agreements
  - Partnership agreements
- ☐ Franchise Reports
  - Occupancy
  - Inspection
  - Reservation
  - Turnaway
  - Denials
- ☐ Capital expenditures (last three years)
- ☐ Capital budget (cost) projections (next three years)
- ☐ Personal and real property tax bills
- ☐ Comparable assessments
- ☐ Cost of furniture, fixtures, and equipment (last three years)
- ☐ Marketing plans
- ☐ Impact study
- ☐ Name of legal owner

Property Records

- ☐ Architectural plans
- ☐ Floor plans (as built)
- ☐ Plot plans
- ☐ Survey and legal description of property
- ☐ Engineering reports
- ☐ Original purchase data (price, date, terms, contract, closing statement)
- ☐ Agreement of sale, option, or listing
- ☐ Financing documents (mortgage)
- ☐ Past appraisals of subject property
- ☐ Market and feasibility studies of subject property
- ☐ Prospectuses

HVS

Miscellaneous Records

Credit card user surveys
Meeting planners brochure—rate card
Maps

2. IN-HOUSE DATA BASE

Client proposal for valuation
Past studies performed in market area
Contacts with local hoteliers
American Hotel and Motel Association Construction Report
Directories
- Official Hotel and Resort Guide
- Hotel Travel Index
- Red Book
- AAA
- Mobil Travel Guide
- American Institute of Real Estate Appraisers Directory
- Hospitality Market Data Exchange
- American Society of Real Estate Counselors Directory
- Society of Real Estate Appraisers Directory

Rate and occupancy data collections
College alumni listing (e.g., Cornell Society of Hotelmen Directory)
Mailing list of clients
Telephone listings—hotels, motels, real estate, apartments
National Real Estate Investor—city data, atlas. encyclopedia
Sales and Marketing Management
Survey of Buying Power
Restaurant Business RAI and RGI
FAA terminal forecasts

I. FIELD DATA

Contacts *(Name and telephone number)*

General Manager _____

_____
Assistant Resident Manager

_____
Director of Marketing

_____
Director of Sales _____

_____
Director of Engineering _____

Front Desk Manager _____

_____
Controller/Accountant _____

Introductions *(Name and telephone number)*

Other general managers in area _____

_____
Chamber of Commerce _____

_____
Convention and Visitors Bureau _____

Hotel Association _____

Marketing

Demand generator analysis
- Major businesses and industries in area
- Primary market area in geographic terms (provide map)
- Top twenty major users of subject property
- Major contract business, including term. rate, and number of room-nights

Competition analysis
- Competitive hotels, including occupancy, average rate, and market segmentation
- Market segmentation, by month
- Average length of stay
- Seasonally
  - — weekly
  - — monthly
  - — by segment
- Unaccommodated demand, by segment
- Double occupancy percentage
- Rate resistance by segment
- Rack rate pricing strategy
- Points of origin (feeder markets)
- Mode of arrival (indicate shuttle availability applicable)
- Percentage of reservations from franchise

- Amount of travel agent commissions
- Hotel or extended-stay association

Subject Property Analysis

Size, topography, and shape

- Land area
- Excess land (indicate if salable, highest and best use)
- Plot survey
- Optimum frontage-to-depth ratio (corner location)
- Frontages
- Adjoining uses:
  - — North
  - —East
  - — South
  - —West
- Grade, compared to surrounding roads/uses
- Contours, slope, drainage
- Identification of flood zones, if any, and need for flood insurance
- Soil tests
  - — Water table
  - — Percolation tests
  - — Other
- Air rights
- Subsurface rights
- Water rights
- Landscaping
- Easements/restrictions
- Current condition Access
- North/south roads
- East/west roads
- Direct access pattern (i.e., number of lanes in approach roads, presence of median division, turn restrictions, traffic signals, one-way, curb cuts. limited access)
- Time and distance to:
  - — Airport
  - — Highways and interchanges
  - — Mass transportation
  - — Convention center
  - — Demand generators
  - — Competition

Visibility

- North-south roadways
- East-west roadways
- From demand generators, airport, convention center
- Height and depth
- Slope of land
- Obstructing buildings (all sides)
- Signage
  - — Location
  - — Visibility
  - — Condition
- Views from subject (all sides) including:
  - — Guestrooms
  - — Food and beverage outlets
- Effect of climate, if any

Utilities

- Location
- Capacity
- Provider
- Electricity:
  - — Price/KWH
  - — Normal demand charges
  - — Quantity discounts
  - — Seasonal adjustments
- Natural gas:
  - — Price/therm
  - — Quantity discounts
  - — Seasonal adjustments
- Oil:
  - — Tank size
  - — Price/gallon
  - —Quantity discounts
- Steam
- Water source
- Telephone service
- Sewage
- LPG
- Trash removal
- Storm drainage Photographic documentation
- Visibility of subject property
- Access to subject properly
- Entrance, with signage
- View of subject property—four sides
- View from subject property—four sides
- Approach roads
- Surrounding land use

Neighborhood

Boundaries, as indicated by:

- Land use changes
- Transportation arteries

- Bodies of water
- Changes in elevation/topography

Characteristics

- Residential
- Commercial
- Retail
- Industrial
- Rural
- Suburban
- Urban

Buildings

- Style
- Size
- Density
- Vacancy levels
- Rental rates
- Effective age
- Condition

New construction/development

Street patterns/widths

Nearby parks and recreation areas

Noise or other nuisances

Future trends or potential changes in neighborhood as indicated by uniformity/variance in land uses

4. IMPROVEMENTS

Hotel Description

Architectural plans and description

Year opened

Year of expansion/renovation

Description of expansion/renovation

Number of structures

Location of structures on site

Number of stories in each building

Configuration of each building (e.g., H. L, U)

Total gross building square footage

Total net building square footage

Landscaping and sidewalks

Exterior facade

- Architectural style
- Materials
- Balconies

Future development plans

- Project description
- Costs

Current engineering reports

Building Layout

Lobby

- Layout and circulation
- Decor
- Size
- Condition
- Ceiling height
- Porte cochere
- Valet stand
- Shuttle bus
- Doors (i.e., automatic, airlock vestibule)
- Bell stand
- Luggage storage
- Concierge desk
- Restrooms
- Phones

Front Desk

- Published rates
- Visibility to incoming guests
- Elevator visibility
- Reservation and registration system

Other Floors

Layout

Circulation

Guestrooms (broken down by type)

Total number

Number of connecting rooms

Walking distance

Size

Ceiling height

Number of terraces

Furnishings

- Age
- Last replacement date
- Present condition
- Refurbishment schedule
- Amenities (e.g., extra phone, shoe shine, movies. VCR)

Doors

- Material
- Peephole
- Lock brand
- Type (e.g., 1-key, 2-key, card)

Closets

Wall material (e.g.. plaster, drywall. concrete)

Windows
- Type
- Condition

Sprinklers
Smoke detectors
Accessibility to and equipment (or the handi-capped
No-smoking rooms
Bathrooms
- Condition
- Lighting
- Amenities (e.g.. heat lamp. clothesline, heated towel bar)

Guest Corridors and Elevator Lobbies

Type (double, single-loaded)
Location (interior or exterior)
Direction
Width
Lighting
Ceiling height
Wallcovering
Floorcovering
Condition
Elevator lobby furnishings
Ice machines
Vending machines
Maid/linen closets

Food, Beverage, and Room Service Facilities

Seating capacities
Meals served
Hours of operation (including room service)
Menus (obtain copies)
Decors
Furnishings
- Style
- Quality
- Age and condition

Bar
Buffet
Back-of-the-house access from kitchens
Room service facilities
Separate outside access (describe visibility of entrance)
Access to restrooms
Entertainment policy
Point of sale system
Average turnover by meal period
Average check by meal period
Percentage of in-house capture by meal period
Estimate of in-house capture and outside capture
Annual covers
- Breakfast
- Lunch
- Dinner

Room service
Lounge
Banquet room
- Square footage
- Room rental revenue

Food and beverage financial statement (broken down by meal period and outlet)
- Cost of sales
- Total payroll expense
- Total other expenses

Kitchen(s)

Locations
Access (floors, distance)
- Receiving areas
- Storage areas
- Meeting rooms
- Outlets

Equipment
- Description
- Quality
- Quantity
- Configuration
- Condition

Adequacy of size and layout

Meeting and Banquet Facilities

Individual rooms
- Name
- Size
- Capacity

Adequacy of mix and breakout rooms
Décor
Condition
Separate entrance/porte cochere
Separate service and public corridors
Proximity to kitchen
Adequacy of meeting support amenities (e.g.. furniture, audio-visual equipment)

Furniture storage area
HVAC/zone control

Recreational Facilities

Swimming pool
- Shape
- Indoor/outdoor

Tennis courts
- Lighted
- Indoor/outdoor

Golf course
- Number of holes
- Yards per hole
- Annual rounds played
- Fees

Jogging trails
Health/exercise club
- Sauna
- Steambath
- Whirlpool
- Massage
- Exercise classes
- Exercise apparatus
  - —Type
  - — Number

Other facilities (e.g., horseback riding, ice skating, boating, skiing)
Spa
Game room

Back-of-the-House Layout

Employee entrance (access pattern)
Employee facilities
- Lockers
- Lounge area
- Cafeteria

Security
Timekeeping
Personnel
Purchasing offices
Receiving
- Loading dock .• Guest view
- Lift

Storerooms
Engineering
- Shops
- Storage
- Electrician
- Locksmith
- Carpenter

Building Systems

Structural
- Foundation
- Framing (e.g., steel, precast concrete, reinforced concrete)
- Walls
- Roof
  - —Age
  - — Condition
  - — Sloped or flat
  - —Material (e.g., asphalt shingle, built-up felt and tar. slate)

Parking
- Number of spaces
- Indoor/outdoor
- Valet
- Cost to guest
- Percentage of non-guest use
- Condition of pavement and striping

Heating, Ventilation, and Air Conditioning

Heating system
- Type (i.e., hot water, steam, electric)
- Fuel
- Delivery (2-, 3-, 4-pipe. forced air)
- Heat/cool simultaneously
- Boilers
  - — Brand
  - — Model number
  - — Age/condition
- Burners
  - — Brand
  - — Model number
  - — Age/condition
- Water heater
  - — Brand
  - — Model number
  - — Tank size
  - — Age/condition
- Resistance
  - — Brand
  - — Model/capacity
  - — Age/condition

- Heat exchanger
  - — Brand
  - — Model/capacity
  - — Age/condition
- Heat pump
  - — Brand
  - — Model number
  - — Capacity
  - — Age/condition

Cooling system

- Type (e.g , central/chilled water, heat pumps)
- Chiller
  - — Brand
  - — Model number
  - — Age/condition
- Cooling tower
  - — Brand
  - — Model number
  - — Age/condition
- Zones
  - — Guestrooms
  - — Meeting rooms
  - — Public space control

Energy Management System

Description

Brand and model number

Guestrooms (type of control, eg.. individual)

Meeting/public space (type of control, eg., individual)

Housekeeping

Offices

Storage areas

Sorting areas

Trash chute

Linen chute

Exhaust tan

Washer

- Brand
- Model number
- Quantity

Dryer

- Brand
- Model number
- Quantity
- Fuel

Guest laundry

- Outside contract
- Self-service

Fire

Smoke detectors

- Local
- Wired

Heat detectors

- Local
- Wired

Sprinkler system

Fire extinguishers

Pull stations

- Control/communication system
- Brand
- Model number

Annunciator panel

Emergency lighting and battery backup

Exit signage and battery backup

Fire hoses

- Brand
- Model number

Standpipes

Kitchen range hood

- Brand
- Model number
- CO, system

Public address system

Emergency generator

- Brand
- Model number

Vertical Transportation

Passenger elevators

- Number
- Floors served
- Brand
- Cable or hydraulic
- Cab condition
- Capacity
- Feet per minute
- Automatic/manned
- Control system
- Mechanical or electrical relays
- Computerized load system

Service elevators

- Number

- Floors served
- Brand
- Cable or hydraulic
- Capacity
- Feet per minute
- Control system
- Mechanical or electrical relays
- Computerized load system

Escalators

- Number
- Floors served

Dumbwaiters

- Number
- Floors served

Stairs

- Number
- Location

Security

Electronic surveillance equipment

- Number
- Location

Alarm systems

Telephone System

Brand

Model number

Type of call accounting

Least cost routing

Other special functions

Lighting

Exterior

- Type (e.g., sodium, fluorescent, incandescent)
- Building signage Interior

Miscellaneous

Asbestos construction

Urea-formaldehyde foam insulation

Building inspection reports

Health inspection reports

Total deferred maintenance

Total functional obsolescence

5. ECONOMIC AND DEMOGRAPHIC DATA

Market Area

Hotels

- Room counts
- Rates
- Occupancy

SIC employment

Population

- Migration vs. births
- Peak vs. annual
- Age distribution
- Income levels (effective buying income)

Retail sales

Eating and drinking place sales

Office space and occupancy survey/directory (i.e., absorption trends)

Major businesses

- By employment sector
- National
- Number of employees

Industrial space and occupancy survey/directory (i.e , absorption trends)

Unemployment percentages

- Housing stats
- Building permits
  - Number
  - Dollar value

Area maps

Major universities

- Enrollments
- Faculty
- Staff

Major military bases

- Civilian employment
- Type/function

Room/bed lax data

Visitor statistics to area attractions

Assessed Valuation and Taxes

- Assessor
  - Name
  - Address
  - Telephone number

Purchase tax map

- Size of parcel (acreage, square feet)
- Length of boundaries
- Lot and block number
- Tax ID number

Subject property's assessed value
- Date of assessment
- Value of land
- Value of building

Assessment basis
- Income, cost, market
- Change on sale

Date and frequency of assessment

Tax history
- Past five years
- Current
- Future trends
- Equalization rate
- Assessed values
- Mill rates

Comparable hotel parcels
- Number
- Assessments
  - —Land
  - —Buildings

Land sales

Motel sales

Hotel rates and occupancies

Special and/or future assessments

Tax abatements

Personal property
- Subject property's assessed value
- Comparable hotel assessed value
- Mill rates

Chamber of Commerce/Economic Development Administration

Primary contact
- Name
- Address
- Telephone number

Area economic status (e.g., cyclical, growing, declining, high-tech, industrial)

Businesses entering/leaving area

Area attractions
- Historical visitation
- Projected visitation

Area hotels
- Occupancy rates
- Rates

Proposed hotels

Prominent area officials
- Name
- Address
- Telephone number

Area business associations

Airport Authority

Passenger traffic
- Past five years
- Projected for five years

Cargo traffic
- Past five years
- Projected for five years

Airlines and number of flights

Physical description of airport

Expansion plans, if any

Cities served (originations)

Restrictions on aircraft size

Number of days closed annually

Hotel Association

Primary contact
- Name
- Address
- Telephone number

List of area hotels
- Market segmentation
- Rates
- Occupancies

Total room count
- Current
- Historical

Room/bed tax information

Hotels recently opened or closed

Proposed hotels

Convention Center and Visitors Bureau

Primary contact
- Name
- Address
- Telephone number

Physical description
- Size
- Capacity
- Age
- Facilities

Number of conventions
- Historic
- Projected
- Seasonality

Number of conventioneers
- Historic
- Projected
- Seasonality

Average expenditure of conventioneer

Average conventioneer length of stay

Average convention size

Future convention calendar/number of events

Marketing plan

Promotion budget
- Past five years
- Next five years
- Deficits funding

Nature and types of events (local, state. regional)

Visitor statistics

Room/Bed/Occupancy Tax

Historical taxes by month
- Past five years
- Next five years

Identification of tax by property (occupancy and rate)

Tax rate
- Historical rates
- Rate changes

Definition of taxable property

Change in number of taxable hotel rooms

Zoning/Building/Planning Department

Primary contact
- Name
- Address
- Telephone number

Proposed hotel development
- Plans
- Related facilities
- Name of developer, hotel company
- Estimated completion date

Hotels under construction
- Status of each project
- Approval process

Zoning of subject property
- Current
- Historical
- Zoning map
- Zoning regulations
- Conforming use
- Height restrictions
- Lot coverage
- Size restrictions
- Floor area ratio
- Setback restrictions
- Parking requirements
- Sign restrictions
- Moratoriums on building and utilities usage

Environmental impact study requirements

Zoning for surrounding land
- Present
- Future

Flood plain areas Zoning trends for area

Potential for/probability of zoning changes

Building permits
- Five-year history
- Number
- Dollar value

Economic Development Administration or Planning Department: City, County, and Surrounding Area

Contacts
- Name
- Address
- Telephone number

Existing hotels
- Occupancy
- Rate

New construction
- Hotels
- Expansions
- Renovations

County (of subject property)

City (of subject property)

Surrounding municipalities

Master (renewal) plan for development

Pertinent studies
- Land use map
- Economic/demographic data
- Transportation

Directions of growth (e.g., industrial, commercial, redevelopment)

Availability of public funds/tax incentives for hotels

Highway/Transportation Department

Primary contact
- Name
- Address
- Telephone number

Origination and destination maps

Traffic flow/count maps

Future changes
- Road improvements
- Traffic rerouting roadway changes (eg., left turn lanes, lights, curb cuts, medians, turn restrictions, additional lanes)

Traffic counts
- Historic
- Current
- Toll receipts

Commercial Real Estate Firm/Board/ Brokers/Developers/Relocation Services

- ☐ Apartments that accommodate extended stay demand (less than six months)
- ☐ Relocation director/coordinator
- ☐ Retail space inventory
  - Commercial
  - Office
  - Industrial
  - Retail
- ☐ Historic absorption/anticipated growth
- ☐ New projects/expansions/renovations
  - Developer
  - Location
  - Size (square feet)
  - Opening date
  - Major committed tenants
  - Projected occupancy
  - Projected tenant mix
- ☐ Geographic patterns of growth
  - Office space
  - Industrial
  - Retail
  - Residential
  - Source of tenants

Land Appraisers, Counselors, Bankers

- ☐ Land and hotel sales
- ☐ Occupancy and average rate/market segmentation
- ☐ Proposed hotels
  - Additions
  - Expansions
- ☐ Economic and demographic data

Land use
- ☐ Land value

Property tax rate trends

Newspapers

- ☐ Advertising/research department
  - Demographic data
  - Economic data
- ☐ Real estate department
  - Articles concerning recently announced commercial/hotel properties
  - Articles concerning recent hotel or land sales

Rental Car Agencies

- ☐ Number of cars rented
  - Monthly
  - Annually
- ☐ Average length of rentals
- ☐ Renters' points of origin
- ☐ Major companies renting cars

Generators of Visitation

- ☐ Major companies
- ☐ Office and industrial parks
- ☐ Scenic areas
- ☐ Hospitals
  - Local
  - Regional
  - National specialty
- ☐ Military installations
- ☐ Colleges and universities
- ☐ Amusement parks
- ☐ Resort facilities
- ☐ Governmental offices
- ☐ Residential developments
- ☐ Racetracks
- ☐ Sports stadiums
- ☐ Historic attractions
- ☐ Retail shopping
- ☐ Theaters
- ☐ Museums
- ☐ World and state fairs
- ☐ Sporting events
- ☐ Historic events

National and slate parks
Courts of law
County seats and state capitals

Generators of Visitation (specifics by type)

Description
Proximity to subject property
Types of visitors (i.e. commercial, meeting/convention. leisure)
Visitor counts
- Admission charge
- Recent changes

Origin of visitors
- Percentage local (from within 200-mile radius)
- Percentage requiring accommodations

Seasonally of visitation

Competitive Restaurants and Lounges

Name and address
Photograph
Capacity
Year opened
Meals served
Hours of operation
Affiliation
Owner
Renovation/expansion plans
Seasonality
- Weekly
- Monthly

Type of menu
Type of service
Types of patrons
- Age group
- Income

Decor/theme
Entertainment policy
Competitors
Average check
Covers/turnover
Annual sales
Reputation
Location/proximity to subject property

Competitive Hotels

Name/address
Photograph (entrance with sign)
Brochure/meeting planner/sates or business card
Number of rooms/room square footage
Building configuration
Year opened
Franchise/management company/owner
Unionized
Properly for sale
Percentage of reservations from system
Renovation/expansion plans
Seasonality
- Weekly
- Monthly
- By segment

Segmentation
Competitors
Occupancy
- Historical
- Current trends

Average rate
- Historical
- Current trends

Market segmentation
- Historical
- Current trends

Published rates
Proposed hotels
Additions
Renovations
Major customers
Amenities—description
Current property condition
Location/distance from:
- Subject property
- Demand generators

Access and visibility
Corridors
- Exterior
- Interior
- Both

Neighborhood
- Food
- Beverage
- Entertainment

Frequent traveler program
Actual number of extended-stay room-nights
Relocation and corporate rates
Rooms or suites with kitchen facilities and types of facilities

HVS

Extended Stay Competition

Name/address
Photograph (entrance with sign)
Brochure/sales or business card
Number of rooms/square footage
Building configuration
Year opened
Management/ownership
Minimum stay (six months or less)
Furnished
- Furniture
- Linen
- China
- Utensils

Full kitchen
Number of units
Breakdown of units
- Studio
- One-bedroom
- Multiple bedroom

Rates by unit size
- 1-6 days
- 7-29 days
- 30-60 days
- Over 60 days

Maid service
- Daily
- Weekly

Telephone service
- 24-hour switchboard
- Wake-up calls
- Messages
- Free local calls

Utilities included
Amenities
- Pool
- Meeting space
- Other

Renovation/expansion plans
Seasonably
Occupancy/average rate
- Historic (past five years)
- Future (next five years)
- Segmentation

Competition
- Occupancy
- Average rate
- Trend
- Segmentation

Proposed direct competition
Major customers
Condition of property
Location/distance from:
- Subject property
- Demand generators

Neighborhood
- Food
- Beverage
- Entertainment

Access/visibility

Liquor License Laws

Application process
- Location
- Time
- Cost
- Limitations

Restrictions
- Ratio of liquor to food
- Open to public
- Required unit of sale

Types of licenses

APPENDIX 1A

Sample Form: Purchase of a Hotel

This Purchase Agreement is entered into on the date hereinafter set forth by and between ..... (the "Purchaser"), and ..... (the "Seller").

WITNESSETH:

ARTICLE 1

1.1 Property Subject to the terms and provisions hereof, the Seller covenants and agrees to sell to the Purchaser, and the Purchaser covenants and agrees to purchase from the Seller that property described on the attached Exhibit A (the "Subject Properties") and commonly known as ..... ("Hotel").

1.2 Other Interests Contemporaneously with the conveyance of the Subject Properties, and subject to the terms hereof, the Seller covenants and agrees to transfer to the Purchaser, and the Purchaser covenants and agrees to accept from the Seller (and to assume the obligations of the Seller) all right, title, and interest of the Seller in and to the following:

(a) All commercial leases providing for rights of possession in or to the Subject Properties (the "Commercial Leases");

(b) All third-party contracts covering the management or operation of the Subject Properties (except the existing management arrangements with .....,...) and all furniture, fixtures, and equipment leases to Seller and used in the operation of the Subject Properties, to the extent transferable ("Third Party Contracts"),

Purchaser shall have the opportunity to review and approve or disapprove of the Commercial Leases and Third-Party Contracts, copies of which shall be supplied to Purchaser within .....,.....(.....,) days of this date. Such review period shall extend for ..... (.....) days after receipt thereof by Purchaser. In the event any Commercial Leases or Third-Party Contracts are objectionable to Purchaser, this Agreement shall be terminable by Purchaser by written notice to such effect provided to Seller prior to the expiration of such ..... -day period, otherwise Purchaser shall be deemed to have approved such Commercial Leases and Third-Party Contracts.

ARTICLE 2

2.1 Purchase Price The total consideration for the conveyance of the Subject Properties by the Seller to the Purchaser shall be as follows:

(a) ..... dollars shall be payable in cash at closing, subject however to Sections 2.1(b) and 2.1 (c) of this Agreement:

(b) The assumption and promise to pay the unpaid principal balance and accrued interest, according to the terms of that certain ..... dollar-promissory note dated ..... 19 ...., payable to the order of..... *[lender]* (the "First Mortgage") together with all instruments evidencing or securing the payment thereof, including without limitation, the Mortgage, Security Agreement, and Assignment of Leases and Rents dated ..... 19..... between Seller and ..... *[lender].* Copies of the First Mortgage and the Mortgage securing the payment thereof have been provided to Purchaser prior to the date hereof, the receipt of which is hereby acknowledged by Purchaser and are hereby approved as acceptable to Purchaser. Purchaser agrees to take all action required by the holder of the First Mortgage as a condition of obtaining consent to the transaction contemplated by this Agreement (if required), provided that Purchaser shall not be required to pay any fee as a condition of obtaining such consent, other than as set forth in Section 2.1(c). In the event Purchaser fails or refuses to comply with or supply such information as required by the holder of the First Mortgage within .....,....,..(.....,,) days after the date such request is made in writing to Purchaser, Purchaser shall be deemed to be in default of this Agreement. Purchaser agrees to indemnify and hold Seller harmless from and against all claims, demands, and liabilities arising out of the First Mortgage, to the extent Seller is liable for any amounts due thereon; and

(c) Purchaser shall deliver to Wells Fargo Realty Advisors, Inc. (the "First Mortgagee") a letter of credit in the amount of..... dollars (the "Letter of Credit") as additional security for the First Mortgage, and Seller shall be released from all liability on the First Mortgage at Closing. Failure of Purchaser to provide to Seller proof satisfactory to Seller of the availability of such Letter of Credit on on before the expiration of ..... (.....) days after the date hereof shall constitute a default of this Agreement and entitle Seller to terminate this Agreement and retain the Earnest Money.

The Purchase Price shall be allocated prior to Closing between the various components of the Subject Properties in a manner mutually acceptable to Seller and Purchaser.

ARTICLE 3

3.1 Seller's Agreements Within .....(.....) days following the date hereof Seller shall furnish the following to the Purchaser, which shall be returned to Seller in the event Closing does not occur.

(a) Any plans and specifications regarding the Subject Properties which Seller may have in its possession;

(b) Any surveys, field notes, and plats Seller may have in its possession regarding the Subject Properties, which survey shall be updated if required by Purchaser at its sole cost and expense;

(c) A current Commitment for Title Insurance (the "Commitment") covering the Subject Properties in the standard ALTA form issued by a title insurance underwriter mutually acceptable to Seller and Purchaser (the "Title Company"),

3.2 Operating Agreements Purchaser shall assume and agree to honor all agreements and contracts which are provided to Purchaser for review in accordance with Section 1.2 and any other agreements and contracts entered into in the ordinary course of business regarding the operation and maintenance of the Subject Properties which are terminable without penalty upon notice of ..... (.....) days or less.

3.3 Sale or Modification Between the date hereof and the date of Closing or termination of this Agreement, the Seller covenants and agrees that without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld, it will not:

(a) Make any structural modifications to the Subject Properties, except to the extent required to comply with this Agreement and except as reasonably required in connection with any emergency or casualty; or

(b) Sell or otherwise dispose of any portion of the Subject Properties (except in the ordinary course of business), unless replaced with Items of equal or better quality.

3.4 Remedies In the event of a breach by the Seller of its covenants or agreements contained in this Article, the sole right or remedy of the Purchaser for such breach shall be the recovery of actual damages therefor, and in no event shall the Purchaser be entitled to rescission or to exemplary or punitive damages, nor shall the Purchaser be entitled to delay Closing or terminate this Agreement by virtue thereof,

ARTICLE 4

4.1 Seller's Obligations At Closing, the Seller covenants and agrees to deliver the following instruments and documents to the Purchaser:

(a) A duly executed and acknowledged deed with warranties limited only to the grantors acts, conveying good and indefeasible title to the Subject Properties to the Purchaser, subject only to those matters permitted herein, the liens securing the First Mortgage and the liens securing the promissory note described in Section 8.2(c);

(b) A Bill of Sale transferring all personal property constituting the Subject Properties to Purchaser;

(c) An Assignment of Leases and Third-Party Contracts, transferring all Commercial Leases and Third-Party Contracts regarding the Subject Properties (to the extent transferable);

(d) Such other documents as may reasonably be required by the Title Company in order to evidence the authority of those executing the various documents on behalf of the Seller;

(e) The proceeds of any insurance policies paid for unrepaired damages;

(f) A certificate of the Secretary of State of..... that the Certificate of Articles of Limited
Partnership is on file and has not been revoked or terminated; and

(g) A complete schedule of all accounts receivable and accounts payable as of the Closing Date.

4.2 Purchaser's Obligations The Purchaser covenants and agrees to pay to the Seller, at Closing, the cash consideration (together with or net of any adjustments as provided in Article 10 hereof) and to execute, acknowledge, and deliver to Seller counterparts of the Bill of Sale, the Assignment of Leases and Third-Party Contracts and the Letter of Credit. Purchaser shall also deliver to Seller an opinion of counsel for Purchaser that Purchaser is a validly formed corporation according to the laws of its state of incorporation, is in good standing, has the full power and authority to perform and act as required by this Agreement and the person(s) executing the closing documents on behalf of the Purchaser has the full power and authority to so act. A certificate of the applicable public official to the good standing of the Purchaser shall be delivered to Seller at the Closing.

4.3 Documents On the date of Closing, and following Closing, the Seller shall deliver to the Purchaser, on the site of the Subject Properties, the following:

(a) executed originals of all Commercial Leases in the possession of the Seller pertaining to leases with such tenants;

(b) executed originals (or copies if originals are not in the possession of Seller) of all Third-Party Contracts assigned to the Purchaser;

(c) to the extent in possession of Seller; keys to each room, and all guest records relating to present and future guests;

(d) possession of the Subject Properties, subject to rights of tenants under Commercial Leases, hotel guests and other matters permitted herein; and

(e) all marketing, personnel records, and any other files and records used in the operation of and located on the Subject Properties, other than as otherwise provided in this Agreement.

ARTICLE 5 5.1 Representations' Seller makes the following

representations:

(a) This Agreement has been duly and validly authorized, executed, and delivered by Seller and no other action is requisite to the valid and binding execution, delivery, and performance of this Agreement by Seller. This representation shall survive for a period of ..... (.....) days after the Closing.

(b) Except as otherwise disclosed on the attached Exhibit B, to Seller's knowledge and belief, there are no actions, suits, or proceedings pending against, threatened, or affecting the Property or the Hotel operating on the Subject Properties in law or equity.

(c) During the period Seller operated the Hotel, all required licenses and permits necessary for the operation of the Hotel by Seller were in full force and effect on the date of the Closing (except Buyer will be responsible for procuring its own liquor license and transfer of such licenses and permits);

(d) The financial information furnished and to be furnished to Purchaser by Seller relating to the Subject Properties fairly presents those facts and circumstances reflected therein as of the effective date of such financial information;

(e) Seller is the owner of good and indefeasible fee simple title to the Subject Properties, subject only to those matters described or permitted herein;

(f) There are no union contracts covering any of the employees employed at the Subject Properties; and

(g) As of the date Seller acquired the Subject Properties, its use was permitted under applicable zoning laws and, to the best of Seller's knowledge, there has been no change in the applicable zoning classification; and

(h) Seller has not entered into any Commercial Leases or Third-Party Contracts except those delivered to Purchaser under Section 1.2 herein or except those terminable without penalty on notice of.....,.....,., (.....) days or less.

ARTICLE 6

6.1 Earnest Money Contemporaneously with the execution and delivery of this Agreement, the Purchaser has deposited with .....Title Insurance Company ..... *[address], ... [city], ... [state],* the sum of..... dollars. Closing shall be held on or before ..... (.....) days after the date hereof or such earlier date as is mutually agreed upon. Upon Closing, all Earnest Money shall be applied toward part payment of the cash portion of consideration specified herein. In the event this Agreement is not closed for any reason, then the Earnest Money shall be disbursed in the manner provided in Article 7.

ARTICLE 7

7.1 Seller's Remedies In the event that all covenants and agreements to be performed by the Seller prior to Closing are fully performed by the Seller or if such performance is not completed due to

the default or failure by the Purchaser, and all conditions precedent set forth in Article 8 hereof have been satisfied or waived, and the transaction contracted for in this Agreement is not consummated due to default on the part of the Purchaser on or before the date of Closing, then the Seller shall retain the Earnest Money as liquidated damages for the Purchaser's default hereunder. The foregoing provisions of this Section shall not affect the indemnity and confidentiality obligations of Purchaser (or any liability to Seller for any breach by Purchaser of any of such obligations) contained herein.

7.2 Title Objections Purchaser shall have ..... (.....) days after receipt of a copy of the Title Commitment in which to notify Seller of any objection to the title of Seller to the Subject Properties disclosed therein. Standard exceptions contained in the Title Commitment, any exceptions which do not have a material adverse effect on the operation of the Subject Property as a hotel and all liens against the Subject Properties which are to be assumed by Purchaser, which may be discharged out of the cash payable to the Seller at Closing or are otherwise permitted herein, shall not constitute objections to title. Purchaser shall be deemed to have waived any objections to title disclosed in the Title Commitment for which no such notice is given to Seller with such .....day period. In the event the Purchaser timely objects to the title to the Subject Properties, then the Seller shall have the right, but not the obligation, for a period of..... (.....) days hereafter, to cure such objections and to show title herein required in the Seller, and if the Closing would otherwise occur within such .....day period, the date of Closing shall be extended until the end of such .....day period. If the Seller elects not to cure such objections, or fails to cure such objections within such .....day period, then

(a) the Purchaser may, at its election, waive any objections to title and proceed with the Closing of the transaction contracted for herein (in which event such objections to title shall be deemed approved), all with prejudice to the Purchaser's rights against the Seller for damages by reason of such default or breach; or

(b) the Purchaser, as its sole exclusive remedy (Purchaser hereby waiving all other rights and remedies in connection with such failure of title, including any right to specific performance hereof), may terminate this Agreement, and shall then be entitled to the return of the Purchaser's Earnest Money, in which event this Agreement shall be thereafter terminated. The obligations of the Seller to deliver good and indefeasible title shall be satisfied upon delivery of the Deed and the Title Policy.

7.3 Purchaser's Remedies In the event that the transaction contracted for in this Agreement is not consummated on the date of Closing due to default on the part of the Seller, excepting only a default as provided in Section 7.2, then the Purchaser may elect as its sole and exclusive remedies:

(a) to terminate this Agreement, in which event the Purchaser's Earnest Money shall be refunded; or

(b) in the event Seller intentionally defaults in its obligations to perform, and Purchaser is ready, willing, and able to perform and has waived all conditions to Closing, enforce specific performance.

ARTICLE 8

8.1 Purchaser's Conditions The obligation of Purchaser to consummate the transaction contemplated hereby is subject to the satisfaction (or waiver in writing by Purchaser) or each of the following conditions precedent:

(a) Within ..... (.....) days after the date hereof, Purchaser shall have received from ..... Hotel Company a commitment to issue a new franchise or transfer the existing franchise to operate the Subject Properties as a ..... Hotel, subject to such requirements and conditions as ..... Hotel Company may impose. Purchaser shall apply for a new franchise or transfer of the existing franchise within .....,.....(.....) days of the date hereof and shall be responsible for all costs incurred in connection with ob-

taining such franchise. Seller agrees to assist and cooperate with Purchaser in obtaining such franchise, at the sole cost and expense of Purchaser.

(b) Within .....,.....,,(....) days from the date hereof, Purchaser shall make an application with the First Mortgagee for consent to the transfer and conveyance of the Subject Properties subject to the First Mortgage upon such terms as may be acceptable to Purchaser. That the First Mortgage may require Purchaser to deliver a letter of credit in an amount not to exceed .....dollars shall not be a requirement unacceptable to Purchaser. In the event Purchaser has not obtained such consent from the First Mortgagee within ..... (.....) days after the date hereof, this Agreement shall automatically terminate without any further action by Seller unless Seller elects otherwise. Should Seller elect not to terminate this Agreement and Buyer has not terminated this Agreement on or before the expiration of ..... (....) days after the date hereof, Buyer's Earnest Money shall be deemed to be "at risk" and shall be non-refundable (except in the event of default by Seller).

(c) Purchaser shall have had the opportunity to review and approve the Commercial Lease and Third-Party Contracts as provided in Section 1.2(b).

(d) Notwithstanding anything in this Agreement to the contrary, Purchaser shall have no right to obtain a refund of the Earnest Money after the expiration of.....(.....) days after the date hereof except in the event of a default by Seller and, after the expiration of such .....day period, Purchaser shall be deemed to have waived any conditions to Closing (except failure by Seller to perform).

8.2 Seller's Conditions Seller's obligations to consummate the transaction contemplated hereby are subject to the satisfaction (or waiver in writing by Seller) of each of the following conditions precedent:

(a) On or before the Closing Date, Seller shall have received from ..... Hotel Company a full release, effective as of the Closing Date, of all of Seller's obligations and liabilities under the terms of the existing franchise agreement between Seller and ..... Hotel Company.

(b) On or before the Closing Date, Seller shall have obtained consent from the First Mortgagee for the transfer and conveyance of the Subject Properties to Purchaser subject to the First Mortgage without cost to Seller and without change in the terms of the First Mortgage, unless otherwise agreed by Seller. The First Mortgagee shall release Seller and ..... *[name]* and liability under the First Mortgage, any other indebtedness secured by the Subject Properties and release any property other than the Subject Properties from security for the First Mortgage. Seller shall apply to the First Mortgage for said consent and release within ....days after the date hereof.

(c) Purchaser shall accept the Subject Properties subject to the liens and security interests securing that certain ..... dollar-promissory note dated ..... 19 ..,.., payable to the order of ..... Hotel Company and Purchaser shall indemnify and hold Seller harmless from and against any and all claims and damages in connection with such indebtedness ..... *[name]* and Seller shall be released from all liability in connection with said indebtedness or Purchaser shall provide adequate security to Seller to protect against any loss.

(d) Purchaser shall supply to Seller satisfactory evidence of a commitment for the Letter of Credit to be delivered as provided in Section 2.1(c) within ..... (.....) days after the date hereof. Failure to do so shall constitute a default in this Agreement by Purchaser and entitle Seller to retain the Earnest Money.

ARTICLE 9

9.1 Inspection The Seller agrees that, prior to Closing, the Purchaser, personally or through its authorized agent or representatives, shall be entitled to enter upon the Subject Properties at all reasonable times with notice to Seller and only in the presence of a duly authorized representative of Seller. Purchaser agrees that this right shall not be exercised in such a manner as to interfere with the normal business or operations of Seller. All information, plans, and specifications shall be made available on the site of the Subject Properties and shall be kept confidential by the Purchaser.

ARTICLE 10

10.1 Adjustments The Seller shall pay all expenses incurred or accrued in connection with the operation of the Subject Properties through ..... A.M. on the date of Closing. The Purchaser shall pay all expenses incurred in connection with the ownership or operation of the Subject Properties from and after..... A.M. on the date of Closing. The parties shall use reasonable efforts to obtain final bills from all utility companies, and to terminate all expenses, as of..... A.M. on the date of Closing. To the extent that any such item cannot be terminated at such time and on such date, the item shall be prorated between the Seller and the Purchaser at such time as a final bill is received. Notwithstanding anything contained in this Section, however, all hazards against which insurance is provided shall be the responsibility of the Seller until 12:01 A.M. on the date of Closing, and the responsibility of the Purchaser from and after 12:01 A.M. on the date of Closing.

10.2 Closing Costs The Purchaser shall pay the escrow fee charged by the Title Company, all charges and fees relating to filing of documents or instruments executed and delivered pursuant to this Agreement (including transfer taxes and documentary or stamp taxes), the premium for the Title Policy, and all costs and expenses contracted for by the Purchaser. The Seller shall pay all costs and expenses contracted for by the Seller. All items to be prorated between the Purchaser and the Seller, as well as all other charges and credits reflected on the closing statements of the parties, shall be based on the best information available to the parties at the time of Closing. In the event, following Closing, either party discovers that any item paid, prorated, charged, or credited, pursuant to the provisions of this Article (including, without limitations, ad valoreum taxes) was erroneous, or was based on an inaccurate estimate, then such party shall notify the other party of such error and an appropriate adjustment shall be made between the parties so that any such item will have been correctly and accurately prorated, charged, or credited between the parties. Any such amount shall be due and payable ..... (.....) days following demand for payment thereof accompanied by such documents as may be reasonably required to establish the accuracy of such adjustment. In the event of any dispute as to amounts owed, the matter may be settled by resorting to arbitration under the rules of the American Arbitration Association upon .....(.....) days prior written notice by one party to the other. The costs of such proceeding shall be borne by the losing party.

10.3 Payment of Liabilities Attached hereto as an exhibit is a schedule of the current assets and current liabilities of the Seller as of..... 19... Seller will transfer to Purchaser at closing the current assets as of the Closing Date. Purchaser agrees to assume the current liabilities as of the Closing Date. If, as of the Closing Date, the excess of the current liabilities over current assets is more than the excess of current liabilities over current assets as of the above date, then any change in the excess shall be a credit to Purchaser and a charge to Seller. If, as of the Closing Date, the excess of the current liabilities over current assets is less than the excess of current liabilities over current assets as of the above date then any reduction shall be a credit to Seller and a charge to Purchaser. Any amounts due under this Section shall be payable at Closing.

Purchaser hereby agrees to pay at Closing that portion of the current liabilities which include accrued employee wages and salaries, and accrued federal, state, and local payroll taxes. Purchaser further agrees to guarantee to Seller the full and complete payment of the current liabilities, and to the extent such current liabilities are not paid in full at Closing, Purchaser shall deliver to Seller adequate security to insure Purchaser's performance, which security shall be in the form of a letter of credit or escrow deposit in such form and amount as may be reasonably accepted by Seller.

10.4 Employees Seller shall not solicit for employment any of the employees at the Subject Properties after the date of Closing without first providing Purchaser with notice and obtaining its prior consent.

ARTICLE 11

11.1 Insurance The Seller covenants and agrees to maintain in full force and effect until 12:01 A.M. on the date of Closing all insurance policies currently in effect. For purposes of transfer of title, Closing shall be considered to occur at 12:01 A.M. on the date of Closing, even though actual execution, delivery, and exchange of documents of Closing shall occur at a different time.

11.2 Casualty The Purchaser shall assume the responsibility for all insurance coverage on the improvements at 12:01 A.M. on the date of Closing. In the event the Subject Properties should be damaged by any casualty prior to the above time on the date of Closing, then notice of such damage shall be given to the Purchaser by the Seller, and if the cost of repairing such damage, as estimated by an architect retained by Seller and Purchaser, the cost of which shall be shared equally between Seller and Purchaser, is:

(a) Less than ..... dollars, then the Seller shall repair such damage as promptly as is reasonably possible, restoring the damaged property at least to its condition immediately prior to such damage.

(b) More than ..... dollars but less than ..... dollars, and if such casualty is covered by insurance carried by Seller, then (i) the Purchaser shall be obligated to close in accordance with the provisions hereof; (ii) the Seller shall assign to the Purchaser, at Closing (or pay to the Purchaser if such proceeds have been collected) all insurance proceeds payable for such damage, which insurance proceeds together with the amount of the deductible, shall not be less than the cost to repair such damage, as determined by an architect retained by Seller for such purpose; (iii) the consideration set forth in Section 2.1 hereof shall be reduced by the amount of the deductible under Seller's insurance policies applicable to such casualty; and (iv) the Purchaser shall have the entire right and authority to negotiate for and agree to any adjustments for such damage with insurance carriers;

(c) More than ..... dollars, then the Purchaser may elect to terminate this Agreement upon notice given to the Seller within ..... (.....) days following receipt by the Purchaser from the Seller of notice of such damage; and if the Purchaser does not elect to terminate this Agreement, the Seller shall assign to the Purchaser (or pay to the Purchaser if such proceeds have been collected), at Closing, all insurance proceeds payable for such damage and the sale shall be closed without the Seller's repairing such damage.

(d) Seller agrees to carry business interruption insurance in the event of loss of revenue caused by Casualty and, in the event of assignment of insurance proceeds to Purchaser pursuant to (b) or (c) above, any business interruption insurance proceeds applicable to the period after Closing shall be paid to Purchaser.

ARTICLE 12

12.1 Commissions In the event any claim or demand is made by any real estate agent claiming by, through, or under an agreement with any party hereto, the contracting party shall indemnify and hold the other harmless from and against any such claim or demand and all expenses related thereto, including, without limitation, court costs and attorney fees.

12.2 Seller's Indemnity Subject to the provisions of Section 12.3 hereof, the Seller agrees to indemnify and hold the Purchaser harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature (except those items which by this Agreement specifically become the obligation of the Purchaser) arising or accruing prior to .....A.M. on the date of Closing and which are related to the
Seller's ownership, maintenance, or operation of the Subject Properties and all expenses related thereto.

12.3 Purchaser's Indemnity The Purchaser agrees to indemnify and hold the Seller harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature (except those items which by this Agreement specifically remain the obligation of the Seller) arising or accruing subsequent to .....A.M. on the date of Closing and which are in any way related to the ownership, maintenance, or operation of the Subject Properties, and all expenses related thereto; including, without limitation, court costs and attorney fees. The Purchaser also agrees to indemnify and hold the Seller harmless from and against any and all liabilities, claims, demands, and expenses of any kind or nature, for any damage to property, or any injury to or death of persons, resulting from any entry onto the Subject Properties by Purchaser or any of its agents, architects, engineers, auditors, planners, or other representatives, or any inspections, surveys, audits, or tests conducted by any of the foregoing, and all expenses related thereto; including, without limitation, court costs and attorney fees.

12.4 Survival It is expressly stipulated, covenanted, and agreed that the provisions of this Article shall survive Closing.

ARTICLE 13

13.1 Notices All notices, demands, or other communications of any type given by the Seller to the Purchaser or by the Purchaser to the Seller, whether required by this Agreement or in any way related to the transaction contracted for herein, shall be given in accordance with the provisions of this Article. All notices shall be in writing and delivered to the person to whom the notice is directed by personal delivery, commercial messenger service, or by U.S. Mail, as a Registered or Certified item, Return Receipt Requested. Notices shall be effective on the earlier to occur of (i) actual receipt by the party to whom such notice is addressed or (ii), in the case of notices sent by U.S. Mail, ... (.....) days after deposited in a Post Office or other official depository under the care or custody of the U.S. Postal Service. All notices shall be enclosed in a wrapper prepaid or with proper postage affixed, addressed, if to the Purchaser, to its address in the United States as indicated on the signature page hereof. Either party hereto may change the address for notice specified above to any other address within the continental United States by giving the other party ..... (.....) days advance written notice of such changes of address.

ARTICLE 14

14.1 Continuing Liability Any covenant or agreement herein of either party to this Agreement which contemplates performance after the time of Closing, shall not be deemed to be merged into or waived by the instruments of Closing, but shall expressly survive Closing and shall be binding upon the party obligated thereby.

14.2 Assignment This Agreement may not be assigned by the Purchaser, except with the prior written consent of the Seller, which prior written consent shall not be unreasonably withheld. Consent to assignment to an affiliate, subsidiary, or related entity of Purchaser shall not be withheld. Any representations or warranties of Seller shall be personal to Purchaser and nontransferable or available for reliance by any third-party beneficiary Such representations and warranties shall survive for a period of..... (.....) months after the date of Closing.

14.3 Construction and Interpretation This Agreement shall be construed and interpreted in accordance with the laws of the State of..... and the English language. Where required for proper interpretation, words in the singular shall include the plural, the masculine gender shall include the neuter and the feminine, and vice versa. The terms "heirs, executors, administrators, and assigns" shall include successors, legal representatives, and assigns. The descriptive headings of the several Articles and Sections contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

14.4 Amendment and Waiver This Agreement may not be modified or amended, except by an agreement in writing signed by the Seller and the Purchaser. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

14.5 Attorney Fees In the event it becomes necessary for either party hereto to file a suite to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages provided for herein, reasonable attorney fees.

14.6 Consent to Jurisdiction For purposes of enforcing the obligations of Purchaser under this Agreement only, Purchaser hereby consents to the jurisdiction of the courts of the State of ..... and of the United States, and agrees that any suit against Purchaser arising out of this
Agreement may be brought in any appropriate ..... *[state]* or United States court,

14.7 Notices and Press Releases Purchaser and Seller covenant and agree with each other not to make public or give notice of the execution of this Agreement or of the transaction contemplated herein prior to the Closing except for disclosure to parties necessary in connection with the Closing or in connection with post-Closing work to be done by the Purchaser and unless any such notice or publicly be in writing and be approved in writing by both Seller and Purchaser. Recognizing that Seller may suffer damages arising out of the loss of business or the loss of employees should any notice or publicity be given with respect to this Agreement or the transactions contemplated herein, and in the event Purchaser violates the covenants herein, Purchaser agrees to indemnify and hold Seller harmless from any such loss or damage. In the event the Purchaser deals with work to be performed after Closing, the Purchaser shall use his best efforts to prevent any such disclosures by said third parties.

14.8 Licenses and Permits Purchaser shall be solely responsible for obtaining such governmental permits, licenses, certificates, and approvals as shall be necessary for Purchaser's use of the Subject Properties (including, without limitation, any liquor licenses), and the failure of Purchaser to obtain any such item prior to Closing shall not delay the Closing or affect the obligation of the Purchaser hereunder to purchase the Subject Properties from the Seller at the Closing. Seller shall not be required to perform any obligations under this Agreement which would be in violation of applicable law, including without limitation, transfer of liquor licenses in violation of applicable licensing laws, provided however Seller agrees to cooperate with and assist Purchaser in obtaining such licenses and permits (at no cost to Seller).

14.9 Approvals Purchaser shall be solely responsible for obtaining any approvals required for the assignment of any contracts, leases, or other agreements which affect the Subject Properties from all such parties who may have reserved the right of prior approval to such assignment and assumption.

14.10 Effective Date All references in the Agreement to the terms "Effective Date," "date hereof" or similar references shall be deemed to refer to the earliest date upon which all of the following have occurred: (a) execution of this Agreement by Purchaser; (b) execution of this Agreement by Seller;
and (c) receipt by ..... Title Insurance Company of the Earnest Money.

14.11 Multiple Originals Numerous copies of this Agreement have been executed by the parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument.

IN WITNESS WHEREOF, etc. **Courtesy of D.J. Brats,**

Mississippi Grand, Tunica, Miss.

HVS

APPENDIX 2

Sample Clauses for Hotel Purchase and Sale Agreement

This appendix is a compilation of clauses from a number of actual purchase and sale agreements, which have been selected to cover a broad range of subjects. To facilitate their use, they have been arranged topically in 17 different categories. In many instances, the clauses are supplemented with alternative or optional language.

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Category 1 REAL AND PERSONAL PROPERTY BEING SOLD

Seller agrees to sell and convey the Hotel to Purchaser and Purchaser agrees to purchase the Hotel from Seller, for the Purchase price and upon the terms and conditions herein set forth, which Hotel consists of the following property:

1.1 Land

The approximately 5.1-acre tract of land described in Exhibit A *[omitted}* attached hereto and made a part hereof together with all rights, easements, and interests appurtenant thereto, including, but not limited to, any streets or other public ways adjacent to said real property and any water or mineral rights owned by or leased to Seller (all of such property being hereinafter referred to as the "Land").

1.2 Improvements

All improvements located on the land, including eighteen (18) two-story buildings, each of which contains six (6) studio suites (one-bedroom) and two (2) penthouse suites (two bedrooms on two levels), together with parking spaces for approximately 149 cars, and any and all amenities and other improvements located on the land, including, without limitation, the administrative building (which houses the guest lobby and registration area, administrative areas, meeting area and complimentary service area. swimming pool, whirlpool, and other recreational facilities (all such improvements being hereinafter referred to as the "Improvements"). The land and all of the Improvements thereon are hereinafter sometimes referred to collectively as the "Real Property."

1.3 Personal Property

All personal property presently owned by Seller and located on or in the Real Property or used in connection with the operation and maintenance of the Hotel, including, without

limitation, all of Seller's fixtures, furniture, machinery, vehicles, equipment, linens, kitchen and bar equipment and supplies (including cleaning supplies and materials, whether in sealed or broken packages), building materials, supplies, merchandise inventories, hardware, carpeting, draperies, wall coverings, quest supplies, signs, and all other personal property used in connection with the operation of the Hotel (all o(such personal properly being hereinafter referred to as the "Persona! Property): provided, however, that the Personal Property does not include Seller's food and beverage inventories To the extent any items of Personal Properly are subject to operating lenses or executory contracts that are assignable, Seller shall convey such properly subject to such operating leases or executory contracts. Within fifteen (15) days after *Vie* Contract Dale. Seller's most recent inventory (the "Personal Property Inventory") of all of the Personal Property (and executory contracts and operating leases relating thereto) shall be delivered lo Purchaser. On the Closing Dale, such Personal Property Inventory shall be supplemented in accordance with the terms and provisions hereof. Such Personal Property Inventory and the supplement thereto shall, upon delivery to Purchaser as aforesaid, be and constitute a part of this Agreement, to the same extent as if fully set forth herein.

[Alternate Clause] All china, glassware, and silverware; uniforms: engineering, maintenance, and housekeeping supplies, including soap. cleaning materials, and matches; draperies, material, and carpeting; stationery and printing; and other supplies of all kinds with a use, and including such resupplies as shall occur and be made in a normal course of business.

The quantities of Personal Property and Inventory in the Property shall permit the Property to be operated at a normal level

[Alternate Clause] Exhibit H *[omitted]* hereto sets forth a true and complete list of all furniture and equipment located in. at, or about the Properly or otherwise used in connection with the operation thereof. All Personal Property to be transferred to Purchaser pursuant hereto is or at Closing will be owned by Seller free and clear of any and all liens, encumbrances, security interests, or hypothecations.

Category 2 BUSINESS ASSETS BEING SOLD

In recognition of the fact that Ihe value of the business as specified herein is dependent upon the business being a going concern. Seller hereby agrees to transfer to Purchaser at the Closing the following items:

2.1 Governmental Permits

All of the Seller's right, title, and interest in and to all hotel licenses and other governmental permits, approvals, and licenses used in the operation of the Hotel, but only if such assignment is permitted by the terms thereof.

[Alternate Clause] All licenses, franchises, and permits used in or related to the ownership, occupancy, or operation of any part of the Real Properly.

[Alternate Clause] All rights of the Partnership and all licenses and permits to the extent assignable, including, but without limitation, the license or licenses to sell alcoholic beverages on or in connection with the conduct of any business on the Real Property.

2.2 Operating Contracts

All operating leases, executory contracts, service contracts, and repair agreements with respect to the Real Property and the Personal Property, but only if assignment is permitted

by (he terms thereof. Seller hereby represents and warrants to Purchaser that true and correct copies of each of the governmental permits and operating contracts are set forth in Exhibit B (omitted).

[Alternate Clause} All service, maintenance, union, employment, and other contracts respecting the maintenance or operation of the property.

2.3 Other Miscellaneous and Intangible Personal Property

All other contract rights, leases, concessions, receipts, trademarks, logos, copyrights, and other items of .intangible personal property relating to the operation of the Property.

{Alternate Clause] Seller shall grant to Purchaser the right to use the existing name of _____ at the subject property only and subject to reasonable and customary conditions (or a period of five (5) years, for a payment of Ten Dollars ($10.00) per year.

[Alternate Clause] To the extent owned by Seller and permitted to be transferred under the Franchise Agreement or otherwise, the trade name of ————. and goodwill relating thereto, together with the telephone exchange numbers.

[Optional Clause] All customer lists and records owned or possessed by Seller pertaining to the transaction of business at the Hotel, together with the architectural plans.

[Optional Clause] All other intangible property not described above owned by Seller and used or useful in connection with the ownership and operation of the Hotel, including, without limitation, contract rights, guarantees, warranties, and goodwill, but only to the extent that such are assignable by their own terms or under law.

[Optional Clause] All current sales records and information with respect to the hotel, including, without restriction, all sales files and all sales "leads" that would be used in the normal course of business of the hotel.

2.4 Franchise Agreement

Purchaser shall have determined that the Partnership has entered into a Franchise Agreement with the Franchisor, and such Franchise Agreement can be transferred to Purchaser at closing.

Category 3 CLOSING

The consummation of the Purchase and sale of the Hotel as contemplated herein shall take place at the escrow offices of the Title Insurer at ————. ————, on ————, 19_, on or before the close of business, or at such other time as the parties may agree upon in writing. The Closing shall be effected through a closing escrow with the Title Insurer in accordance with the terms and provisions of this Agreement. Seller shall deliver possession of the Hotel to Purchaser at closing.

[Alternate Clause]The closing of title hereunder in respect of the Hotels and payment of the consideration thereof shall occur on or before sixty (60) days after the signing of this Agreement, subject only to the provisions relating to the extension of time to close. The Closing shall occur in _____, _____. at a place to be mutually agreed upon by the parties hereto.

[Alternate Clause] At Closing, the balance of the purchase proceeds shall be delivered to Seller in the manner provided and title to the Property, together with all other documents to be delivered by Seller to Buyer, shall be delivered and conveyed to Buyer. Legal possession and physical occupancy of the Premises shall be given to Buyer at 12:01 P.M. on the date of Closing.

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Category 4 PURCHASE PRICE

4.1 General Terms

The purchase price ("Purchase Price") for the Properly, subject to the adjustments **as** provided in this Agreement, shall be Ten Million. Nine Hundred Twenty-live Thousand Dollars ($10,925,000) and shall be payable in the manner set forth herein.

[Alternate Clause] The Purchase Price shall be paid in cash at Closing by wire transfer, with credit (or the Deposit specified above and subject to the Prorations and Adjustments referred to herein.

[Alternate Clause] Purchaser shall pay to Seller or, if the dosing be an escrow closing, to the Escrow Agent on behalf of the Seller the sum of $____, which sum shall be paid by certified check or bank draft to the order of the Seller (or the Escrow Agent, as the case may be) at the closing.

4.2 Mortgage Assumption

Seven Million, Eight Hundred Fifty-five Thousand Dollars ($7.855,000) shall be paid by the assumption by Purchaser of the First Mortgage Notes currently encumbering part of the Property.

4.3 Purchase Money Financing

Seller will provide purchase money financing in the amount of One Million, Three Hundred Thousand Dollars ($1,300,000). Such loan will bear interest at the rate of eleven percent (11%) per annum and will require payment of interest and principal based on a thirty (30) year amortization period, with a balloon payment of remaining principal and interest at the end of the 15th year. Seller agrees that such purchase money financing shall be subordinate to First Mortgage financing obtained by Purchaser in an amount not to exceed Three Million, Five Hundred Thousand Dollars ($3.500,000). II is provided, however, that the lender will agree to promptly notify Seller of any default or late payment by Purchaser and will further agree to allow a reasonable time (or Seller to make such payments and to assume the loan. It is further provided that such default on the first mortgage shall be deemed a default in Purchaser's second mortgage to Seller, and Purchaser shall quietly surrender possession of the properties to Seller.

4.4 Allocation of Purchase Price

The Purchase Price shall be allocated among the assets acquired by the Purchaser as follows:

Land $ 800,000 Building
6,080,000 Personal Property
1.670,000 Inventory 50,000
Hotel Names 50,000 Permits
50,000 Hotel Contracts 50.000
Miscellaneous Hotel Assets 50.000 Total
$8.800,000

[Alternate Clause] Prior to the closing date, Purchaser shall determine the allocation of purchase price as among Land, Building, fixtures, machinery, equipment, furniture, inventory, and goodwill and shall deliver to Seller notice as to such allocation at least five (5) days prior to the Closing Date. At Closing, Purchaser and Seller shall execute an agreement in form and

terms mutually satisfactory whereby Purchaser and Seller confirm such allocation of purchase price.

Category 5 EARNEST MONEY

5.1 General Terms

An earnest money deposit in the amount of Two Hundred Fifty Thousand Dollars ($250,000) by wire transfer shall be deposited with Purchaser's Title Insurer upon execution of this Agreement. If the transaction contemplated hereby is consummated in accordance with the terms and provisions of this Agreement, the Deposit shall be applied to the cash payment at Closing. The Deposit shall be promptly returned to Purchaser in the event that Seller defaults on any of the terms, covenants, or conditions of this Agreement.

[Alternate Clause] Upon the execution and delivery of this agreement. Purchaser shall pay to _____ (the "Escrowee Agent"), $——— (the "Deposit"), which Deposit shall be held by the Escrowee Agent until closing. All interest on the Deposit shall be payable to Purchaser. Upon closing of the transaction contemplated herein, the Deposit together with all interest thereon shall be paid by the Escrow Agent to the Purchaser. In the event that this transaction shall fail to close, the disposition of the Deposit shall be governed by the provisions of Section 19 hereof.

{Alternate Clause] An Earnest Money Deposit in the amount of One Hundred Thousand Dollars ($100,000) by wire transfer shall be deposited with Escrow Agent by Purchaser upon execution hereof and receipt by Purchaser of a fully executed copy of this Agreement. Following the expiration of the Inspection Period, an additional Earnest Money Deposit in the amount of One Hundred Fifty Thousand Dollars ($150,000) by wire transfer shall be deposited with Escrow Agent by Purchaser. Such Earnest Money Deposit shall be refundable in the event that Seller defaults in any of the terms, covenants, or conditions of this agreement.

5.2 Purchaser's Default

In the event the Closing fails to occur due to the default of Purchaser, Seller shall deliver a written notice of termination to Purchaser and shall retain the Earnest Money Deposit as liquidated damages, it being understood that Seller's actual damages in the event of such default are dilficull to ascertain, owing to changing economic and market conditions and the amount of time that the Hotel may be off the market, and that the Earnest Money represents the parties' best current estimate of such damages. Seller shall have no other remedy for any default by Purchaser.

[Alternate Clause] If the Transaction is not consummated, and Seller is not in default under the terms of this Agreement, the Earnest Money Deposit shall be retained by the Seller.

[Alternate Clause] If Purchaser fails to perform its obligations under this Agreement within the times specified. the deposits paid by Purchaser aforesaid may be retained by and (or the account of Seller as liquidated damages, as full settlement of any claims; whereupon all parties shall be relieved of all obligations under this Agreement; or Seller, at its option, may proceed at law or in equity to enforce its legal rights under this Agreement, including specific performance.

5.3 Seller's Default

In the event the Closing fails to occur due to the default of Seller, Purchaser, as its sole and exclusive remedy, may elect to obtain specific performance of the express terms and

conditions set forth in this Agreement (so long as such specific performance does not involve seeking judgment for money against Seller or any partner o(Seller).

[Alternate Clause] It Seller fails, neglects, or refuses to perform this Agreement, other than rendering title marketable (unless Seller has no obligation to correct any title defect or matter unacceptable to Purchaser), the Purchaser may seek specific performance or elect to receive the return of its deposits, in which event this Agreement shall be terminated and the parties released of any further obligation hereunder.

5.3.1 Termination of Agreement. Purchaser may terminate this Agreement by written notice to Seller, in which event Seller shall return the Earnest Money, so long as Purchaser's written notice terminates all of the Purchaser's interest in the Hotel and this Agreement; provided, however, that failure of the Purchaser to give the Seller such notice shall not be constructed to expand the Purchaser's remedies in any manner.

[Alternate Clause] Purchaser may terminate this Agreement by written notice delivered to Seller on or before the Closing Date, in which event Purchaser shall be entitled to the return of the Earnest Money Deposit.

Category 6 DUE DILIGENCE

6.1 Inspection Period

For a period of sixty (60) days from and after the Seller Authorization, Purchaser and its employees, agents, and representatives shall be entitled to physically inspect and con-duel an engineering study of the Premises and examine records of the Hotel as described hereunder.

6.1.1 Physical Inspection. Purchaser may enter upon the Real Property, on al least 24 hours' notice to Seller's resident manager at the Hotel, to perform such inspections and tests of the Hotel including, without limitation, all leased areas and structural and mechanical systems within the Improvements, as Purchaser shall, in its sole discretion, deem appropriate.

6.1.2 Engineering Study. Purchaser, within the time period provided herein, may obtain an independent engineering firm to conduct a thorough review of the Premises. If such engineering firm determines that (he Premises have any major structural, electrical, or mechanical deficiencies (including those deficiencies that violate local building codes), Purchaser shall immediately notify Seller and Seller may correct such deficiencies prior to Closing. If such major deficiencies are found to exist, Purchaser shall have the right to either cancel this Agreement and immediately receive back all amounts paid by it or proceed to Closing and accept the property "as is," Purchaser waiving any adjustment of purchase price.

If the Seller fails to perform the above conditions or if any of the above conditions are not satisfied, then Purchaser shall have the right to terminate (his Agreement and the Earnest Money Deposit shall promptly be returned to Purchaser and hereafter neither party shall have any liability or be under any obligation to the other

Purchaser shall obtain an independent engineering firm to conduct a thorough review of the premises. Seller will correct any major structural, electrical, and mechanical deficiencies (including those deficiencies that violate local building codes) found on the premises prior to closing, or the Purchase Price will be adjusted to cover such costs.

6.1.3 Examine Records. Purchaser may examine and copy any and all books and records maintained by Seller or its agents relating to receipts and expenditures pertaining to the ownership and operation of the Hotel for the three (3) most recent full calendar years and the current calendar year.

[Alternate Clause] Purchaser's auditors may examine the books, records, and financial statements relating to the operation of the Hotel for the past three years, and such books, records, and financial statements must be in auditable condition and acceptable to Purchaser's auditors.

6.2 Confidentiality

Purchaser hereby expressly agrees that neither it nor its agents or representatives shall discuss any aspect of the physical or financial condition of the Hotel or any aspect of Hotel operations with anyone employed at the Hotel except in the presence of and with the approval of Seller's resident manager.

6.3 Seller Held Harmless

Purchaser shall hold Seller harmless and shall indemnify and defend Seller and its successors and assigns against any loss, damage, claim, cost, liability, or expense, including reasonable attorney fees, resulting from (a) any intentional act of Purchaser or its agents, representatives, or assigns during or in connection with its inspection of the Real Property, the Hotel, the Records, and other matters that adversely affect Seller's relations with the employees at the Hotel or business operation at the Hotel, or (b) any physical damage caused by Purchaser or its agents, representatives, or assigns during or in connection with its inspection of the Real Property, the Hotel, the Records, and other matters. Purchaser's indemnity in the preceding sentence shall survive termination of this Agreement or Closing of the sale contemplated herein.

6.4 Termination of Agreement

On or before the expiration o(the Inspection Period, if Purchaser, in its sole discretion, determines that the results of any inspection, test, or examination are unacceptable or unsatisfactory for purchase or operation of the Hotel in the Manner contemplated by Purchaser, Purchaser may terminate this Agreement by written notice to Seller specifying the reason(s) (or the termination. Upon receipt of such notice, this Agreement shall automatically terminate, Seller shall return the Earnest Money to Purchaser, and neither party shall have any further rights, obligations, or liability to the other hereunder.

[Alternate Clause] Should Purchaser not be satisfied for any reason with respect to any aspect of the Real Property, Personal Property, or any other matter whatsoever. Purchaser shall have the unconditional right to cancel this Agreement by written notice to Seller prior to 12:00 A.M. (midnight) on the sixtieth (60th) day following the effective date of this Agreement. In the event that Purchaser cancels this Agreement pursuant to this paragraph, then Purchaser shall be entitled to an immediate return of Purchaser's deposit, whereupon this Agreement shall be deemed cancelled and the parties released of all further obligations hereunder.

S.5 Affirmation of Agreement

Failure of Purchaser to send any notice to Seller within the required time period shall be conclusively deemed to constitute affirmance of this Agreement and waiver ol the right to terminate.

Category 7 TERMS OF PURCHASE FINANCING

The purchaser will often include the condition that the completion of the purchase agreement is contingent on the procurement of financing.

7.1 Agreement Not Contingent on Loan Commitment

Simultaneously with the Closing, but not as a condition to the Closing and not as a condition to Purchaser's obligations under this Agreement, Purchaser shall have the right, i(Purchaser so desires, to obtain, at its sole cost and expense, a loan. to be secured by a first lien against the Real Property and Personal Property.

[Alternate Clause] 7.2 Agreement Contingent on Loan Commitment

For a period of ninety (90) days from and after the Seller Authorization, Purchaser shall use reasonable efforts to procure a firm written commitment from a lender to make a fully nonrecourse acquisition loan to Purchaser, the proceeds of which loan shall be utilized by Purchaser in order to consummate its acquisition of the Hotel, on the following terms:

1. *Principal amount*—No less than Seven Million, Seven Hundred Sixty-Five Thousand and no/100ths Dollars;
2. *Interest rate—No* greater than ten and one-half percent (lO[1]^) per annum;
3. *Amortization schedule*—thirty (30) years; and
4. *Other terms*— Any other terms that Purchaser deems acceptable.

7.3 Failure to Procure Loan Commitment

In the event that Purchaser fails to procure the Loan Commitment, Purchaser shall have the right to terminate this Agreement by delivering notice of such election thai shall specify the reason(s) (or the termination to Seller. Upon receipt of such notice, this Agreement shall automatically terminate. Seller shall retain the Earnest Money as Liquidated damages (it being understood that Seller's actual damages in such event are difficult to ascertain owing to changing economic and market conditions and the amount of time the Hotel may be off the market), and neither party shall have any further rights, obligations, or liability to the other hereunder.

[Alternate Clause] Seller agrees that if said commitment is not obtained by Purchaser as described above, then. at Purchaser's election, it may terminate this Agreement, which shall then be void and without recourse to either party, and the Earnest Money Deposit shall be returned to Purchaser, or Purchaser may elect to proceed to close the purchase of the Property, such election to be made by written notice to Seller not later than sixty (60) days from execution and delivery of this document.

[Alternate Clause] If Purchaser is unable to obtain the first mortgage funding by the Closing, Purchaser shall have the right to extend the Closing (or 30 days (or a maximum of two times. Each time Purchaser wishes to extend Closing, Purchaser will (a) send written notice to Seller stating such intention five (5) days prior to the scheduled Closing, and (b) deposit with the Escrow Agent an additional deposit in the amount of One Hundred Thousand Dollars ($100,000). Any deposits made under this, paragraph will be considered part of the Deposit and credited toward the Purchase Price.

Category 8 TITLE COMMITMENT AND SURVEY

8.1 Title Commitment

Purchaser, at Purchaser's sole expense, shall be responsible for obtaining a title insurance commitment for a title insurance policy from a title insurance company (hereinafter "Purchaser's Title Insurer") in such amount and in favor of such persons as Purchaser desires. Purchaser shall have a period of ten (10) days from the date of this Agreement in which to conduct a title search of Property encumbrances or defects of title rendering title of the Property unmarketable. Marketability of title hereunder shall be determined in accordance with the standards of title of the Local Bar. Seller shall have an additional twenty (20) days (but not later than the date of Closing) from the date of receipt of such written notice to remove the specified encumbrances or detects. If, at the expiration of such twenty (20)-day period or the day of Closing, Seller is able to convey good and marketable title, transfer of title shall occur at the Closing. If, at the expiration of said twenty (20)-day period or the day of Closing period, Seller shall then be unable to convey good and marketable title free and clear of all such encumbrances and detects, then Purchaser shall have the option either of accepting such title as Seller can convey or of rescinding this Agreement; and it Purchaser shall elect to rescind, Seller shall refund the Earnest Money Deposit to Purchaser, whereupon all rights and liabilities of the parties hereto by reason of this Agreement shall be deemed at an end.

8.1.1 Title to Real Property. No later than fifteen (15) days after the Contract Date, Seller will deliver to Purchaser, at Seller's sole cost and expense, a title commitment, dated on or after the Contract Date. issued by the Title Insurance Company committing to issue to Purchaser an American Land Title Association (ALTA) owner's policy of title insurance in the amount of the Purchase Price, showing fee simple title to the Real Property in Seller, subject only to the exceptions listed on Exhibit D *[omitted]* and true and correct copies of all documents, whether recorded or unrecorded, referred to in the Title Commitment.

8.1.2 Title to Site. Promptly after the effective Date, Purchaser shall obtain evidence of title to the Site, at Purchaser's cost and expense, by the issuance of a title insurance binder or commitment through a major national title insurance company selected by Purchaser. The Title Commitment shall set forth the state of title to the Site together with all exceptions or conditions to such title, including, but without limitation to, all easements, restrictions, rights-of-way, covenants, reservations, and all other encumbrances affecting the Site that would appear in an owner's title policy.

8.1.3 Title to Personal Property. At Closing, Seller shall warrant that the Partnership has good and sufficient title to the Personal Property, subject to the encumbrances created by Security Agreements in the Loan Documents.

8.1.4 Contract Rights. Purchaser shall have determined that the Partnership has good title to the Contract Rights in accordance with the requirements hereof.

[Alternate Clause} At Closing, Seller shall warrant to Purchaser that the Partnership has good sufficient title to the Contract Rights and Accounts, that Seller has no knowledge of any defect or unmerchantable title thereto, and that Seller has not created or suffered any lien, encumbrances, attachment, security interest, or other outstanding interest or right that would diminish, affect, or reduce title thereto subject to the encumbrance created by Security Agreements in the Loan Documents.

8.1.5 Defects of Title—Cure. Seller shall have an additional thirty (30) days from the date of receipt of such written notice to remove the specified encumbrances or defects If. at the expiration of such thirty (30) -day period. Seller is able to convey good and marketable title, transfer of title shall occur at the Closing as provided for in this Agreement

]Alternate Clause] Seller shall, at its sole cost, cause the standard printed exceptions contained in the Title Commitment to be removed or insured over as of the Closing. Seller shall, al its sole cost, cause the title policy to be issued in accordance with the Title Commitment to be issued, as of the Closing Date, to cover the recording of the Deed.

[Alternate Clause] In the event Purchaser objects to any matters of records as disclosed by the Abstract of Title, Purchaser shall notify Seller of the items of which Purchaser disapproves. Seller then shall have the right (or a period of thirty (30) days to cure or remove such matters ol records that have been objected to by Purchaser, provided, however, that Seller shall have no obligation to do so.

8.1.6 Defects of Title—Termination. If, at the expiration of said thirty (30) -day period, Seller shall then be unable to convey good or marketable title free and clear of all such encumbrances and defects. Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey, with a credit against the monies payable al the Closing equal to the reasonably estimated costs to cure the same up to Twenty Thousand Dollars ($20,000), but without any other credit or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this Agreement and Seller will immediately refund (he Deposit.

[Alternate Clause] In the event Seller fails or refuses to cure or remove alt of such items as hereinbefore provided within said thirty (30) -day cure period, Purchaser's only remedy will be to terminate this Agreement, whereupon the Title Company is hereby authorized to return to Purchaser all deposits that have been theretofore paid or deposited by Purchaser in connection with this Agreement, and the parties hereto shall be released from all further obligations hereunder. In the alternative, if Purchaser shall fail lo cancel this Agreement as provided, Purchaser shall accept title in its existing condition, and Purchaser shall be deemed to have waived any objections to such title that have not been cured or removed, except as to warranties contained in the documents of conveyance.

8.2 UCC Search

Purchaser, at Purchaser's sole expense, shall be responsible for obtaining a UCC search of the records of ____ County, State of ——— and (he Secretary of State of ____ pertaining to Seller and Property. The results of this search shall not disclose any lien or encumbrance that cannot be discharged at the Closing. Seller warrants to discharge any other such lien or encumbrance at Closing.

8.3 As-Built Survey

No later than fifteen (15) days after the Contract Date, Seller will deliver to Purchaser, at Seller's sole cost and expense, a print of an as-built survey of the Hotel (the "Survey"), prepared by the planners and engineers. Prior to Closing, the Survey will be updated, will be certified by said surveyor to have been prepared in accordance with minimum detail requirements of the ALTA land survey standards, and will be recertified to Purchaser and Purchaser's lender(s). In the event the Survey shows any encroachment over a lot line, a prohibited encroachment over any easement, or any other matter that, in Purchaser's reasonable opinion, does (or could, in the future) materially interfere with the use. operation, or financing of the Real Property, such matter shall be considered a "Defect" hereunder.

8.4 Site Survey

Promptly alter the Effective Dale, Seller shall cause a boundary survey o(the Site to be made by a licensed land surveyor selected by Seller. The Survey shall provide a legal description of the boundaries of the Site and shall identify all easements, restrictions, and rights-of-way benefiting or burdening the Site by reference to the applicable recorded documents creating same. The costs and expenses of the Survey shall be paid by Purchaser.

8.5 Review of Title Commitment and Survey

Purchaser shall have thirty (30) days after receipt of the latter of (a) the Title Commitment and (b) the Survey to deliver, in writing to Seller, Purchaser's objections to title. Purchaser's failure to object to any item on the Title Commitment or Survey within the thirty (30) -day time limitation imposed hereby shall be deemed to be approval of same by Purchaser.

[Alternate Clause] In the event that any or all of the Title Commitment, Survey, or Lien Searches disclose any claim, lien, encumbrance, encroachment, or other matter that is objectionable to Purchaser, then Purchaser shall, within fifteen (15) days of receipt of the instrument containing the Defect, notify Seller in writing of any objections. Failure of Purchaser to so notify Seller in writing within such time period shall be conclusively deemed to be approval by Purchaser of all items in the Title Commitment, Survey, or Lien Searches, as applicable. If Purchaser timely notifies Seller of any objections, Seller may, but shall not be obligated to, prior to Closing, cause such Defects to be removed or insured over prior to Closing; Purchaser may, at its sole option, either (a) terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser, and neither party shall have any further liability to the other, or (b) proceed to close and accept title to the Hotel subject to such objectionable items, in which event the obligations of the parties hereunder shall not be affected by reason of such matters, the sale contemplated hereunder shall be consummated without reduction of the Purchase Price, and Purchaser shall have no further right to terminate this Agreement because of such Defects. If Seller causes the Defects to be removed or insured over, Purchaser shall be obligated to proceed with Closing.

Category 9 SELLER'S DELIVERIES

9.1 Financial Statements

Seller wilt provide the Purchaser with copies of year-end financial statements for the Hotel (the "Operating Statements") for the three (3) most recent full calendar years prior to Closing and, to the extent available, the current year. The year-end statements shall be certified by an independent certified public accountant as having been prepared in accordance with generally accepted accounting principles.

[Alternate Clause] Seller will provide Purchaser with copies of monthly operating statements for the Property (or each month for the last two (2) years, each statement to include the occupied rooms for that period, accompanied by a written statement signed by the President of the Seller certifying that such statements are true and correct to the best of his/her knowledge after reasonable investigation.

[Alternate Clause] The Seller will provide to Purchaser, on or before the twentieth (20th) day of each month, a Profit and Loss Statement with detailed departmental schedules, actual occupancy per-

centage, and average room rate (or the preceding month from the dale hereto until the Closing.

9.2 Plans

Seller will provide Purchaser with copies of all engineering and architectural plans and specifications, drawings, soil reports, studies, and surveys relating to the construction o(the Hotel in Seller's possession or control.

9.3 Taxes

Seller will provide Purchaser with copies of the bill or bills issued (or the three (3) most recent years for which bills have been issued (or all real estate taxes and personal property taxes and with copies of any and all notices pertaining to real estate taxes or assessments applicable to the Hotel.

9.4 Contracts

Seller will provide Purchaser with copies o(all brokerage, commission, management, leasing, maintenance, repair, service, pest control, and supply contracts (including without limitation janitorial, elevator, scavenger, laundry, and landscaping agreements) and any other contracts or agreements relating to or affecting the Hotel that will be binding upon the Hotel or Purchaser subsequent to Closing, all as amended.

Contemporaneously with the execution hereof, Seller shall provide Purchaser with copies of all notes, mortgages, leases, contracts, licenses, commitments, trademarks, trade names, copyrights, and engagements of Seller with respect to the Property and the business conducted thereon or any part thereof and, within ten (10) days after receipt of such documents. Purchaser shall advise Seller in writing of which of such Contracts Purchaser at its sole discretion will agree to assume and perform from and after Closing, providing, however, that if Purchaser shall not agree to assume any one of the Contracts that shall be material in nature. Seller shall have the right to cancel this Agreement within five (5) days after such notification from Purchaser, and in such event Purchaser's deposit shall be returned to Purchaser with all interest earned thereon. At Closing, Seller shall furnish to Purchaser assignments, in form and content satisfactory to Purchaser's counsel, conveying and assigning such of the Contracts as Purchaser has agreed to assume and perform. Such assignments of Contracts shall contain all third party consents as may be required in order to validly assign same to Purchaser and shall require Purchaser to assume all obligations under such Contracts that may arise thereunder from and after the Closing (except as otherwise herein provided) and to indemnify Seller with respect thereto.

9.5 Licenses

Seller shall provide Purchaser with copies of all licenses of Seller for the benefit of the Hotel or of third parties burdening the Hotel.

9.6 Leases

Seller shall provide Purchaser with copies of all contracts, leases, and agreements for the Property,

9.7 Insurance Policy

Seller shall provide Purchaser with copies of existing insurance policies covering the Property.

[Alternate Clause] Seller shall, contemporaneously with the execution hereof, provide Purchaser with a schedule setting forth all the insurance policies owned by Seller with respect to the Property and indicating the carrier or carriers of such insurance, the type of coverage afforded by each such policy, the annual premium, and the duration of the policy. Purchaser acknowledges that it will cause its own insurance to be placed on the Property at Closing.

9.8 Historical Capital Expenditure Budgets

Seller shall provide Purchaser with a summary of all capital expenditures made by Seller during last three (3) years, which summary may be delivered up to thirty (30) days after the execution of this agreement.

9.9 Franchise Reports

Seller shall provide Purchaser with copies of all inspection reports, deficiency letters, improvement requirements, and similar communications received by Seller from the Franchisor under the Franchise Agreement during the past twenty-four (24) calendar months.

9.10 Miscellaneous Hotel Assets

Seller shall provide Purchaser with a complete listing of all miscellaneous Hotel assets.

9.11 Reduction Certificate

Seller shall provide Purchaser with any estoppel letters from any mortgagees as to mortgages encumbering the Real Property and/or Personal Property, to be furnished not less than twenty (20) days prior to closing.

9.12 Rent Roll

Seller shall provide Purchaser with a Rent Roll for the property, certified to be true and correct by the Seller, setting forth the name and address of each tenant, monthly rent, amount of security or other deposits, status of rental payments, options if any. term of lease, and rent prepayments.

9.13 Payroll Summary

Seller shall provide Purchaser with a summary of Seller's payroll for employees.

[Alternate Clause] Contemporaneously with the execution hereof, to the extent available to Seller, Seller shall provide Purchaser with a list of all employees presently employed by Seller or by the manager of the hotel with respect to the Property, indicating, in each case, the name of each such employee, the position occupied by such employee, such employee's rate of compensation and any agreement relating to any increase thereof or bonus to be paid to such employee, term of employment, contract agreement, if any, and any other relevant information with respect to such employee.

9.14 Inventory of Personal Property

The inventory of Personal Properly of the Hotel shall be delivered to Purchaser within twenty (20) days

9.15 Affidavit From Partners of Sellers

Within thirty (30) days, an affidavit from the partners of Seller shall be provided to Purchaser setting forth who the partners are and the identity of the person or persons authorized to execute the documents required by this Agreement to effectuate the closing.

Category 10 SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS

10.1 Due Authorization

The performance of this Agreement and the transactions contemplated hereunder by Seller and each general partner of Seller have been duly authorized by all necessary action on the part of Seller and by each of its partners, and this Agreement is binding on and enforceable against Seller and each general partner of Seller in accordance with its terms. Seller shall, on or prior to the Closing Date, furnish Purchaser with certified resolutions, in form and substance satisfactory to Purchaser, evidencing that Seller and each general partner of Seller have been duly authorized to enter into and perform this Agreement and the transactions contemplated hereunder. No further consent of any shareholder, creditor, investor, judicial or administrative bonds. Governmental Authority, or other party to such execution, delivery, and performance is required.

[Alternate Clause] Seller has informed Purchaser, and Purchaser hereby acknowledges and agrees, that, notwithstanding the executions of this Agreement by ____ as the general partners of Seller, this Agreement shall not be or become binding upon Seller unless and until the terms and conditions of the transaction contemplated by this Agreement have been approved by the Board of Directors of the general partners. If both partners of Seller have not obtained authorization within (en (10) days after the Contract Date and given written notice thereof to Purchaser, this Agreement shall be automatically terminated and be null and void, and the parties shall have no further rights or obligations unto the other hereunder.

10.2 Authority and Capacity

Any person signing below warrants that. unless a representative capacity is set forth in connection with his signature, he is acting for himself alone. Seller warrants that Seller is the owner of the Property in fee simple and has the right and power to enter into (his offer and to carry out the terms hereof. All persons signing as Seller agree to execute Seller's deed required hereunder.

10.3 Foreign Entity Status

At the closing. Seller shall deliver to Purchaser such documents as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1954, as amended, or the regulations issued pursuant thereto certifying as to the non-foreign status of the Seller. In the event that Seller fails or refuses to deliver such certificate to the Purchaser and the Title Company at the closing, Seller authorizes the Title Company to withhold from the cash portion of the purchase price to be delivered to Seller at closing an amount equal to ten percent (10%) of the purchase price. All such sums withheld by

the Title Company shall be remitted to the Internal Revenue Service within the period prescribed by law. Notwithstanding the foregoing, it the Seller has received a Withholding Certificate from the Internal Revenue Service pursuant to applicable laws and regulations, the Title Company shall withhold from the cash portion of the purchase price payable at the closing only the amount required by the Withholding Certificate, with all such funds so withheld or paid to be remitted to the Internal Revenue Service within the period prescribed by applicable law

10.4 No Conflicts by Consummation of Agreement

To the best knowledge of Seller, neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (a) result in a breach of, default under, acceleration of, or imposition of any lien or encumbrance against the Hotel under any agreement to which Seller is a party or by which Seller or the Real Property are bound or (b) violate any restriction, court order, judgment, law, regulation, charter, bylaw, instrument, or agreement to which Seller or the Real Property (or any portion thereof) are subject.

10.5 No Undisclosed Interest

All of the Real Property described in Exhibit A *[omitted] as* being conveyed hereby in connection with the hotel is contiguous. Seller neither owns nor leases nor has any other interest in any real property adjoining, adjacent, or otherwise connected with the operation of the Property and no such real property is being conveyed to Purchaser pursuant to the terms of this Agreement.

10.6 No Untrue Statement

The representations and warranties of Seller contained herein were true in all material respects when made and are true in all material respects with its obligations and agreements hereunder and Seller shall have delivered to Purchaser a certificate dated the Closing Date signed by the President of the Seller to that effect and indicating any changes.

[Alternate Clause] No Exhibit hereto or document specified hereunder furnished or to be furnished pursuant to this Agreement to Purchaser contains or will contain any untrue statement of a material (act.

[Alternate Clause] Seller shall notify Purchaser promptly if Seller becomes aware of any transaction or occurrence prior to (he Closing Dale which would make any of the covenants, representations, and warranties of Seller contained herein not true in any material respect with the same force and effect as if made on and as of the date on which Seller becomes aware of such transaction or occurrence.

[Alternate Clause] Seller hereby represents and warrants to Purchaser as to the truth and accuracy of each of the matters set forth on Schedule C *[omitted]* annexed hereto, which representations and warranties shall survive the execution hereof (and any investigation made by the Purchaser) and the Closing for a period of two (2) years after the Closing.

10.7 Further Assurances

The parties hereto agree to execute, acknowledge, deliver, and record such certificates, amendments, instruments, and documents and to take such other action as may be necessary to carry out the intent and purposes of this Agreement.

[Alternate Clause] All action required pursuant lo this Agreement that is necessary to effectuate the transaction contemplated herein will be taken promptly and in good faith by Seller, and Seller shall furnish Purchaser with such documents or further assurances as Purchaser may reasonably require.

10.8 Actual Knowledge

Notwithstanding anything in this Agreement to the contrary, Seller shall have no liability whatsoever with regard to any matter of which the Purchaser had actual knowledge prior to the Closing. For purposes of this Agreement, "actual knowledge" shall include anything in a written report or document of any sort given to Purchaser in connection with the transaction contemplated in this Agreement or in a written report prepared for Purchaser by any inspector, engineer, auditor, or any other party; or anything known by an inspector, engineer, auditor, or other person reviewing any aspect of the Real Property, the Hotel, the Records, or the general business operations of the Hotel on behalf of Purchaser, whether or not said person disclosed the information to Purchaser or any of the foregoing named persons. By executing this Agreement, the Purchaser waives any such claim; by Closing, the Purchaser shall be deemed to have waived any such claim; and the Purchaser shall not be entitled to "reserve" any claims at Closing of which it has actual knowledge.

10.9 No Further Entrance Into Binding Agreements

Seller will not enter into any new Hotel Contracts or agreements of any kind (whether written or oral) affecting the Properly that by their terms require the payment of or receipt by Seller of more than Five Hundred Dollars ($500) annually, or cancel, modify, or renew any existing Hotel Contracts without notifying Purchaser by written notice. If Purchaser does not approve of any such agreement, within five (5) days of receiving notice from Seller of such agreement, Purchaser may terminate this contract and receive back the Deposit, and thereafter neither party shall have any further obligation to the other.

[Alternate Clause] Seller agrees that from and after the date hereof and pending transfer of title to Purchaser, Seller will not enter into any lease or agreement for the rental of any portion of the Premises, other than in the ordinary course of business.

[Alternate Clause] Seller will not enter into any negotiations with any third party with respect to the sale of the Property unless and until this agreement shall have been terminated in accordance with the provisions hereof.

10.10 Continued Operation

Seller shall continue to operate and manage the Hotel, maintaining present services (including pest control); shall maintain the Hotel in good repair and working order; shall keep on hand sufficient materials, supplies, equipment, and other personal property for the operation and management of the Hotel; and shall maintain in full force and effect and make all payments, and perform, when due. all of Seller's obligations under the Operating Contracts, the Governmental Permits, and all mortgages, restrictions, and other agreements affecting or relating to the Hotel and otherwise in accordance with applicable laws, ordinances, rules, and regulations affecting or relating to the Hotel. Seller shall deliver the Hotel at Closing in substantially the same condition as on the dale Purchaser waives or is deemed to waive its rights to terminate this Agreement, reasonable wear and tear excepted. Except as otherwise provided herein. Seller shall terminate, as of the Closing Date, those of the Operating Contracts that by their terms are not assignable. None of the

Personal Property or fixtures shall be removed from the Real Property unless replaced by personal property or fixtures of equal or greater utility and value.

10.10.1 Repairs and Maintenance. All repairs and replacements necessary to maintain the Property in its current condition will be made in the regular course of business up to the Closing Date at the expense of Seller.

10.10.2 Marketing. The Hotel will continue to be operated, promoted, advertised, and marketed substantially in accordance with the present standards of operation, promotion, advertising, and marketing.

10.10.3 Business Relationships. Seller shall preserve intact the normal business and organization of the Hotel and the normal business relationships of the Hotel with all wholesalers, suppliers, contractors, and other parties with whom the Property maintains a business relationship, and Seller shall maintain normal relations with the present employees of the Property.

10.10.4 Inventory. Each and every guestroom and function room in the hotel located on the Property and all public rooms therein are and shall on the Closing Date be no less fully equipped and furnished that they were on _____, 19— and each and every item of equipment and furniture therein or used in connection with the operation of the business thereon is included within the Property, except with respect to leased equipment.

[Alternate Clause] Until the date hereof and from the date hereof to the Closing Date, each of Seller and manager of the hotel has not and shall have not removed any item of inventory from the Property, other than items of inventory that have been consumed on the Property in the normal course of business.

[Alternate Clause] The book values of food and beverage inventories on the Property at the Closing Date shall be not less than the book values of such inventories maintained by the Property in the comparable month in the preceding year.

10.10.5 No Sale of Hotel. Until the date hereof and from the date hereof to the Closing Date, neither Seller nor the manager of the hotel has nor shall have sold, leased, mortgaged, pledged, or otherwise encumbered or disposed of any part of the Property, except in the ordinary and usual conduct and course of business.

10.10.6 Taxes. Seller is current in the payment of all taxes affecting the Property or operation thereof and Seller shall continue to make timely payments of all such taxes.

10.10.7 Insurance. Seller carries insurance upon or in connection with the Property of the kind and in the amounts as required by the first mortgage, and said insurance is in full force and effect on the date hereof and no notices of cancellation or suspension have been received with respect thereto.

[Alternate Clause] Seller will maintain in effect through the Closing Date all policies of casualty and liability insurance or similar policies of insurance, with limits of coverage not less than those required by the First Mortgagee.

10.11 Licenses and Permits

All required Certificates of Occupancy, underwriter's certificates, zoning, building, housing, safety, tire, health, environmental, liquor, and similar governmental approvals and all

permits and licenses necessary to operate the Hotel in the manner in which it is presently being operated have been issued and are valid and in lull force and elfect. and none of the foregoing is in the nature of a conditional use permit variance or other special approval.

[Alternate Clause] Seller owns and holds all licenses, permits, certificates, concessions, franchises, rights, approvals, and other authorizations, all unencumbered and subject to no challenge or revocation, as are required to carry out and conduct the business carried out and conducted at the Property and each and every aspect thereof and to own. use, and operate the business thereon carried on and conducted; and all such rights and privileges will pass to Purchaser at Closing without creating the right of termination or revocation on the part of any third party granting such right and privilege, except with respect to those licenses, permits, certificates, concessions, franchises, and approvals as expressly noted. With respect to the Property and its use and operation. Seller is not obligated or under any liability to make any payments by way of royalties or fees or otherwise pursuant to any license, royalty, franchise, or other agreement to any owner of. licensor of, or claimant to a patent, trademark, trade name, copyright, or other intangible asset with respect to the use thereof or in connection with the conduct of its business or otherwise.

[Alternate Clause] Exhibit C *[omitted]* identifies and will on the Closing Date identify all Permits used in connection with the operation of the Property, and is complete and correct. Seller has received no written notice from the issuing agency to the effect that a default has occurred in (he due observance of any condition to any Permit, and the Seller has not received any written notification from any governmental body to the effect that there is lacking any license, franchise, or permit needed in connection with the operation of the Property and any related business thereof. All Permits are transferable to Purchaser.

[Alternate Clause] Seller has unencumbered title to any and all licenses and permits necessary for the customary operation of the Hotel as required by any governmental authority having jurisdiction over the Premises, and such licenses and permits are freely transferable to Purchaser; and the Hotel is properly zoned (or its present use as a first-class hotel.

[Alternate Clause] Seller has valid transferable permits and/or leases as the case may be for all signs used in connection with the advertising, location, or directions to the Property.

[Alternate Clause] To the best o(Seller's knowledge, all permits and licenses necessary for the operation of the Property for its current use have been obtained and will be in effect as of the date of closing.

[Alternate Clause] Seller will execute and, where necessary. Purchaser will join in the execution of all applications and instruments required in connection with the transfer of the Permits in order to transfer the benefits of the Permits (o Purchaser on the Date of the Closing. Seller shall preserve in force all existing Permits and shall timely file proper applications for renewal of any Permit expiring prior to the Closing Date. If any such Permit shall be suspended or revoked. Seller shall promptly so notify Purchaser and shall take all measures necessary to cause the reinstatement of such Permit without any additional limitation or condition.

[Optional Clause] The Seller holds valid licenses under the State of ____ Alcoholic Control Law permitting the sale of alcoholic beverages for on-premises consumption and all permits as **are** required in order for Seller to sell alcoholic beverages on the Property in the places and in the manner in which Seller has heretofore sold such alcoholic beverages.

[Optional Clause] All curb cut and street opening licenses or permits required for vehicular access to and from any portion of the Property to any adjoining public street, highway, or road have been obtained and, where required, paid for in full by Seller and are in full force and effect.

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10.12 Contracts

There are no contracts, leases, or other agreements affecting the Property other than those to be delivered at the Closing. Such contracts, leases, or agreements are not in default by either party thereto and are freely transferable to Purchaser.

[Alternate Clause] There are no contracts, verbal or written, with any employees or unions, nor any service contracts, maintenance contracts, or any other contracts or agreements in connection with the operation of the Real Property or Personal Property, and there are no actions pending or, to Seller's knowledge, threatened between Seller, as landlord, and any tenant on the Real Property, to reduce any of their rentals.

[Alternate Clause] With respect to the Property, the Seller is not engaged in any labor or other material controversy with any of its employees, and the Seller is not a party to any labor agreement, management contract, employment contract, expense program, or pension, retirement, profit sharing or other benefit plan, program, or arrangement, or to any executive or key personnel incentive or other special compensation or agreement or to other contracts or agreements with employees, including union and incentive contracts or agreements, other than those referred to in Exhibit 3 *[omitted}* annexed hereto; and with respect to each employee of Seller or of the manager of the hotel with respect to the Property, all amounts owing to the date of Closing shall be paid to each such employee on the date of closing, including, without restriction, all salaries, wages, fringe benefits, contributions to pension plans, and accrued vacation pay.

10.13 Franchise Agreement

Annexed hereto is all of the documentation constituting the Franchise Agreement, true and complete copies of which documentation have been heretofore delivered to Purchaser. The Franchise Agreement has not been modified, amended, supplemented, or changed in any manner and the Franchise Agreement is valid, binding, and in full force and effect. As of the date hereof, no defaults on the part of Seller or any other party thereto exist under the Franchise Agreement; all royalty and other payments under the Franchise Agreement, including, without limitation, fixed payments and percentage payments, have been paid to date; and Seller shall deliver to Purchaser at the Closing and thereafter all reports, statements, and financial information necessary or appropriate to enable Seller to calculate percentage royalties and other sums payable to the franchisor, as the case may be, and otherwise to file required financial and other statements pursuant to the Franchise Agreement.

[Optional Clause] On or before the Closing Date, Purchaser will have obtained any required consents or approvals to enable Purchaser to assume the existing license or Franchise Agreement. Purchaser shall use diligence and its best efforts to obtain the approval from the franchisor (or the assumption of the existing Franchise Agreement.

[Optional Clause] There are no outstanding requirements or recommendations by the franchisor of the Franchise Agreement or by any insurance company issuing a policy with respect to the Property and/or Personal Property or by any board of fire underwriters or by any other bodies exercising similar functions requiring or recommending any repair or ameliorative work to be done in, at, or about the Hotel.

10.14 Employee-Related Representations

No employee of Seller or of the Property has the right to occupy any dwelling space on the Properly or has a dwelling provided for it by the Property.

[Alternate Clause] There are no employment agreements with any of the employees.

[Alternate Clause] There are no labor disputes pending or threatened, and Seller has no knowledge or reason to believe such disputes are threatened.

[Alternate Clause] Until the date hereof and from the date hereof to the Closing Date, each of Seller and the manager of the hotel has not and shall not have incurred any increase in salaries, wages, or other forms of compensation payable to or to become payable to any employee of the Seller with respect to the Property.

10.15 No Outstanding Litigation or Outstanding Conflicts

Seller represents and warrants that as of the Effective Dale, there are no suits, arbitration proceedings, other proceedings, or governmental investigations pending against it or, to the knowledge of Seller, threatened that adversely and materially affect its right or ability to enter into this Agreement or to consummate the sale of the Hotel in accordance with the terms of this Agreement, or that materially affect the Hotel.

[Alternate Clause] To the best of Seller's knowledge, there is no violation of any law. ordinance, or regulation and no existing litigation, known potential or threatened litigation, investigation, or other proceeding with respect to any aspect of the real or Personal Property being purchased under this Agreement, and if there were, any such litigation would be covered by insurance In the event that a lien, claim, or cause of action should arise after the closing resulting or attributable to any of Seller's activities upon the property prior to the closing, the Seller shall, at its sole cost and expense, cause any such lien to be discharged and defend against any such claim or cause of action, and Seller shall hold Purchaser harmless therefrom, including, but not necessarily limited to. charges incurred for the retention of such attorneys or other persons as may be required If any matters referred to in this paragraph become known to Seller after the effective date of this Agreement and prior to closing, Seller shall notify Purchaser of same.

[Alternate Clause] There is no violation of applicable laws, ordinances, or regulations, inclusive of those of administrative boards or agencies and other public authorities, relating to the Property and the business thereon conducted, and the Seller is not in default (or having failed to file lax returns or statements required to be filed under the laws of any federal, stale, municipal, or other jurisdiction with respect to the Properly and the business conducted thereon by Seller, and the Seller has paid or shall pay on or prior to the Closing all taxes, whether income, sales, use, real estate, or otherwise, owing to date with respect to the Property or its ownership or operation thereof and the business conducted thereon, and Purchaser will assume no liability with respect to any period up to and including the Closing Date or otherwise with respect to any such taxes, except for such real estate taxes that may be adjusted at Closing.

10.16 Eminent Domain/Condemnation Actions

Seller represents and warrants (hat as of the Effective Date, there are no pending condemnation actions of any nature with respect to the Hotel that would materially impair the Hotel's economic viability, and Seller has not received any notice of any such threatened or contemplated condemnation actions.

A. MISCELLANEOUS REPRESENTATIONS, WARRANTIES, AND COVENANTS

10.17 Title Matters

Seller has good and marketable title to the Personal Property and all Personal Property has been fully paid for.

[Alternate Clause] Seller makes no warranty of title as to the Site or the Improvements, except that Seller represents and warrants that it has refrained from any action that might impair Purchaser's title and will continue to do so.

10.18 General Encumbrance

There are no instruments or agreements that in any way encumber or affect the Property, and Seller has neither done nor (ailed to do anything nor suffered anything to be done as a result of which the Property or any part thereof has been or will be encumbered or title thereto has been or will be affected in any way.

10.19 Mortgage

To the best of Seller's knowledge, all mortgages and liens encumbering the Real Property and Ground Lease are in good standing, and Seller shall keep all of such mortgages and the Ground Lease in good standing through the date of closing.

[Alternate Clause] There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy pending against Seller or contemplated by Seller, and to the knowledge of Seller no such action has been threatened against it.

10.20 Zoning

Except as required by law. Seller shall not seek or consent to any amendment to any Permit that would alter the existing permissible uses of the Hotel or any part thereof.

[Alternate Clause] Seller has not made nor shall Seller make any applications before any zoning board or commission seeking to modify or change the present zoning of the Real Property constituting the Property.

10.21 Operating Liabilities

All Liabilities for sales taxes, unemployment compensation contributions, and assessments incurred by Seller in connection with the operation of the Real Property through the date of actual closing hereunder shall, unless otherwise provided herein to the contrary. be paid prior to or at closing.

10.22 Asbestos

There is now and there shall be on the Closing Date no asbestos or other noxious or environmentally hazardous substance on or about the Property.

10.23 Payment for Labor, Goods, and Services

Seller has paid or will pay in full before or after Closing all bills and invoices tor labor, goods, material, and services of any kind relating to the Hotel or any portion thereof, and utility charges relating to the period prior to closing.

10.24 Hotel Names

Exhibit B [omitted] identifies the Hotel Names that are included in this sale and Seller is currently using no others in connection with the operation of the Property.

HVS

10.25 Break-Even Guarantee

From the date of Closing and for twelve (12) months thereafter, the Seller shall guarantee that gross operating expenses shall be sufficient to cover all debt service on the Seven Million, Six Hundred Thousand ($7,600,000) Dollar loan and One Hundred Sixty-two Thousand Dollars ($162.000) of credit fees The Seller's guarantee will be personally guaranteed by _

B. SPECIAL CASES

10.26 Completion of Hotel

Seller agrees that it will undertake and complete the Hotel for the purposes and in the manner intended hereby and in accordance with the plans and specifications therefore that have been prepared by or on behalf of Seller and are attached as Exhibit D [omitted] hereto, and that it will cause such improvements to be made to His Real Properly **as are** necessary for the operation thereof in the manner herein provided

[Alternate Clause] Seller shall obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Hotel and in compliance with all state and local laws, ordinances, and regulations applicable thereto. Upon completion of the Hotel, Seller shall obtain all required permits and authorization from appropriate authorities, if any **be** required, authorizing the operation and uses of the Hotel for the purposes contemplated hereby.

[Alternate Clause] Seller covenants that it will take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of the contracts, including, without limitation, the correcting of any defective work.

10.27 Limitations on Seller's Representations, Warranties, and Covenants

Purchaser acknowledges and agrees that except as otherwise expressly set forth in this Agreement, (a) Purchaser is acquiring the Hotel "as is" and (b) neither Seller nor the Broker nor any other agent of Seller has made, and Purchaser is not relying upon, any representation or warranty, express or implied, with regard to the Hotel or otherwise in connection with the size, value, physical condition, or financial condition of the Hotel or its suitability for development resale or any particular use.

10.28 Survival of Contract

Notwithstanding anything to the contrary contained in this Agreement, after Closing, Purchaser shall have no cause of action against the Seller with respect to the breach of any representation, warranty, or agreement contained herein.

[Alternate Clause] All warranties and representations made in this Agreement shall survive the Closing.

10.29 Default and Termination

11 Seller defaults at any of the terms, covenants, or conditions of this Agreement or if any of the above conditions are not satisfied, then Purchaser shall have the right to terminate this Agreement by written notice to Seller listing the condition that was not satisfied and the return of the Deposit to Purchaser.

[Alternate Clause} II, at any lime prior to the Closing. Purchaser discovers that any of the representations or warranties of Seller are not true or that any of the agreements of Seller have not been complied with or that any of the conditions precedent to Closing are not satisfied, then Purchaser shall notify Seller and Seller may, but shall not be obligated to. cure same. If Seller is unwilling or unable to cure any such matters, Seller shall forthwith give notice of such fact to Purchaser and Purchaser shall, as its sole and exclusive remedy in such event, make an election in writing, which must be received by Seller within ten (10) days after receipt by Purchaser of Seller's Election Not to Cure, to terminate this Agreement, in which event the Earnest Money shall be returned to Purchaser by Seller after its receipt of Purchaser's election, and the parties hereto shall be fully released from any further liability or obligation hereunder. In the event that Purchaser has not received Seller's Election Not to Cure within ten (10) days after Seller's receipt of the notification from Purchaser, Seller shall be deemed conclusively to have elected to cure.

[Alternate Clause] In the event that Seller is unable to deliver title in accordance with the terms of this agreement or is unable to perform or comply with any other condition or obligation on the part of Seller to be performed under this Agreement, or in the event that any representation or warranty made by Seller hereunder shall be untrue as of the Closing Date, in each such case for reasons beyond Seller's control, then Purchaser shall have the option (a) to close and waive objection to any such defect or (b) to terminate this agreement at any lime prior to Closing or at Closing, by notice in writing to Seller, whereupon the Deposit and all interest earned thereon shall be returned to Purchaser and whereupon neither party shall be further obligated hereunder. In the event that the transaction contemplated hereby fails to close owing to any reason that is not beyond Seller's control, then Purchaser shall have the right, at its option, to obtain specific performance or to obtain money damages and to terminate this Agreement. Notwithstanding the foregoing, to the extent that there exists a state of fact underlying any representation or warranty made by Seller hereunder, which state of fact shall cause any representation or warranty to be untrue or incorrect as of the Closing, Purchaser shall not be entitled to elect to terminate this Agreement as aforesaid if (i) this state of fact shall be susceptible of correction by the payment of money, (ii) Seller elects to take such steps as are necessary for the correction of such state of fact subject to the reasonable approval by Purchaser of the steps to be taken, and (iii) such steps are taken and such state of fact if corrected within fifteen (15) days from the date initially established (or the Closing.

In the event that this transaction fails to close due to Purchaser's unexcused default, then Seller shall be entitled to payment of the Deposit as liquidated damages, and this Agreement shall be terminated and neither party shall be further obligated hereunder.

Category 11 REPRESENTATIONS AND WARRANTIES OF PURCHASER

11.1 General Terms

in order to induce Seller to sell the Motel and to consummate the other transactions contemplated hereby. Purchaser hereby represents and warrants to Seller that the following are true statements **as** of the date hereof and agrees that the following shall be true statements as of the Closing, subject to the proposition that, prior to Closing, the truth of the following is a condition to Closing only, with no liability of Purchaser whatsoever.

11.2 Due Organization

Purchaser is duly organized, validly existing, and in good standing under the laws of the state of its formation, and will on the Closing Date, be qualified to do business in the State of ——-——, and has all requisite power and authority to execute this Agreement and

the documents referred to herein to be executed by Purchaser. Prior to the closing. Purchaser shall have taken all actions required for the consummation of the transaction contemplated by this Agreement or any document delivered or to be delivered in connection with this Agreement.

[Alternate Clause] Purchaser represents and warrants that it is a corporation duly organized, validly existing, and in good standing under the laws o((he Slate of _____, is qualified to do business in the State o(_____, and is authorized to enter into the transactions contemplated by this Agreement. At Closing, if this Agreement has been assigned to a limited partnership, said limited partnership will be duly organized, validly existing, in good standing under the laws of the State of _____, qualified to do business in the Slate of _____, and authorized to enter into the transactions contemplated by this Agreement.

11.3 No Conflict

Neither the execution, delivery, and performance of this Agreement or any other agreement contemplated hereunder nor the carrying out by the Purchaser of the transactions contemplated hereby or thereby will conflict with, result in a breach of, constitute a default under, or accelerate (he maturity of (a) any applicable provisions of the Purchaser's charier or by-laws or other governing instrument, (b) any applicable legal requirements, or (c) any other agreement, indenture, or instrument to which the Purchaser is a party or by which the Purchaser is or may be bound or affected No consent o(any third party is required in order (or the Purchaser to enter into this Agreement or any other agreement contemplated hereunder or for the Purchaser to carry out the transactions contemplated hereby or thereby.

11.4 No Pending Litigation

The Individuals and the entity comprised by the Purchaser represent and warrant that as of the Effective Date. there are no suits, arbitration proceedings, other proceedings, or governmental investigations that are pending against them or to their knowledge threatened that adversely and materially affect their right or ability to enter into this Agreement or to consummate the purchase of the Hotel in accordance with the terms of this Agreement.

11.5 Purchaser Authorizations

Within thirty (30) days from the effective date of this Agreement. Purchaser shall furnish to Seller evidence acceptable to Seller, authorizing the consummation by Purchaser of the purchase and sale transaction contemplated hereby and the execution and delivery of the closing documents on behalf of the Purchaser. The foregoing shall also be required as to any person or entity to which Purchaser may assign this Agreement. No assignment of this Agreement by Purchaser will relieve Guarantors of their obligation hereunder. Simultaneously with the provision of such information as required by (his paragraph, Purchaser shall also provide to Seller a certificate of current good standing of the Purchaser in the State of incorporation of Purchaser.

11.6 Truth of Representations

Purchaser hereby represents and warrants to Seller as to the truth and accuracy of each of the matters set forth on Schedule D *[omitted]* annexed hereto, which representations and warranties shall survive the execution hereof and the Closing (or a period of two (2) years after the Closing.

Category 12 PRORATIONS AND ADJUSTMENTS

12.1 General Accounts Receivable and Accounts Payable

It is understood and agreed by and between the parties that any and all accounts receivable arising out of Seller's operation of the Hotel prior to the Closing shall remain the property of Seller and are not part of the property being transferred under this Agreement. In the event Purchaser shall receive payments on said accounts receivable due Seller after Closing, Purchaser agrees to promptly remit same to Seller. All accounts receivable arising out of the operation of said Hotel from and after the date of Closing shall belong to Purchaser, Further, it is understood and agreed to between the parties that Purchaser assumes no responsibility or liability for any accounts payable, obligations, or indebtedness of Seller of the Hotel, except those obligations assumed by Purchaser hereunder, and Seller shall hold Purchaser harmless and indemnify Purchaser from any claim by any party relating to any accounts payable, obligation, or indebtedness of any nature that was incurred prior to the Closing.

12.2 Liabilities Not Assumed

The purchase and sale of the Hotel shall be a transfer of assets only, and no liabilities or obligations of the Seller, whether incurred prior to or after the date hereof, shall be assigned by Seller or assumed by Purchaser, with the exception of the following: (a) any liability to provide hotel accommodations and services pursuant to confirmed reservations subsequent to the Closing Date: (b) any liability under the service contracts and equipment leases that is attributable to the period after the Closing Date; and (c) all accounts payable, trade payables, wages, vacation pay, and other accrued operating expenses incurred in the ordinary course of operating the hotel (not including real estate or personal properly taxes, which shall be prorated as of the Closing Date). Except as specifically provided herein, Purchaser shall not be responsible for any liabilities arising from acts or omissions of Seller prior to the Closing Dale, even though the claim with respect thereto may be brought after the Closing Date.

[Alternate Clause} Purchaser is not assuming any of the liabilities of Seller accrued prior to or on the Closing Date unless Otherwise specifically provided in this Agreement, which liabilities are and shall remain after the Closing Date the obligation of Seller.

12.3 Utilities

Seller shall be responsible for all water, sewer, and all other utility charges through the date prior to Closing hereunder, and Seller will use its best efforts to have meters for such utility services read on the date of the closing and thereafter Purchaser shall be responsible tor such utility services in its own name commencing with the closing date and thereafter. Seller agrees not to terminate utility services without giving Purchaser at least three (3) days' notice. Purchaser shall, prior to closing, post such utility deposits as required by the applicable utilities to assume the utility services and prevent interruption of service.

[Alternate Clause} Rents, if any, and water, sewer, gas, and electric charges as per meter readings taken not more than twenty-four hours prior to Closing shall be prorated and adjusted as of the date immediately prior to Closing.

12.4 Real Estate and Personal Property

Real estate taxes, personal property taxes, and no prepayable assessments shall be prorated to the date of delivery of possession, using the last available tax bill. Accrued general real estate, personal property, and ad valorem taxes for the current year shall be

prorated on the basis of actual bills therefore, if available prior to closing. If such bills are not available, then such taxes shall be prorated on the basis of one hundred ten percent (110%) of the most currently available information (or the Real Property and promptly re-prorated upon the issuance of final bills therefore (and any amounts due from one party by reason of such re-proration to the other shall be paid in cash at that time). Prior to or at Closing, Seller shall pay or have paid all such bills that are due and payable prior to or on the Closing Date and shall furnish evidence of such payment to Purchaser and the Title Insurer.

[Alternate Clause] At Closing, the real estate ad valorem taxes and the personal property taxes shall be prorated between the Seller and the Purchaser on the basis of the tax bill rendered lor the year before the year in which the Closing occurs il said tax bill for the year in which the Closing occurs has not been rendered. At such time as the actual tax bills lor the Real Property and Personal Property for the tax year during which the Closing is held are available, then taxes shall be re-prorated between the parties based upon the Closing Date. All tax prorations shall be made, taking into account the maximum discount permitted by law. The obligation to re-prorate taxes as set forth herein shall survive the closing.

12.5 Sales Taxes

There shall be no apportionment with respect to sales tax or occupancy taxes charged to guests occupying rooms at the Property subject to such taxes. After the Closing, Seller shall file final sales and occupancy tax returns with the appropriate taxing authority and pay to the appropriate taxing authority sales and occupancy taxes charged to guests and others during the period of time prior to the Cut-Off Time.

12.6 Payroll

Seller will pay all employees for all services performed through 12 P.M. (noon) of the date of Closing, together with all contributions to welfare, pension, fringe benefit, and other such programs required to be made on their behalf, and the employer's share of payroll taxes, social security, unemployment compensation taxes, and disability insurance incident to such salaries, wages, or other benefits. The accrual for vacation and sick day pay and bonuses shall be based upon individual calculations for each employee in conformity with (a) union contracts, when applicable, and (b) past practices as to vacations and sick days allowed and bonuses paid to non-union employees.

12.7 Interest

Interest, accrued or prepaid, shall be apportioned as of the date of Closing.

12.8 Association Dues

Trade association dues. travel agency commissions, trade subscription, and commissions of credit referral organizations, if any. shall be prorated as of the Closing Date.

[Alternate Clause] American Express, Diners Club, Carte Blanche. VISA, Mastercard. Citicorp Credit Service, net receivables, and payments or net receivables of other credit organizations, if any, shall be apportioned and the amount due to Seller shall be paid lo Seller by Purchaser if and when collected by Purchaser. Seller agrees to reimburse Purchaser promptly for any refunds Purchaser is required to make with respect to any payment theretofore made to Seller.

12.9 Telephone Charges

Purchaser and Seller shall obtain and determine all telephone charges applicable to the telephone system in use at the Hotel, and Seller shall execute any and all forms required in order to transfer (he existing telephone numbers, and any and all rights thereto, to Purchaser.

12.10 Room Rents

Seller shall be credited with all room rents from guests in residence on the night immediately prior to the date of Closing.

[Alternate Clause] Purchaser shall be credited with all room rents from guests in residence on the night immediately prior to the date of Closing.

[Alternate Clause] At 12:01 A.M. on the Closing Dale. Purchaser and Seller, or their designated agents and representatives, shall prepare and enter into the cash register a separate "folio" for every hotel guest then residing at the Hotel as disclosed by the guest ledger maintained by Seller (which guest ledger shall be subject to verification by Purchaser) and shall prepare a separate listing or inventory of same. As Purchaser receives payment in response to the accounts set forth on such Guest Inventory, Purchaser shall, within seven (7) days after receipt of such payment, pay to Seller that portion of each such payment representing guest charges attributable to the period prior to the Closing Date, net of all applicable collection charges, including, but not limited to. any applicable credit card commissions or other similar charges. Purchaser shall receive credit for one half ([1]^) of the guest charges attributable to guests residing at the Hotel at 12:01 A.M. on the Closing Date for the previous night's lodging.

12.11 Prepaid Rent and Deposits

All prepaid rent, room rental deposits, and all other deposits for advanced reservations or future rentals are to be turned over to Purchaser at Closing. All prepaid amounts under Hotel Contracts shall be adjusted.

[Alternate Clause] On the Closing Date. Seller shall provide Purchaser with a complete schedule (the "Reservation Schedule") of post-closing confirmed guest reservations, which Reservation Schedule shall list (a) the party for whose benefit the reservation was made; (b) the amount of prepaid room rent thereunder; (c) the amount of any room rental deposits; and (d) the amount of any other deposits made lor advance reservations, banquets, and/or future services to be provided after the Closing Date. Seller shall pay to Purchaser the amount of all deposits held in connection with such confirmed reservations at the rate or price previously agreed to by Seller.

12.12 Vending Machines

All revenues from vending machines and commissions, i(any, payable by the telephone company in respect of public telephones in the Property and long distance telephone calls made from the property shall accrue to the benefit of Purchaser after the Closing.

12.13 Inventory

There shall be no apportionment for inventory of consumable items or any linens, china, silverware, or supplies, the value of which are included in the Purchase Price.

[Alternate Clause} On the Closing Date, Seller and Purchaser shall take a further inventory of the Personal Property for (he purpose of assuring the accuracy of the Personal Property Inventory, and

any items of Personal Property that shall have been added or removed since the date of the Personal Property Inventory shall be disclosed in a written supplement to the Personal Property Inventory and furnished to Purchaser at Closing. Any additional items of Personal Property disclosed in said supplement shall be conveyed to Purchaser at Closing in the manner herein provided.

12.14 Working Capital

Purchaser shall pay Seller amounts of all house funds and petty cash funds at the Premises as of 12 P.M. (noon) of the date of the closing. All such amounts shall be verified jointly by representatives of Seller and Purchaser.

[Alternate Clause] Seller shall insure that there is Seventy-five Thousand Dollars ($75,000) of working Capital deposited in the Hotel's working capital account as of 12 P.M. (noon) of the date of Closing.

[Alternate Clause] Purchaser shall pay lo Seller an amount equal to the sum of all cash maintained in all cash registers in use at the Hotel as of 12:01 A.M. on the Closing Dale. That cash shall be counted jointly by representatives of Seller and Purchaser.

[Alternate Clause] Promptly after the Closing Date, Seller shall determine, subject to Purchaser's review and approval, the dollar amount of the Working Capital of the Hotel as of the Closing Date. If said dollar amount is less than Five Hundred Fifty Thousand Dollars ($550,000), Seller shall pay any such deficiency to Purchaser. If said dollar amount is greater than Five Hundred Fifty Thousand Dollars ($550,000), Seller shall be entitled to withdraw and retain any such excess from the Hotel operating accounts.

12.15 Other Adjustments

Charges due under the Assigned Contracts (defined hereinafter) shall be prorated as of the Closing Date. All other items that are customarily adjusted in transactions similar to the transactions contemplated hereunder shall also be prorated as of the Closing Date.

12.16 Disputes

Any and all disputes as to the adjustments pursuant to this section shall be resolved by an audit. The losing party shall pay all of the costs of such auditing expense. The provisions of this section shall survive the Closing.

Category 13 CLOSING DOCUMENTS AND PROCEDURE

Not later than fifteen (15) days prior to the Closing, the parties shall deliver copies of certain documents, set forth below, to the other parties as specified: the original of said documents shall be executed and delivered at the Closing together with such other documents as are contemplated by this Agreement.

A. SELLER'S RESPONSIBILITIES

13.1 Title Deed

Limited warranty deed in recordable form, executed by Seller, conveying the Real Property to Purchaser free and clear of all claims, liens, and encumbrances except tor the Permitted Exceptions and items approved or deemed to be approved by Purchaser.

[Alternate Clause} By general warranty deed, which deed, when tiled for record, shall convey to Purchaser and Warrant good and marketable title to the property, in tee simple absolute, free and clear o(all liens and encumbrances, except the underlying mortgages, described herein, taxes and assessments not yet due and payable, zoning ordinances and regulations acceptable to Purchaser, and such other "title exceptions," the Permitted Exceptions as well as additional title explanations, as shall have been approved in writing by Purchaser prior to the Closing.

13.2 Bill of Sale

A warranty assignment and bill of sale. executed by Seller, assigning, conveying, and warranting to the Purchaser title to the Personal Property, free and clear of all encumbrances, other than the Permitted Exceptions and items approved or deemed to be approved by Purchaser, and assignments of title to any vehicles owned by Seller included in the Personal Property, together with the original certificates of title thereof.

[Alternate Clause] By Seller to Purchaser, a Bill of Sale in the form customarily used in the county in which the Personal Property is situated, conveying the Personal Property, with warranty ot title.

[Altetnate Clause] The personal property, which shall be inventoried prior to Closing to the approval of Purchaser. shall be conveyed by a good and sufficient Bill of Sale with warranty of title by Seller as required by Purchaser. Purchaser agrees to accept the Personal Property estate in its present physical condition, Purchaser acknowledges that Seller has made no representations or warranties of any kind or nature, express or implied, with respect to the aforesaid Personal Property and Improvements except as herein set forth.

13.3 Assignment of Governmental Permits

To the extent any Governmental Permits are assignable, an assignment, executed by Seller, to Purchaser of all of Seller's right, title, and interest in and to the Governmental Permits, together with executed copies, applications, forms, and other documents as may be necessary to fully effectuate to the transfer of the same to Purchaser as herein contemplated.

13.3.1 Liquor **Permit.** Among the permits and licenses to be assigned and transferred with respect to the operation of the Property and the conduct of the Seller's business is the liquor permit issued to the Seller by the _____ Department of Liquor Control. At the Closing, Seller shall cause to be executed and delivered to Purchaser or Purchaser's nominee an instrument in form reasonably satisfactory to Purchaser that assigns, conveys, and transfers to Transferee all of Seller's rights and interests in, under, and to the Liquor Permit.

13.4 Assignment of Intangible Personal Property

An assignment to Purchaser of all right, title, and interest of Seller and its agents in and to the Intangible Personal Property, executed by Seller.

13.5 Assignment of Operating Contracts

An assignment executed by Seller, to Purchaser of those of the Operating Contracts that are assignable, in which Seller agrees to indemnify, protect, defend, and hold Purchaser harmless from and against any and all claims, damages, losses, costs, and expenses (including attorney fees) that arise in connection with the Operating Contracts and relate to the time period prior to Closing

13.6 Original Documents

To the extent not previously delivered to Purchaser, original copies of the Operating Contracts and Governmental Permits.

13.7 Keys

All keys used in connection with the Properly, tagged for identification

13.8 Title Policy

The Title Policy (for a "marked-up" Title Commitment) issued by the Title Insurer, dated as of the Closing Date. in such amounts and containing such endorsements and other terms as are required herein.

[Alternate Clause] At the Closing, there shall be issued to Purchaser by the Title Company an owner's policy of title insurance on ALTA Owner's Policy Form _ (the "Title Policy") in the amount of the Purchase Price. The Title Policy shall insure good, marketable, and indefeasible fee simple title to the Site, and to any beneficial easements and/or restrictions appurtenant to the Site, and shall contain as exceptions to title only the Permitted Exceptions and such additional matters as shall be approved by Purchaser. The costs and expenses of the Title Policy shall be paid by Purchaser.

13.9 Resolutions

A certified resolution authorizing Seller to enter into and perform this Agreement and to perform Seller's obligations hereunder.

[Alternate Clause] At Closing, a certificate of the Seller signed by a Senior officer, dated the Closing Date, certifying that all of the representations and warranties of the Seller contained in this Agreement are true and correct on and as of the Closing Date with the same force and effect as if made on and as pt the Closing Date.

13.10 Closing Statement

A counterpart, executed by Seller, of a closing statement conforming to the proration and other relevant provisions of this Agreement.

13.11 Records

To the extent not previously delivered to Purchaser, original copies of all records (including, without limitation, all guest ledgers) pertaining to the Hotel.

13.12 Certificate of Non-Foreign Status

The Certificate of Non-Foreign Status in the form attached hereto as Exhibit C *{omitted].*

13.13 Affidavits

Affidavits reasonably required by Purchaser and/or the Title Company to establish the authority and capacity of Seller to consummate the transaction described herein.

13.13.1 No-Lien Affidavit. By Seller to Purchaser, a Seller's No-Lien affidavit that is customary in form and content in the county in which the Properly is located.

HVS

13.14 Tenant Notice

By Seller to Purchaser, a form letter to tenants advising them of the sale of the Lessee's interest under the Ground Lease, advising that future rent payment shall be paid to the Purchaser.

13.15 Warranty Assignment

By Seller to Purchaser, a general assignment to Purchaser of all warranties that exist as to equipment, Personal Property, or structural components o(the building that have not expired by lapse of time

13.16 Lease Assignment

By Seller to Purchaser, an assignment of any leases to Purchaser.

13.17 Rent Roll

By Seller to Purchaser, a rent roll, certified to be true and correct by Seller, setting forth the name and address of each tenant, monthly rental, amount of security or other deposits, status of rental payment, options (if any), term of lease, and rent prepayments.

13.18 Hotel Name

An assignment by Seller to Purchaser, to the extent of the Seller's rights therein, without warranty, to the name "_____" and the current telephone numbers of the _____ (if same are transferable to the Purchaser).

13.19 Other Documents

Such other documents and instruments as are contemplated hereunder or as may reasonably be required by Purchaser, its counsel, or the Title Insurer and necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto.

B. PURCHASER'S RESPONSIBILITIES

At Closing, Purchaser shall deliver to Seller:

13.20 Purchase Price

The full Purchase Price, plus or minus prorations and other adjustments hereunder, in the amount and in the manner provided pursuant to this agreement.

13.21 Assumption of Ground Lease

By Purchaser to Seller, the consent and agreements of the Lessor to the assignment of the Lessee's interest under the Ground Lease and other matters as required by this Agreement.

13.22 Closing Statement

A counterpart, executed by Purchaser, of a closing statement conforming to the proration and other relevant provisions of this Agreement.

13.23 Assumption of Operating Contracts

An assumption executed by Purchaser in which Purchaser agrees to assume the Operating Contracts assigned to it by Seller, together with the agreement of Purchaser to indemnify, protect, defend, and hold Seller harmless from and against any and all claims, damages, losses, costs, and expenses (including attorney fees) that arise in connection with the assigned Operating Contract and relate to (he time period from and after Closing.

13.24 Resolutions

Certified resolution authorizing Purchaser to enter into and perform this Agreement and to perform Purchaser's obligations hereunder.

[Alternate Clause] By Purchaser to Seller, evidence reasonably acceptable each to the other authorizing the consummation of this Agreement and the execution and delivery of all of the Closing documents by the applicable party, and the authority of the applicable party to execute and deliver the closing documents.

13.25 Affidavits

Affidavits reasonably required by Seller and/or the Title Company to establish the authority or capacity of Purchaser to consummate the transaction described herein.

13.26 Franchise Transfer

By Purchaser to Seller, the consent o(Franchisor to the transfer of the existing Franchise Agreement from Seller to Purchaser and agreement by such Franchisor as to such other mailers required by this Agreement.

13.27 Other Documents

Such other documents and instruments as are contemplated hereunder or as may reasonably be required by Seller, its counsel, or the Title Insurer and necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto.

13.28 Seller's Escrowee Instructions

Seller's instructions to Escrowee regarding the recording and release to Purchaser of the Deed and the other documents described herein.

13.29 Purchaser's Escrowee Instructions

Purchaser's instructions to Escrowee authorizing the disbursement of the Purchase Price to Seller and the delivery of the documents listed above to Seller, conditioned on Escrowee simultaneously informing Purchaser that it is prepared to issue the Title Policy with respect to the Hotel, in the total amount of the Purchase Price, subject only to the Permitted Exceptions.

13.30 Escrowee Actions

Wire transfer to Seller of the Purchase Price and delivery to Seller of the documents described hereinabove:

Causing the Deed (together with all other documents that are to be recorded) to be recorded in the jurisdiction in which the Hotel is located.

Issuance (or contractual obligation of itself to issue) the Title Policy to Purchaser.

Carrying out all of the remaining instructions given by Purchaser and Seller to Escrowee.

Category 14 CLOSING EXPENSES

14.1 Closing Expenses

Seller shall pay the cost of the Title Policy, the Survey, one half of all escrow fees, and recording relating to the instruments of conveyance contemplated herein. Purchaser shall pay any real estate transfer taxes, intangible fee, or tax, and one half of all escrow tees.

[Alternate Clause] Seller shall pay such Closing costs including, but not limited to, transfer, stamp, or documentary taxes Purchaser shall pay for the costs of title insurance policies and Escrow fees.

[Alternate Clause] All costs relating to the Closing, other than fees payable to Purchaser's and Seller's respective legal counsel, and including, but without restriction, the cost of the title insurance policy and any transfer taxes shall be paid by Seller, and recording lees and sales taxes shall be paid by Purchaser; each of Purchaser and Seller shall be responsible (or fees payable to their respective legal counsel.

14.2 Real Estate Brokerage Fees

Real Estate Broker fees will be provided for in a separate agreement between Seller and Broker. Purchaser shall have no liability for any real estate brokerage commission in connection with the acquisition of the Property.

[Alternate Clause] Seller and Purchaser represent and warrant each to the other that no broker was involved in the negotiations leading to the execution of this Agreement or brought it about either directly or indirectly.

[Alternate Clause] Seller and Purchaser each warrant to the other that each has dealt with no broker, salesman, finder, or consultant with respect to this Agreement or the sale contemplated herein except the Broker. All sums due Broker shall be paid in full by Seller. Except as provided above, each shall indemnify, protect, defend, and hold the other harmless from and against all claims, losses, costs, expenses, and damages (including attorney fees) resulting from a breach of the foregoing warranty.

Category 15 EMINENT DOMAIN AND RISK OF LOSS

15.1 Eminent Domain

In the event of the institution of any proceedings, judicial, administrative, or otherwise, relating to the taking of a portion of the Real Property by eminent domain, or condemnation, prior to closing, the Seller shall have the first right to terminate this Agreement, which right shall be exercised within fifteen (15) days after notice of condemnation or proposed taking is received by Seller, whereupon all deposits heretofore paid by the Purchaser shall be returned to the Purchaser, and the parties shall be released from any further obligations hereunder. In the event that the Seller does not elect to cancel this Agreement, then the Purchaser shall have the option, to be exercised within ten (10) days after (he aforesaid fifteen (15) -day period, of canceling this Agreement, in which event all deposits theretofore paid by the Purchaser shall be returned to the Purchaser and the parties shall be released of all further obligations hereunder, or the Purchaser shall elect to close this

transaction, in which event there shall be no reduction in the Purchase Price, except that Purchaser shall be entitled to receive the award as a result of such taking, except that Seller shall be entitled to such portion of the award for its damages between the date of the taking and the dale of the Closing, assuming the taking occurred prior to the Closing, in which event the award shall be prorated.

15.2 Risk of Loss

Risk ol loss to the Real Properly or Personal Property or any portion thereof until the Closing shall be borne by Seller. In the event of damage to or destruction of the Real Property or Personal Property or any portion thereof by fire or other casualty prior to Closing, Seller shall have the option of repairing the damage or of rescinding this Agreement, in which event the deposits theretofore paid by Purchaser shall be returned to Purchaser and the parties shall be released and relieved of all further obligations hereunder.

[Alternate Clause] If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty prior lo the Closing, and such damage shall not have been repaired or reconstructed prior to Closing in a good and workmanlike manner to the reasonable satisfaction of Purchaser, Purchaser may, at its option, (a) receive the proceeds of any insurance payable in connection therewith, under Seller's insurance policy or policies, and thereupon remain obligated to perform this Agreement, or (b) terminate this Agreement and receive back any funds previously paid or deposited. Upon termination of this Agreement by Purchaser pursuant to this section, neither party shall thereafter be under any further liability to the other. Seller agrees to advise Purchaser of the present insurance coverage upon the property, to keep said policy or policies in full force and effect through the Closing Date. and to advise Purchaser promptly of any damage to the Premises by any loss or casualty.

Category 16 ASSIGNMENT, SUCCESSORS, AND HEIRS

Purchaser may assign this Agreement and the Purchaser's rights thereunder to any person or entity at any time.

[Alternate Clause] Purchaser may assign this Agreement and the Purchaser's rights thereunder to any person or entity at any time; however, such assignment shall not release Purchaser from any personal guarantees or recourse liabilities given by Purchaser to Seller unless Seller consents to such release in writing, which consent shall not be unreasonably withheld.

[Alternate Clause] This Agreement may not be assigned prior to the Closing Date by either party without the prior written consent of the other, except that Purchaser shall have the right **to** assign its interest in this Agreement **to a** limited partnership. When such assignee limited partnership assumes this Agreement, such an assignment shall relieve Purchaser of its obligations hereunder. Subject to the foregoing provisions, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Category 17 GENERAL CLAUSES

17.1 Benefit

This Agreement is for the benefit only of the parties hereto or (heir nominees, successors, beneficiaries, and assigns, and no other person or entity shall be entitled to rely hereon, receive any benefit herefrom, or enforce against any party hereto any provision hereof.

17.2 Binding Agreement

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns, and shall constitute the entire agreement among the parties.

17.3 Business Day

It any date herein set forth (or the performance of any obligations by Seller or Purchaser or (or the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday, or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post office are generally closed in the State of _____.

17.4 Confidentiality

(a) The parties agree that the terms of this Agreement and all information, documents, reports, and studies developed by either party in connection with the within transaction are strictly confidential and that they will make every effort to ensure that the provisions hereof and such information, documents, reports, and the like are not disclosed to any third party (including the press) without the other party's written consent.

(b) Neither the Private Placement Memorandum nor any documents relating thereto will contain statements about Seller or the Hotel unless Seller has previously reviewed such statements for accuracy. However, regardless of whether Seller does or does not review such statements, Seller will not be deemed a sponsor of the offering described in the Private Placement Memorandum, nor will Seller have responsibility (or the preparation or review of the offering documentation, and the Private Placement Memorandum will so state.

17.5 Controlling Law

This Agreement shall be interpreted in accordance with the laws of the Slate of New York. This Agreement shall be governed by and construed in accordance with the law of the Stale of New York.

17.6 Entire Agreement

This Agreement constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous oral agreements. understandings, representations, and statements are merged into this Agreement. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument.

[Alternate Clause] This Agreement may be executed in one or more counterparts, and all so executed shall constitute one contract, binding on all the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

17.6.1 Waiver. Either party hereto may. at its option, waive any performance by any other party required under the provisions of this Agreement by an instrument in writing.

[Alternate Clause] No modification or amendment of this Agreement shall be of any force or effect unless it is in writing and executed by both Seller and Purchaser.

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17.7 Escrow Agent

This Agreement shall serve as escrow instruction subject to the escrow agent's usual conditions or acceptance where not contrary to any of the terms hereof.

[Alternate Clause] This Agreement shall serve as escrow instruction subject to the escrow agent's usual conditions or acceptance where not contrary to any of the terms hereof. Purchaser's Title Insurer shall be escrow agent (or consummation ol this transaction.

17.7.1 Escrow Fund. Each Seller and the Purchaser agree that Three Thousand Dollars ($3.000) of the closing proceeds due Seller shall be held by Escrow Agent, in escrow, for a period not to exceed ninety (90) days from the dale of Closing, which escrow monies shall be used to satisfy any liabilities and obligations of the particular Seller pursuant to this Agreement that were not known or could not have been known as of the dale o(Closing. As to any such liabilities or obligations, before Escrow Agent shall disburse any of such monies in payment of same, the Seller and Purchaser shall provide Escrow Agent with joint written instructions as to the disbursement of such funds.

17.8 Headings

The headings appearing in (his Agreement are inserted only as a matter o(convenience for reference purposes, and in no way define, limit, or describe the scope and intent of this Agreement or any paragraph hereof.

17.9 Hold Harmless

Seller agrees to indemnify and hold harmless Purchaser from and against all claims, damages, losses, and expense, including reasonable legal fees and other costs, arising from any and all liability, loss, or damage the Purchaser may suffer as a result of claims, demands, costs, or judgments against it arising from or in any way connected with any accident, action, or incident of whatever nature occurring during the period of Seller's ownership of said Premises; and Purchaser agrees to indemnify and hold harmless Seller from and against all claims, damages, losses, and expenses, including reasonable legal fees and other costs, arising from any and all liability, loss. or damage the Seller may suffer as a result of claims, demands, costs, or judgments against it arising from or in any way connected with any accident, action, or incident of whatever nature during the period o(Purchaser's ownership of said Premises.

17.10 Litigation

In the event of litigation between the parties with respect to the Real Property, this Agreement, the performance of their obligations hereunder, or the effect of a termination under this Agreement, the losing party shall pay all costs and expenses incurred by the prevailing party in connection with such litigation, including reasonable attorney fees. Notwith-standing any provision of this Agreement to the contrary, the obligations of the parties under this Paragraph shall survive termination of this Agreement.

[Alternate Clause] In the event either party hereto is required to employ an attorney because of the default of the other party, then the defaulting party shall pay to the non-defaulting party court costs and reasonable attorney fees incurred in the enforcement of this Agreement.

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17.11 Notices

Any notice or election that may be or is required to be given pursuant to the provisions of (his Agreement shall be sufficiently served if sent by certified or registered U.S. Mails, postage prepaid, return receipt requested and addressed as follows:

As to Purchaser:.....

As to Seller:.....

17.11.1 Notice Deemed Served. Any properly mailed notice shall be deemed to have been served as of five (5) days after its posting for purposes of establishing that the sending party complied with this Agreement's applicable time limitations, but it shall not be binding on (he addressee until actually received.

17.12 Recording

This Agreement shall not be recorded, nor shall any memorandum hereof or excerpt or summary hereof be recorded. Any violation of the preceding sentence shall automatically render this Agreement, and the rights and obligations of the parties hereunder, null and void.

17.13 Reference

Wherever reference is made herein to any party by name or designation, such reference shall be deemed to extend to and include the nominee, successors, and assigns of such party.

17.14 Severability

If any provision of this Agreement is held invalid, the validity of the remainder of the Agreement shall not be affected thereby.

17.15 Time of the Essence

Time is of the essence as to this Agreement.

17.18 Time of Termination of Offer

This offer shall be open for acceptance until ——, 199X. Acceptance shad be effected by delivery to Purchaser of a copy of this Agreement executed by Seller.

17.17 Currency

All amounts herein expressed in dollars shall be in the legal tender of the United States.

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APPENDIX 3

Management Contract Clauses

This appendix is a compilation of clauses from a number of actual management contracts. These clauses have been selected to provide a representative sample of the types of provisions included in a typical management contract. In addition to serving as a guide for an attorney drafting such an agreement, these clauses can help the parties negotiating the agreement by showing them how other contracts have been structured.

The clauses have been arranged topically into 11 different sections. In many cases, a number of different clauses are contained under one title in order to provide the reader with optional or alternative language. At the beginning of each clause is an indicator showing the orientation of the clause. Clauses can be owner-oriented, operator-oriented, or neutral. This identification of orientation should allow the reader to select the clauses that best represent his interests. Finally, many of the clauses are followed by editorial notes that provide additional insight into the content of the clause.

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Section 1 PREOPENING MANAGEMENT SERVICES

1.1 Preopening Services—General

NEUTRAL In general. Operator will perform all activities necessary or reasonably required to open the Hotel for business, to see that the Hotel is properly stalled and equipped, and to see that there is in place, well prior to the Opening Date, a coordinated program for selling the room facilities and services of the hotel to the public.

NOTE: The contract should set forth in detail the preopening duties and responsibilities of the Operator.

[Alternate Clause] As part of the Preopening Services, Operator will:
OWNER

A. Recruit, train, direct, and employ an initial staff (or the Hotel:
B. Initiate and conduct such promotion, publicity, and other like programs **as** Operator may deem necessary to attract guests to the Hotel on and after the Formal Opening Date;
C. Negotiate for and enter into agreement for leases, licenses, and concessions (or stores, office space, and lobby space at the Hotel, in Owner's name subject to Owner's prior written approval, as agent (or Owner;
D. Apply for. process, and take all necessary steps to procure, in Owner's name or in name of an operator or an individual on its behalf or any combination thereof as may be required by the issuing authority, all licenses and permits required for the operation of the Hotel and its related facilities, including, but not limited to. liquor and restaurant licenses;
E. Purchase or contract for the purchase of all initial inventories and operating supplies, which shall be paid for out of the Initial Working Capital furnished by Owner;
F. Assist in coordinating the efforts and activities of the architect, interior designer, and alt other consultants retained by Owner in connection with the planning and development of the Hotel;

G. Supervise the Hotel's sales staff and conduct the sales and marketing efforts through its sales and marketing staff as Operator shall deem appropriate for the Hotel;

H. Do all other things Operator deems necessary for the proper opening of the Hotel, including, but not limited to, arranging for suitable inaugural ceremonies; and

I. Coordinate all Preopening Services.

1.2 Payment of Preopening Fees

OPERATOR Owner shall pay Operator a fee equivalent to two and one-half (2^1k) times Operator's direct personnel costs, including related fringe benefits and payroll costs for those personnel who are directly engaged in performing Preopening Services for the time such personnel are performing such services (excluding (a) personnel at other hotels managed by Operator and from Operator's corporate offices who are temporarily assigned to the Hotel to provide preopening and opening assistance in connection with the opening of the Hotel to the general public ("Preopening Personnel"), and (b) the Operator personnel assigned to the Hotel on a permanent basis in order to perform the services provided for under this clause ("Permanent Employees")). "Direct personnel costs" pursuant to this Section shall be based on Operator's mean grade salary level for personnel in each job classification, which may change from time to lime; provided however, that Operator agrees to assign personnel without regard to their actual salary level.

1.3 Reimbursement for Preopening Expenses

OPERATOR Preopening expenses incurred or paid by Operator, not to exceed One Hundred Fifty Thousand Dollars ($150,000), shall be promptly reimbursed by Owner upon receipt of a statement of account for such expenses.

1.4 Preopening Plan and Budgets

NEUTRAL On or before_____, 19__, Operator shall submit for Owner's approval, not to be unreasonably withheld, a preopening budget ("Preopening Budget") to Owner. Such budget shall not exceed One Hundred Fifty Thousand Dollars ($150,000).

1.5 Owner's Approval of Preopening Plan and Budgets

NEUTRAL Within thirty (30) days from the date of submission of the initial Preopening Plan to Owner or submission of any additional information requested by Owner in connection with its review of the initial preopening Plan, Owner shall submit to Operator, in writing and in reasonable detail, its objections to and comments on the initial Preopening Plan. A failure to do so shall be deemed an approval thereof by Owner. If Owner and Operator are not able to reach an agreement concerning any modifications to the initial Preopening Plan resulting from Owner's objections and comments within sixty (60) days after such comments and objections are received by Operator (it being expressly understood that the inability of Owner and Operator to agree on such modifications shall not be subject to arbitration), then this Agreement and the Management Agreement shall terminate, unless Operator, by notice given to Owner prior to such date, shall elect to continue them in full force and effect for such period or periods of time, not to exceed forty-five (45) days from the date of Operator's notice as Operator shall, in its sole discretion, determine by so slating in said notice.

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1.6 Operator to Prepare Staffing and Wage Schedules

OWNER Prior to the Opening. Operator will prepare for Owner an organization chart of Operator's corporate personnel who will perform the services to be provided by Operator under this Agreement; a proposed organization chart of job positions for the people to be employed by Operator and Owner in connection with the operation of the Hotel under this Agreement; and a preliminary staffing plan providing positions, schedules of employment, and average salaries or wages of persons to be employed by Operator and Owner in connection with the operation of the Hotel under the Management Agreement ("Staffing Plan").

[Alternate Clause] OWNER Prior to the Opening, Operator will prepare staffing tables, employment time tables, hiring and training guidelines for employees, and other programs relating to staffing of the Hotel.

1.7 Operator to Assemble a Task Force of Experts

OWNER The Operator will provide. for a task force of experts and personnel to supervise and assist with certain Preopening and Opening operations.

1.8 Consultants

NEUTRAL Pursuant to the services provided by Operator in this Agreement, Owner will not be required to hire separate, outside consultants for special systems (including Hotel computer systems and the Hotel telephone system) and front desk layouts.

Operator will assist Owner in determining what outside consultants are necessary for the design of the project.

Owner will submit to Operator a list of consultants proposed to be used for the design of project, which shall include the names of architect; structural, mechanical, and electrical engineers; interiors and lighting designers; food service and laundry designers; life safety, elevator, and audio-visual consultants; landscaping designer; and any other design consultants required. Operator will either approve, if acceptable, such consultants or suggest alternate consultants. All consultants to be used for the design of the project must be approved by Operator. Such approval shall not be unreasonably withheld.

1.9 Operator to Hire Executive Staff

OWNER At an appropriate time prior to the Opening, Operator will hire and retain, on behalf of Owner, a General Manager, director of sales, head housekeeper, and other department heads, and thereafter, with the assistance of such department heads. Operator will engage on behalf of Owner a full staff of employees for the Hotel.

1.10 Operator to Recruit and Train Staff

OWNER Prior to the Opening, Operator will recruit, train, direct, and employ an initial staff for the Hotel in the name of and on behalf of Operator or a wholly owned subsidiary of Operator.

1.11 Operator to Perform Preopening Sales and Marketing

OWNER Operator will prepare and coordinate, on behalf of the Hotel, preopening advertising, public relations, and sales budgets,. and may hire outside advertising and public relations firms, and will manage and coordinate all activities so as to develop a cohesive and coordinated preopening program for advertising, public relations, and sales, all subject to Owner's approval.

Such sales and marketing services will include the following:

A. Developing a mission statement for the Hotel;

B. Developing three-year revenue goals for major business segments of the Hotel;

C. Developing direct sales plans for the Hotel, including backlog goals, room rate guidelines, and sales strategies;

D. Developing a corporate rate program for the Hotel;

E. Developing catering market segment and sales goals;

F. Preparing and recruiting a sales organization necessary to support the goals and objectives developed in items A through D;

G. Developing a monthly reporting system to monitor sales progress;

H. Developing appropriate sales promotion strategies; and

I. Developing preopening plans for advertising, public relations, and marketing.

[Alternate Clause]
OWNER

Operator will, on behalf of Owner, hire and retain sales personnel and establish a sales program for the purpose of "selling" the rooms of the Hotel and the use of meeting rooms and other Hotel facilities, prior to the opening of the Hotel.

1.12 Inaugural Ceremonies

OWNER

In cooperation with Owner, Operator will arrange for suitable opening and/or inaugural ceremonies.

1.13 Model Room

OPERATOR

Owner shall construct, at Owner's expense and Operator's direction, a model room or rooms in the city in which the Hotel is to be located or at some other site mutually acceptable to Owner and Operator. Said model room or rooms shall be constructed pursuant to those sections of Operator's Project Standards Manual that Operator deems appropriate, and shall be used for marketing purposes and to illustrate the Hotel guest rooms, the concept, the detail of construction, and the furniture, fixtures, and equipment (F,F,&Es) therein.

1.14 Operator to Negotiate Loans

OWNER

In cooperation with Owner, Operator will negotiate leases, licenses, and concession agreements for stores, office space, and lobby space at the Hotel (exclusive of retail space adjacent to the Hotel), subject to Owner's approval. All leases, licenses, or concessions shall be in Owner's name and executed by officers of Owner on its behalf.

1.15 Operator to Secure Licenses

OWNER

Operator *will* assist Owner in securing all licenses necessary to open and operate the Hotel, including, but not limited to, occupational licenses, liquor licenses, Health Department licenses, and the like.

1.16 Operator to Perform Purchasing Services

OWNER

Operator will negotiate contracts for the design, specification, and purchase of Operating Equipment, Furnishings and Equipment, and Consumable Supplies. Such contracts shall be subjected to the approval of Owner.

1.17 Operator to Supervise Delivery and Installation

OWNER Operator will supervise and coordinate the delivery, installation, and acceptance of Operating Equipment, Furnishings and Equipment, and Consumable Supplies.

1.18 Soft Opening Period

NEUTRAL If agreed upon by Operator and Owner there may be a period during which the Hotel is open to paying guests, although not on a substantially fully operational basis (the "Soft Opening Period"). Any operation of the Hotel during the Soft Opening Period, which shall not exceed three (3) months in duration, shall be treated as part of the Preopening Period, and any excess of Operating Expenses and Other Expenses over Total Revenue during such period shall not be considered in the determination of Net Operating Profit for any Fiscal Year and shall be distributed to Owner pursuant to the provisions of this Agreement.

1.19 Monies Invested by Operator

NEUTRAL Operator shall lend to Owner upon the terms and conditions hereinafter described the sum of Eight Hundred Thousand Dollars ($800,000), which represents a part of the estimated cost of Preopening Services (exclusive, however, of (a) all costs in connection with obtaining all licenses and permits, including attorney and consultants fees, and (b) the fee payable to Operator in accordance with the provisions of this Agreement in relation to partial operations prior to the Opening Date), according to the following schedule:

A. Ten percent (10%) thereof within thirty (30) days of the date the construction loan is committed:
B. Fifteen percent (15%) thereof upon notice to Owner from Operator on the earlier of (i) three (3) months after the construction loan is committed or (ii) fifteen (15) months prior to the Estimated Opening Date (as defined hereinabove):
C. Twenty-five percent (25%) thereof upon notice to Owner from Operator twelve (12) months prior to the Estimated Opening Date; and
D. Fifty percent (50%) thereof upon notice to Owner from Operator (6) months prior to the Estimated Opening Date.

Owner shall execute in favor of Operator a promissory note in the Original principal amount of Eight Hundred Thousand Dollars ($800,000) with interest thereon at the prime rate as set by the parties agreed upon bank from time to time, such interest to accrue on the unpaid balance until paid. The note. shall be due and payable in one balloon installment five (5) years following the Opening Date of the Hotel but shall allow Owner to prepay without penalty. Owner shall execute a deed of trust securing the construction-term loan. Operator agrees to subordinate its deed of trust to the construction-term loan upon request to Owner.

Section 2 OPENING DATE

2.1 Opening Date

NEUTRAL The Opening Date is the date of the formal opening of the Hotel and shall be the earliest date after the Completion Date on which each of the following criteria has been met, as thereupon confirmed by Operator's issuance of a Certificate of Operational Readiness in the form annexed hereto as Exhibit E [omitted]:

A. Eighty-five percent (85%) of guestrooms are permanently available for sale;

B. Lobby area is equipped and functional;

C. Front desk is equipped and functional;

D. Food and beverage outlets are equipped and functional;

E. Kitchens are equipped and functional;

F. Elevators and escalators are installed and operating;

G. Public spaces, banquet rooms, and meeting rooms are equipped and functional;

H. Telephone Department is equipped and functional;

I. Parking facilities are available;

J. Heat, light, power, and air conditioning are available and operating;

K. Laundry and Valet (dry cleaning) Departments are available and functional;

L. Adequate Room status and Front Office systems equipment are installed and functional;

M. Cashiering equipment is installed and functional;

N. All necessary licenses and permits (including, without limitation, liquor licenses) required for the operation of the Hotel have been obtained;

O. Necessary operating inventories are on hand;

P. Necessary inspections by regulatory body have been completed and approvals have been received;

Q. Municipal Statement of Occupancy has been issued (temporary or permanent);

R. All required insurance coverage is in force; and

S. The Complex is capable of rendering deluxe, first-class service to guests on a substantially fully operational basis.

[Alternate Clause]
NEUTRAL

The Opening Date is the date of the formal opening of the Hotel. It shall occur on a date to be specified by Operator with the approval of Owner after Operator deems the Hotel to be substantially completed and the Furniture and Equipment and Operating Equipment have been substantially installed therein, all in accordance with the provisions of this Agreement, after all licenses and permits required for the operation of the Hotel (including a certificate of occupancy and liquor and restaurant licenses) have been obtained, adequate working capital has been furnished by Owner in accordance with this Agreement, and the Hotel has been accepted by Operator and is ready to render first-class service to guests on a fully operational basis. Operator may, without accepting the Hotel and with Owner's consent, conduct partial operations of the Hotel prior to the Opening Date.

[Alternate Clause]
NEUTRAL

The date for the opening of the Hotel to the public (the "Opening Date") shall be the date specified by Owner in a written notice to Operator (given at least thirty (30) days prior to the Opening Date), provided that in no event shall the Opening Date occur prior to the date on which all of the following conditions shall have been satisfied: (a) The construction of the Hotel shall have been substantially completed in accordance with the Final Plans, (b) the installation of the Furniture and Equipment and Operating Supplies in the Hotel shall have been substantially completed in accordance with the provisions of this Agreement, and (c) all certificates, approvals, licenses, and permits required for the legal use and operation of the Hotel, including liquor and restaurant licenses and certificates of occupancy, shall have been obtained from the appropriate governmental authorities. The parties hereto agree to execute an Addendum to this Agreement setting forth the Opening Date, at such time that the Opening Date is finally determined, and a counterpart of such Addendum shall be attached to and become a part of each counterpart of this Agreement.

Section 3 GENERAL COVENANTS OF OWNER AND OPERATOR

3.1 Owner to Provide Supplies

OPERATOR Owner agrees to provide, at its expense, sufficient initial inventories of operating supplies for the uninterrupted and efficient operation and maintenance of the Property.

3.2 Owner Responsible for All Expenses

OPERATOR Owner shall be solely liable for the costs and expenses of maintaining and operating the property and shall pay all costs and expenses of maintaining, operating, and supervising the operation of the property, including, without limitation, the salaries of all of its personnel.

NOTE: The preceding provision makes the agreement a management contract rather than an operating lease.

3.3 Owner's Right of Inspection

OWNER Duly authorized representatives of Owner shall have the right to enter the Hotel upon reasonable notice at all reasonable times during the Operating Term for the purpose of inspecting the Hotel. Such inspections shall be done with as little disturbance to the business of the Hotel as possible.

All books, accounts, and records maintained for the operation of the Hotel (whether maintained at the Hotel or elsewhere by Operator) shall be open at all reasonable hours upon reasonable notice for inspection, examination, copying, and audit by Owner or any qualified accountant experienced in Hotel matters selected by Owner for that purpose, at Owner's expense.

Owner, brokers, and prospective tenants, managers, *and/or* purchasers shall have the right to enter the Hotel at all reasonable times upon reasonable notice during the Operating Term, for the purpose of inspecting the Hotel; but the same shall be done with as little disturbance to the business of the Hotel as possible.

[Alternate Clause] OPERATOR Owner or its agents shall have the right to free access to the Hotel and all of its facilities at all reasonable times, but only for the purpose of inspecting or having others inspect or view the premises either to determine its condition or as prospective purchasers, investors, or lenders. Any concern, comment, or question Owner may have during or after any such visit shall only be directed to Operator or its specified representatives, and not to any other Hotel Employees. In all respects, Owner shall seek to minimize any disruptions to the operation of the Hotel resulting from its access thereto.

[Alternate Clause] OPERATOR Owner may consult only with the General Manager, or if he is unavailable, the manager on duty, concerning any aspect of the management of the Hotel by Operator.

[Alternate Clause] OWNER Owner may, at any time converse with the General Manager or Operator's Vice-President in charge of the Hotel regarding any subject, and Operator shall instruct them to disclose fully to Owner upon Owner's request all information regarding the operation of the Hotel.

3.4 Reserve for Replacement of Furniture, Fixtures, and Equipment

NEUTRAL Owner shall establish and maintain a separate account to be known as "Reserves for Capital Improvements and Replacements of and Additions to Furniture. Fixtures, and Equipment," for use solely for capital improvements and replacement of, and additions to, furniture and equipment so as to maintain the Hotel in a first-class condition.

[Alternate Clause]
NEUTRAL

Operator shall establish one (1) interest-bearing account (the "Replacement Fund") for use in connection with the Hotel, for the benefit of Owner, with a bank selected by Operator and approved by Owner. The monies from time to lime included in the Replacement Fund shall be the properly of Owner and shall be kept separate and apart from the Operating Accounts. Operator shall have the sole and exclusive power to designate the persons authorized, by manual or facsimile signature, to withdraw funds from the Replacement Fund shall be excluded from Gross Revenues and in computing Gross Operating Profit for any period and shall remain part of the Replacement Fund. To the extent Operator shall be required to pay any income taxes on the income as a fiduciary or otherwise, the same shall be payable out of such Replacement Fund.

NOTE: If operator receives an incentive fee calculated on the basis of net income less a Reserve for Replacement, then part of the Reserve has actually been funded by the operator. This point becomes important when the Operating Agreement terminates.

3.5 Funding the Reserve for Replacement of Furniture, Fixtures and Equipment

NEUTRAL

During each fiscal year (and proportionately for any fraction thereof), there shall be reserved and deducted in the determination of adjusted Gross Operating Profit an amount equal to the following percentages of Gross Operating Income: one and one-half percent (1.5%) in the second and third full fiscal year and two percent (2%) in any later years until the amount reserved for the replacement of furniture, fixtures, and equipment equals One Thousand Dollars ($1,000) multiplied by the number of rooms in the Hotel. After the amount reserved equals this sum, no further amount will be reserved, except that as expenditures are made they will be replaced at the two percent (2%) rate.

NOTE: The objective for funding a reserve for replacement of FF&E is to accumulate a sufficient amount for required replacements, but not so much as to create an excessive balance. Most formulas are based on a percentage of total revenue ranging from two to five percent (2% to 5%).

[Alternate Clause]
NEUTRAL

Funds shall be paid from the Operating Accounts into the Replacements Fund for each Monthly Accounting Period of the Operating term in the following amounts:

A. An amount equal to one percent (1%) of the Gross Revenues of the Hotel for each full Monthly Accounting Period during (i) the Fractional Year in which the Effective Date occurs, if the Effective Date does not occur on the first day of a Fiscal Year, and (ii) the first full Fiscal Year of the Operating Term;
B. An amount equal to two percent (2%) of the Gross Revenues of the Hotel for each Monthly Accounting Period during the second full Fiscal Year of the Operating Term; and
C. An amount equal to three percent (3%) of the Gross Revenues of the Hotel for each Monthly Accounting Period of the term of this Agreement, following the end of the second full Fiscal Year of the Operating Term.

Notwithstanding the foregoing, no such payment shall be made to the extent that it would cause the balance in such fund to exceed the sum of Three Thousand Dollars ($3,000) per room for the Hotel. Operator shall be entitled to withdraw from such Replacement Fund to pay for assets in the Equipment Budget and the Capital Expenditures Budget. The items so replaced or added shall be and become, forthwith upon acquisition and installation and without further act or action, the property of Owner.

[Alternate Clause]
NEUTRAL

For each Fiscal Year, an annualized amount initially fixed at ten percent (10%) of the original installed cost of the Furnishings and Equipment shall be set aside for the reserve for replacement of said Furnishings and Equipment. However, whenever Operator shall, from

time to time, determine that the replacement value of the Furnishings and Equipment has increased to a degree that makes it necessary to increase the said deduction in order to preserve the standards of the Hotel, Operator shall be entitled to obtain an independent appraisal of the said replacement value, the cost of which appraisal shall be an operating expense, and the amount of the deduction hereunder shall thereafter be fixed at ten percent (10%) of the replacement value as so determined. The said deduction shall be made by a monthly charge equal to one twelfth ('112) of the annualized amount determined as above.

3.6 Reserve for Structural Repairs

NEUTRAL Operator shall establish, in respect of each Fiscal year during the term of this Agreement, a reserve cash amount from which shall be drawn funds for structural or extraordinary equipment repairs, replacement, or maintenance at the discretion of Owner. During each Fiscal Year of this Agreement, funds shall be transferred into the Structural Component Reserve in Accordance with the following percentages: (a) None ¯(0%) for all Fiscal Years *through* and including the Fiscal Year in which the Renovation Program is completed; and (b) One half of one percent (0.5%) in each full Fiscal Year thereafter.

3.7 Insufficient Reserves

NEUTRAL The percentages for the Replacement Fund described hereinabove are estimates. If, in good faith, Operator believes, at any time during the term of this Agreement, that such percentages have become excessive given the needs of the Hotel, such percentages shall be reduced at the option of Owner. On the other hand, if, in good faith, Operator decides that these percentages may not be sufficient to keep the Replacement Fund at the levels necessary to make the expenditures required for the Hotel as a high quality. first-class facility, and if the Equipment Budget and Capital Expenditures Budget prepared in good faith by Operator exceeds the available funds in the Replacement Fund, Owner shall in good faith consider reasonable proposals made by Operator, in keeping with the need to maintain the position of the Hotel in its competitive geographical market. Owner will have final say in any change to the amounts specified.

3.8 Operator's Use of the Reserve fund

OPERATOR On or after the Formal Opening Date and during each Fiscal Year, Owner will make available to Operator, within thirty (30) days after receipt of Operator's request, for capital improvements and replacements of and additions to furniture and equipment, from the reserve account established therefor, the amount provided in the Annual Capital Budget therefor.

[Alternate Clause] OPERATOR Any expenditure for replacement, substitution, and additions during each fiscal year may be made by Operator without Owner's consent up to the then-remaining balance in such reserve fund.

3.9 Disposal of Furniture and Equipment

OWNER It is expressly understood that nothing contained in this Agreement shall be construed to give Operator any right to dispose of furniture, furnishings, fixtures, equipment, machinery, or any other personal property used in the operation of the Hotel without the prior written approval of Owner,

However, if such disposal is in accordance with the Annual Plan approved by Owner, prior written approval of Owner shall not be required.

3.10 Reserve Funds Upon Termination

OPERATOR Any amounts remaining in the Reserve upon termination of this Agreement, less (a) the cost to complete any protects which have been previously committed and (b) aggregate deposits to the Reserve of proceeds from sale(s) of FF&E, shall be included in the computation of Total Revenue for the sole purpose of computing Incentive Earnings in the year of termination.

3.11 Operator's Right of Offset

OPERATOR Operator shall have the right at any time, but not the obligation, to withdraw from the Agency Account any amounts owed by Owner to Operator that are not paid by Owner in accordance with the terms hereof, but no failure or forbearance by Operator to deduct any such amounts shall be or shall be deemed to be a waiver of Operator's rights to deduct such amounts subsequently or to collect such amounts from Owner in any other manner available to Operator hereunder or at law or in equity.

3.12 Owner to Indemnify Operator

OPERATOR Owner shall indemnify and hold operator harmless from all liability, loss, damage, cost, or expense relating to, arising, or incurred by reason of or in connection with the operation of the Hotel, including any act or omission, negligent, tortious, or otherwise, of any agent or employee of Operator or its Affiliates unless such act of omission constitutes fraud, gross negligence, or willful misconduct. Owner shall, at Owner's sole cost and expense and at Operator's request or upon Operator's demand, assume the defense of any legal proceeding arising out of the allegation of any such act or omission.

NOTE: Both owners and operators usually seek some form of indemnity from the other party. The key phrases in the preceding clause are "gross negligence" and "willful misconduct," which limit the extent of the provision. The use of the phrase "negligence," (as opposed to "gross negligence") would limit this clause even further.

[Alternate Clause] OWNER Notwithstanding the foregoing, Owner shall not be required to indemnify Operator against damages suffered as a result of gross negligence or intentional or willful misconduct on the part of Operator, its agents, or its employees, or on the part of any agents or employees selected or engaged Operator on the account of Owner.

The indemnification provided by this provision shall not extend to any liabilities or claims of Owner that may arise out of the breach, intentional or otherwise, of this Agreement by Operator.

No recovery under this indemnification provision will be allowed if the liability or claim of Operator has been paid in full, or if, and to the extent that, it has been paid in part, by any insurance maintained by Owner or Operator.

3.13 Operator to Indemnity Owner

OWNER Operator shall indemnify and hold harmless Owner from all liability, loss, damage, cost, or expense (including, without limitation, attorney fees and expenses) caused by Operator's breach of this Agreement, actions outside the scope of this Agreement, gross negligence, willful misconduct, fraud, or breach of trust, whether during or after the term of this Agreement. Operator's duty to indemnify Owner shall be binding upon all successors and assigns of Operator. In case of any action, suit, or proceeding brought against Owner with respect to which Owner is entitled to indemnification pursuant to this provision, Owner will, notify Operator of such action, suit, or proceeding, and of the extent to which Owner is to be indemnified. Operator may, and upon Owner's request will, at Operator's expense,

defend such action, suit, or proceeding, or cause the same to be defended by counsel designated by Operator and approved by Owner

3.14 Operator Not Liable to Owner

OPERATOR Operator shall not, in the performance of this Agreement, be liable to Owner for any action or omission, negligent, tortious, or otherwise, of any agent or employee of Operator or its Affiliates, unless its act or omission constitutes fraud, gross negligence, or willful misconduct and the damages resulting therefrom are not covered by insurance that Operator is required to maintain hereunder.

[Alternate Clause] OPERATOR Notwithstanding any other provisions of this Agreement, in no event shall Owner make any claim against Operator or its Affiliates on account of any alleged errors of judgment made in good faith in connection with the operation of the Hotel hereunder by Operator or its Affiliates or the performance of services provided for herein, nor shall Owner object to any expenditure made by Operator in good faith in the course of its management of the Hotel or in settlement of any claim arising out of the operation of the Hotel (other than claims involving a settlement of excess of Ten Thousand Dollars ($10,000), which must be approved by Owner) unless such expenditure is specifically prohibited by this Agreement.

[Alternate Clause] OPERATOR Operator is not liable to Owner or others for any act or omission on the part of its employees, unless Operator has failed to use reasonable diligence in the hiring, discharge, or supervision of such employees so as to maintain a staff of qualified, competent, and trustworthy employees.

3.15 Noncompetition Covenant

OWNER Except with the written consent of Owner, Operator shall not manage or have any equity interest in any other hotel or motel within the radius of five miles of the Hotel during the term of this Agreement.

[Alternate Clause] OWNER For the first five (5) years of the Operating Term, neither Owner, Operator, nor any of their subsidiaries shall either own, lease, manage, or franchise a hotel, motor inn, or similar facility within Area A outlined in red on Exhibit F attached hereto *[omitted).* Thereafter for the balance of the Operating Term, the size of the noncompetition area shall be reduced to the area designated Area B on Exhibit F attached hereto *[omitted],* it being understood that such ownership, leasing, management, or franchising outside of said area shall be totally unrestricted.

[Alternate Clause] OWNER Neither Operator, its parent, nor any subsidiary or entity related to Operator or its parent shall at any time during the Operating Term own any interest in or manage a hotel or motel that is located within seven miles of the Hotel. Except as provided hereinabove, nothing in this Agreement shall deprive or otherwise affect the right of either party to own, invest in, manage, or operate property or business activities that are competitive with the business of the hotel. Operator covenants and agrees that even though it may have either an ownership interest in or a management responsibility for other similar properties that, from time to time, may be competitive with the hotel, Operator always shall represent the hotel fairly and deal with Owner on an equitable basis.

[Alternate Clause] OWNER Operator agrees that, during the first ten (10) years of this Agreement (the "Restricted Period"), Operator shall not hold an interest in any hotel operated under a name of Operator that is located within a ten-mile radius of the Hotel (the "Restricted Area"), provided, however, that if Operator acquires, or is acquired by, a publicly held company (the "Constituent Company") through a merger, consolidation, acquisition of assets, or similar transaction and the Constituent Company holds an interest in a hotel or hotels in the Restricted

Area, the foregoing prohibition shall not apply to the hotel or hotels wherein the Constituent Company holds an interest.

3.16 Arbitration

NEUTRAL

In the event that the parties fail to agree on a matter as provided in this Agreement, the matter involved shall be resolved by arbitration. An arbitrator shall be selected by mutual agreement of the parties, or if they cannot agree, by appointment made by the American Arbitration Association from among the members of its panels who are qualified and who have experience in resolving matters of a nature similar to the matter to be resolved by arbitration. Each party shall submit to the arbitrator a detailed and complete statement of terms and conditions that such party considers to be a fair and reasonable resolution of the dispute and that such party considers its "last and best offer." The arbitrator shall decide the dispute by selecting the proposal made by one (1) party that such arbitrator, after consideration of the parties to this Agreement and the economic benefits the parties intend to derive from this Agreement, considers to be the most reasonable and equitable resolution of the dispute. The decision of the arbitrator shall be final and conclusive and shall be binding upon the successors and assignees of the parties.

[Optional Additional Clause]
NEUTRAL

The arbitrator or arbitrators shall have the right only to interpret and apply the terms of this Agreement, and may not change any such terms or deprive any party to this Agreement of any right or remedy expressly or implicitly provided in this Agreement.

3.17 Legal Costs

NEUTRAL

In the event that either party shall institute legal or equitable proceedings to enforce any provision of this Agreement, the prevailing party, in addition to any other remedy to which it may be entitled, shall be entitled to recover as a part of such judgment or otherwise, and the non-prevailing party shall pay, all costs and expenses incurred in such proceedings, including reasonable attorney fees and disbursements.

3.18 Operator Shall Not Pledge Credit of Owner

OWNER

Operator shall not, except in the purchase of Furnishings and Equipment, Operating Supplies, and services reasonably required in the ordinary course of business in the operation of the Hotel, or as may be otherwise required in the performance of its obligations under this Agreement, pledge the credit of Owner, nor shall Operator in the name of or on behalf of Owner borrow any money, execute any promissory note, or pledge, mortgage, or otherwise encumber any real or personal property used in connection with the Hotel or otherwise without the prior written consent of Owner.

3.19 Confidential Information

OPERATOR

Owner agrees, for itself and its agents and employees, during the term of the Management Agreement and after its termination, not to reveal to any person (except as required hereunder or as authorized by Operator) any confidential or proprietary information or any other information belonging to Operator, its parent company, or their subsidiaries or affiliates relating to the business contemplated by the Management Agreement and not generally known to the trade and to the public, including, but not limited to, trade secrets, business and financial information, and know-how. Owner further agrees not to use at any time any such confidential or proprietary information belonging to Operator or its parent company or their subsidiaries or affiliates in competition with any of them.

3.20 Owner's Right to Mortgage Property

OWNER

Nothing herein contained shall prevent Owner from encumbering the Hotel by mortgage, deed of trust, or trust deed in the nature of a mortgage (the first, unsubordinated mortgage, deed of trust, or trust deed and any instruments secured thereby or collateral thereto shall be herein collectively referred to as the "Mortgage," and the holders of any such Mortgage, or of the indebtedness secured thereby, are herein referred to as "Mortgagee"), provided that Mortgagee shall be subject to the approval of Operator, unless such Mortgagee is a bank, savings and loan association, savings bank, insurance company, mortgage bank, pension fund, educational institution, welfare or retirement or endowment fund, real estate investment trust, or other like institution that is regularly engaged in the business of making loans. secured by mortgages on real property, in which case no such approval shall be required

Owner agrees that, in the event of such refinancing, Owner shall provide Operator notice of such appraised value along with the name, address, telephone number, and resume of the person who performed said appraisal ("First Appraiser") which person shall be an MAI Appraiser who specializes in the appraisal of hotels Within ten (10) days of receipt thereof. Operator shall either accept the findings of said appraisal or notify Owner that it disputes said amount, in which event the following shall occur:

A. Operator shall within ten (10) days of the serving of such notice of dispute to Owner, select an MAI Appraiser ("Second Appraiser").
B. The First Appraiser, whose fees shall be paid by Owner, and Second Appraiser, whose fees shall be paid by Operator, shall, within ten (10) days of the selection of the Second Appraiser, jointly select a third MAI Appraiser ("Third Appraiser"), whose fees shall be split equally between Owner and Operator.
C. The Second Appraiser and Third Appraiser shall each independently perform an appraisal of the Hotel, which appraisals shall be delivered to Owner and Operator within ninety (90) days of the date the Third Appraiser is selected.
D. The value of the Hotel shall be determined by calculating the average of the two appraisals closest in value to each other

Upon the execution of any Mortgage. Owner shall furnish Operator with a duplicate copy thereof and shall designate the post office address where notices may be served upon Mortgagee. Operator agrees that, so long as any such Mortgage shall constitute a lien on the Hotel, when Mortgagee shall request in writing copies of any and all financial or other information, Operator, pursuant to the terms and provisions of this Agreement, is obligated to deliver same to Mortgagee as often as Mortgagee may reasonably request. Moreover, Operator shall allow, upon request of Owner, any person designated in writing by Mortgagee to examine, audit, inspect, and transcribe all books of account and all other records relating to or reflecting the operation of the Hotel.

[Alternate Clause]
OWNER

Owner shall have the right to incur indebtedness in favor of one or more Institutional Lenders for which the Hotel or any part thereof or any interest therein may be used as collateral, so long as the Cash Flow Available for Debt Service for the Fiscal Year immediately preceding the Fiscal Year in which such indebtedness is proposed equals one hundred fifteen percent (115%) of regular annualized debt service on all indebtedness secured and/or to be secured by the Hotel.

3.21 Operator, to Periodically Meet With Owner

NEUTRAL

After each fiscal quarter, Operator and Owner shall, if deemed necessary by Operator or Owner, meet at a mutually agreeable time and place to review operating results for the Fiscal Year to date and operating plans for the balance of the Fiscal Year.

3.22 Owner Responsible for Debts, Liabilities, and Expenses

OPERATOR All debts and liabilities to third persons incurred by Operator in the course of its operation and management of the Hotel and within the scope of its authority hereunder shall be the debts and liabilities of Owner only, and Operator shall not be liable for any such obligations by reason of its management, supervision, direction, and operation of the Hotel for Owner or for any other reason whatsoever, unless such obligations were incurred by Operator beyond the scope of its authority.

[Alternate Clause] OPERATOR In performing its duties hereunder during the Operating Term, Operator shall act solely for the account of Owner. All expenses incurred by Operator in performing its said duties shall be borne exclusively by Owner. To the extent the necessary funds are not generated by the operation of the Hotel, they shall be supplied by Owner to Operator upon demand.

Section 4 OPERATOR'S DUTIES

4.1 Operator's Overall Duties and Responsibilities

OWNER Operator shall be responsible for and have full power, authority, discretion, and control in all matters relating to the operation, management, and maintenance of the Hotel, including, without limitation, (a) rental and occupancy of rooms and commercial space and setting of charges therefore; (b) food and beverage services (including menu development and pricing); (c) employment policies: (d) credit policies; (e) the receipt, holding, and disbursement of funds; (f) accounting; (g) budgeting; (h) maintenance of bank accounts; (i) procurement of inventories, supplies, and services; (j) promotion, sales, marketing, and publicity; (k) maintenance, repairs, and cleaning of all improvements and equipment; and (l) generally, all activities necessary for the operation, management, and maintenance of the Hotel.

4.2 Operator's Duties-Maximization of Profits

OWNER Operator shall use its best efforts in the management and operation of the Hotel so that the Hotel and its services will be operated and maintained in such a manner as to maximize profits and provide a first-rate environment.

NOTE: The preceding clause deals with a duty sometimes overlooked by management companies: the maximization of profits. Operator-oriented contracts usually omit this clause.

[Alternate Clause] OWNER Operator shall implement policies and practices to achieve the following goals:

A. To facilitate effective and efficient discharge of its obligations under this Agreement;
B. to create and enhance goodwill among existing and prospective guests and patrons; and
C. to establish and maintain a favorable reputation for the Hotel.

[Alternate Clause] OWNER Operator shall manage and operate the Hotel and its businesses, services, and sales and shall exercise its best efforts to do so at all times in a manner of a high-quality hotel, consistent with the Franchise Agreement, and within the requirements of the applicable laws. Operator will use its best efforts to maximize to Owner the profits that can be derived from the Hotel and, upon its own initiation, with reasonable frequency, shall consult with and advise Owner and otherwise bring to Owner's attention opportunities to obtain and increase such profits. Operator shall not cause or knowingly permit to occur any act or omission that would violate the Franchise.

4.3 Operator to Maintain a Specific Level of Quality

OWNER Operator shall operate the Hotel throughout the entire Operating Term at a "First-Class Level" and shall provide or cause to be provided all amenities in connection therewith that are customary and usual to such an operation, and shall perform all of the functions and services, including those that are customary and usual for such an operation, so long as Owner does not impair Operator's ability to maintain such First-Class Level by withholding sufficient funds in violation of Owner's obligation to provide funds.

NOTE: When used in an operating agreement, the preceding clause should include a definition of the desired level of quality. The last sentence releases operator from responsibility to maintain this standard if the owner withholds necessary funds.

[Alternate Clause] OWNER Operator agrees to diligently operate the Hotel as a deluxe hotel throughout the Operating Term and in accordance with the high standards of the hotels operated by Operator and its subsidiary companies. The term "deluxe hotel" as used herein refers to the classification listed in the official Hotel and Restaurant Guide issued July 1977, published by the Public Transportation and Travel Division, Ziff-Davis Publishing Company, annexed to this Agreement *[omitted).* Operator agrees further to provide in the Hotel all services that are customary and usual to such an operation, while at all times attempting to maximize the revenues and operating profit of the Hotel consistent with the maintenance of the standards set forth hereinabove.

NOTE: The reference cited in the preceding clause can be replaced with other sources, such as provided by the Mobil Travel Guide and AAA.

[Alternate Clause] OWNER The term "luxury hotel" shall mean a luxury hotel as currently exists in the United States of America comparable in size to the Hotel, with the Hyatt Union Square hotel in San Francisco being used as an example of a luxury hotel at the date of this Agreement.

NOTE: The quality level in the above clause is defined by reference to a specific property. However, this practice can sometimes be difficult for long-term management contracts because the level of quality of the comparable hotel can be altered.

4.4 Operator to Advise Owner of Major Policy Matters

OWNER Operator shall submit outlines, in reasonable detail, to Owner setting forth its plans for and/or any major changes in its management and operation of the Hotel that are likely to have a material effect upon the profitability of the Hotel prior to Operator's institution of such changes.

[Alternate Clause] OWNER Operator shall consult with and advise Owner concerning all policies and procedures affecting all phases of the conduct of business at the Hotel and will give consideration to suggestions made by Owner. To the extent possible and where required under this Agreement, such consultation and advice shall take place prior to the institution of any major policies and procedures.

[Alternate Clause] OWNER Operator agrees that it will not make any major policy changes not reflected in the applicable Annual Business Plan that would have a potentially substantial material effect on the operations of the Hotel without first obtaining Owner's approval of such policy change. Notwithstanding any provision herein set forth to the contrary, in the event that it shall ever be determined that Operator has made a major policy change not reflected in the applicable Annual Business Plan without obtaining Owner's approval, and that such change actually has had a substantial material adverse effect upon Hotel operations, Owner may require that Operator reinstate the policy from which Operator departed without Owner's approval, and may seek such other remedies as may be available hereunder.

NOTE: The first part of the preceding clause ties into the Annual Business Plan, which should incorporate specific Owner approvals. The last part of this clause gives the owner the ability to correct mistakes of the operator. This is a strongly owner-oriented clause.

4.5 Operator to Have Absolute Operational Control

OWNER Operator shall have absolute control and discretion in the operation, direction, management, staffing, supplying, and supervision of the Hotel, including, without limitation, performance of the following activities:

A. Determination of labor policies (including the hiring and firing of all employees);
B. Granting and limiting credit and establishing credit in connection with the operation of the Hotel (including entering into policies and agreement with credit card organizations);
C. Determining the terms of admittance for guests and users of the Hotel, including charges for rooms;
D. Deciding entertainment, amusement, food, and beverage policies;
E. Instituting such legal proceedings in the name of Owner or Operator as Operator shall deem appropriate in connection with the operations of the Hotel;
G. Arranging, in cooperation with the Owner, for all advertising, promotion, and publicity relating to the Hotel;
H. Entering into such contracts, concession agreements, and other undertakings as Operator shall from time to time consider appropriate;
I. Purchasing operating supplies and other services for the Hotel; and
J. Undertaking such other and further matters as Operator shall deem consistent with the good order and management of the Hotel.

4.6 Operator to Comply With Franchise Requirements

OWNER Operator agrees to operate and manage the Hotel in compliance with any franchise agreement Owner may have with, and with the rules, regulations, and requirements of, any major hotel franchisor.

[Alternate Clause] OWNER Operator shall administer compliance with the Franchise, and shall, in connection therewith, communicate with Franchisor, purchase such supplies and services as may be required by the franchise, conduct the business of the Hotel in compliance with the Franchise, and prepare any and all writings and make all payments required by the Franchise. Operator shall forward to Owner copies of all notices, correspondence, and other writings received from or sent to the franchisor immediately following such receipt or dispatch. Upon Owner's request, Operator shall cause an appropriate employee of Operator to attend any and all meetings administered by Franchisor or held by or for the Franchisees and to prepare reports of such meetings for Owner.

4.7 Operator to Comply With Terms of Mortgage

OWNER Operator shall cause the operation of the Hotel to comply with all terms, conditions, and obligations contained in the Mortgage Instruments of which Operator is made aware (provided that Operator shall be under no obligation to ensure that sufficient funds for payment thereof are generated from Hotel operations) and with any leases or other agreements of which Operator is made aware that are executed by Owner and that relate to the Hotel. Operator shall execute and deliver promptly any agreements and documents that Owner or lender may reasonably request to provide for or verify operation of the Hotel in such manner.

4.8 Operator to Establish Prices

OWNER As part of the Annual Business Plan, Operator will submit to Owner for its approval the rates to be published and charged to members of the general public for normal transient occupancy of the various categories of rooms and suites in the Hotel (hereinafter referred to as the "Rack Rates") during such fiscal year. The Rack Rates, as approved by Owner, may not be changed without Owner's further approval. However, it is understood that the said rates will not apply to group business or other categories of business to which Operator may extend a lower rate and that in its discretion Operator may from time to time permit individuals to occupy rooms or suites at the Hotel at rates lower than the said published rates. Operator will also provide Owner with price schedules for all other products and services of the hotel, such as food, beverage, meeting rooms, and commercial space.

4.9 Operator to Establish Credit Policies

NEUTRAL Operator shall establish and implement policies and procedures for verifying, accepting, limiting, and rejecting the credit of guests and patrons of the Hotel. In connection with the foregoing, Operator shall make appropriate arrangements to honor American Express, Visa, MasterCard, such credit cards as may be required or provided by Franchisor, and such other credit cards as Operator or Owner may deem desirable. Operator shall utilize its best efforts to make such arrangements on the most favorable terms available.

4.10 Operator's Collection Practices

OWNER Operator shall employ its best efforts to collect any and all credit card charges, checks, traveler's checks, drafts, and other accounts receivable. Operator shall employ collection agencies and legal counsel, where appropriate, to pursue such claims. If, during any three-month period, more than three percent (3%) of the Gross Revenue is not collected when due, Operator shall promptly explain to Owner, in writing, the reasons therefor and shall revise the credit policies and practices pursuant to Owner's reasonable suggestions.

4.11 Operator to Submit Annual Plan

OWNER Operator shall submit to Owner for Owner's approval an annual plan for the Hotel in form reasonably satisfactory to Owner. Such plan shall be submitted to Owner no later than sixty (60) days prior to the scheduled Effective Date and at least forty-five (45) days prior to the beginning of each Fiscal Year thereafter.

NOTE: The deadline for submission of the annual plan can range from thirty (30) to one hundred twenty (120) days prior to the beginning of the fiscal year. The owner should have sufficient time to review the plan and negotiate modifications.

4.12 Operating Budget

NEUTRAL The operating budget should contain a Profit and Loss Statement on a monthly and yearly basis, that is generally in accordance with the *Uniform* System of Accounts *for Hotels* promulgated by the Hotel Association of New York City, Inc., as adopted by the American Hotel Association of the United States and Canada (the "Uniform System of Accounts"). This statement should include detailed departmental and supporting schedules for each line item. Such budget estimates shall be presented on the form of pro forma operating statement attached hereto *[omitted).*

The operating budget shall also include the following items:

A. Projected occupancy and average room rate by month;
B. Projected gross revenue, detailed by source;
C. Leasing plan with respect to commercial or retail spaces that will be vacant;
D. Projected expenses, detailed by type;
E. Detailed proposed scheduling of staff, salaries, and wages;
F. Hotel room rates and charges for other services;
G. Insurance premiums and property taxes;
H. Property operations and maintenance (non-capital);
I. Advertising, promotional, and marketing expenses;
J. Calculation of base and incentive fees; and
K. Narrative overview of all budgeted revenue and expense levels and an analysis of budgeted levels to the previous year's actual results. Any differences should be explained.

4.13 Capital and Equipment Budgets

NEUTRAL As part of the Annual Plan, Operator will prepare a Capital Expenditures Budget setting forth in reasonable detail Operator's best estimate of capital expenditures to be made for major building improvements, renovation, repairs, and expansion for such period. Operator will also prepare an Equipment Budget setting forth Operator's estimate of the capital expenditures for additions and replacement of FF&E.

4.14 Submission of Annual Plan to Owner

OWNER Operator shall submit the Annual Plan to Owner for its approval, and Owner shall have the right to make any changes thereto or to refuse to expend any money suggested by the Annual Plan. Owner shall inform Operator in writing of any such change or refusal before the commencement of the period covered by the Annual Plan. Except as so changed by Owner, the Annual Plan shall be final for all purposes hereunder.

NOTES: The owner should have at least thirty (30) days from receipt of the Annual Plan to make changes. The above clause is strongly owner-oriented.

4.15 Settlement of Disputes Regarding the Annual Plan

NEUTRAL In the event that Owner and Operator shall not agree on any item of any Annual Plan, the terms or items included in such Annual Plan that have been agreed to by both Owner and Operator shall become operative immediately. In regard to the terms or items over which the parties are in dispute, pending the settlement thereof, operator may continue to operate the Hotel at the levels of expenditures agreed to in the most recently approved Annual Plan increased by a percentage equal to the increase in the Consumer Price Index for the calendar year preceding the calendar year for which the dispute has arisen. In the event that Owner and Operator cannot reach agreement on any term or item of the Annual Plan within sixty (60) days of its submission to Owner, such dispute shall be resolved by arbitration.

[Alternate Clause] NEUTRAL Pending resolution of any dispute over any item or term of an Annual Plan, the specific disputed items shall be suspended and replaced for the fiscal year in question by an amount equal to the lesser of (a) the amount proposed by Operator for such fiscal year or (b) such budget item for the fiscal year prior thereto, subject to escalation per item by the percentage increase in the Consumer Price Index over the twelve (12) -month period immediately preceding the start of the fiscal year in question.

[Alternate Clause] OWNER If any of the items in the Annual Plan are disapproved by Owner, Operator and Owner shall enter into negotiations in an attempt to determine mutually satisfactory budgets and programs. Owner shall make final determination with respect to the budgets and programs.

NOTE: The preceding clause gives the owner total veto power over all Annual Plans. Operator-oriented contracts omit any clause calling for owner approval of Annual Plans.

4.16 Operator Must Comply With Annual Plan

OWNER Operator shall comply with the Annual Plan, once it is approved by Owner, and shall not deviate substantially therefrom as to any item, incur additional expense or capital expenditure or obligation, or change the manner of operation of the Hotel without the written consent of Owner, except where such deviation is due to and is in direct proportion to an increase in business at the Hotel in excess of the pro forma operating statement, or in case of an emergency, or where failure to lake a particular action would expose Owner to the imminent danger of criminal liability other than the payment of fines

[Alternate Clause] OWNER Operator may deviate from the Annual Plan under the following conditions and for the following reasons:

A. The actual expenditures for the Department within which any given expense is allocable will not exceed one hundred ten percent (110%) of the total budgeted expenditures for such Department approved in the Operating Budget (for the purpose of this Agreement, the term "Department" shall mean each of the following twelve (12) general expense categories along with all of the individual expenses included therein as set forth in the Chart of Accounts: (1) Food. (2) Beverage, (3) Rooms, (4) Food and Beverage, (5) Telephone, (6) Golf, Pool, and Health, (7) Laundry, (8) Other Costs, (9) Heat, Light, and Power, (10) Repair and Maintenance, (11) Advertising and Promotion, and (12) Administrative and General);

B. Such expenditure is expressly authorized in this Agreement;
C. Operator obtains Owner's prior approval of such expenditure;

D. Such expenditure is warranted by increased levels of business;

E. Such expenditure is required to meet emergency conditions and Owner is promptly advised thereof;

F. Additional costs are incurred because of the occurrence of an event(s) not reasonably foreseeable by Operator; or

G. Such expenditure is caused by the occurrence of an event(s) outside Operator's reasonable control.

[Alternate Clause] OWNER Operator's sole right to deviate from the planned expenditures on a line-item basis within the accounts for Administration and General, Advertising and Business Promotion, and Property Operations and Maintenance shall be to exceed such planned expenditures on a line-item basis within the foregoing accounts by an amount not to exceed the greater of Fifty Thousand Dollars ($50,000) (adjusted in accordance with changes in the Consumer Price Index) or ten percent (10%) of the line-item amount. Any substantial deviations from the overall direction of the Marketing Plan portion of the Annual Plan contemplated by Operator shall be submitted to Owner, for its prior approval. Operator shall make no material changes in material business policies affecting the Hotel without Owner's prior approval.

4.17 Operator Does Not Guarantee Financial Projections

OPERATOR Owner hereby represents that in entering into this Agreement Owner has not relied on any projection of earnings ("Projections"); statements as to the possibility of future success, or other similar matters that may have been prepared by Operator. Any Projections made by Operator in contemplation of or in the course of implementing this Agreement will not take into account, nor make provisions for, any rise or decline in local or general economic conditions, and Owner understands that (a) no guaranty is made or implied by Operator as to the cost or the future financial success of the Hotel, and (b) Operator does not warrant or guarantee the Projections in any way whatsoever. Any use of this information is based on this understanding.

NOTE: The preceding clause refers to projections performed by the operator made prior to commencing the management contract. A similar clause should be used to state that the Operator makes no guarantee, warranty, or representation with respect to the budget.

4.18 Minimum and Maximum Budget Expenditures

NEUTRAL At a minimum, the Annual Plan will provide for an expenditure of an amount equal to four percent (4%) of gross revenues of the Hotel (determined in accordance with the Uniform System of Accounts for Hotels) for repairs and maintenance.

NOTE: Some contracts also provide for minimum and maximum amounts for advertising, repairs, and maintenance based on a percentage of total revenue, a specific dollar amount per room, or a specific total dollar amount. Any deviation must be approved by the Owner.

4.19 Revised Operating Budgets

OWNER In addition to the Operating Budget, Operator shall prepare a Revised Operating Budget within thirty (30) days after the end of the third (3rd), sixth (6th), and ninth (9th) Accounting Periods if the Hotel's income before fixed charges for any fiscal quarter is less than ninety percent (90%), of the Gross Operating Profit set forth in the Operating Budget for such fiscal quarter.

4.20 Duty of Operator to Supervise Hotel Operations

OWNER Operator shall reasonably employ the resources of its home office and regional facilities and personnel to supervise and assist the operation of the Hotel. Operator shall cause appropriate officers and employees of Operator to visit and inspect the Hotel and the operation thereof with reasonable frequency, and in any event Operator's regional executive in charge of hotel management shall visit the Hotel no less frequently than once each sixty (60) days.

4.21 Cost of Supervisory Services

OWNER The overall supervisory and management services to be rendered by the home office personnel and staff of Operator in connection with the operation of the Hotel shall be provided by Operator at its own expense and not charged to Owner.

NOTE: When the preceding clause is used, the contract should specify who pays travel expenses and what mode of travel should be utilized.

[Alternate Clause] OWNER Upon commencement of operations after the Opening Date, the supervisory services of Operator's corporate officers and employees other than those regularly or tempora-

rily employed on a full-time basis at the Hotel, and specifically including its home office administrative heads of maintenance, housekeeping. decoration and design, public relations, advertising, food and beverage operations, entertainment, sales promotion, forecasting and operations analysis, staff planning, accounting, and reservations, shall be provided by Operator at its own expense and not charged to Owner, except as otherwise specifically provided for in this Agreement, including, without limitation, the out-of-pocket expenses as may be chargeable to the operations of the Hotel. Without limiting the generality of all of the foregoing, Owner shall not be charged with the salaries or wages of any officers, directors, or employees of Operator or any of its affiliated or subsidiary companies except as otherwise specifically provided *in* this Agreement, or except with such personnel who shall be regularly or temporarily employed on a full-time basis at the Hotel.

[Alternate Clause]
NEUTRAL

Operator may charge to the Hotel (a) the tourist-class travel expenses and meals, for its home office personnel, to the extent reasonably allocable to the Hotel and not to other businesses, and (b) the salaries of such personnel only if and for such time as the subject employees are located at the Hotel and are performing full-time services as substitutes for regular Hotel Employees.

[Alternate Clause]
NEUTRAL

Operator may find it desirable to assign one or more of its employees to the Property on a temporary basis to perform hotel-related business, Owner agrees to reimburse Operator for all actual expenses to and from the Property and for all room and board while at the Property for such employees.

4.22 Cost of Special Services

OPERATOR

Extraordinary types of expenses incurred for projects, such as labor negotiations, renovation or rehabilitation programs, and special market studies, that involve a substantial time commitment of Operator's personnel or the .engagement of outside professionals will be reimbursed as a hotel expense, provided, however, that Operator shall not, without Owner's prior approval, incur expenses for such projects in excess of Twelve Thousand Dollars ($12,000) per project, as such amount may be increased by changes in the Consumer Price Index.

4.23 Duty of Operator to Consult With Owner

OWNER

Upon request by Owner, from time to time, Operator shall provide the services of qualified personnel to consult with Owner regarding such subjects relating to the Hotel as Owner may designate, provided that Operator shall have no obligation to provide consulting services of any persons other than employees of Operator or other persons whose services are provided to other hotel owners by Operator.

4.24 Operator to Enter Into Leases

NEUTRAL

Operator will use its best efforts and due diligence in entering into leases and concession agreements for stores, commercial space, and services at the Hotel. Any lease or concession for a period in excess of six (6) months (including any renewal options) shall be subject to the prior written approval of and be executed by Owner. Leases or concessions of a term of six (6) months or less may be executed by the Operator in the name of Owner without its consent. Operator shall, subject to the limitations of such leases and concession agreements and general hotel practice, also supervise and control the activities of tenants, concessionaires, and other persons in possession, and their employees and agents.

4.25 Operator to Enter Into Service Contracts

NEUTRAL Operator is authorized to make and enter into all such contracts, equipment leases, and agreements as are required in the ordinary course of business and as are budgeted in the approved Operating Budget for the operation, maintenance, and service of the Hotel, and to make payment for the same when payment is due. However, Operator shall be required to obtain the consent of Owner before entering into any contract for the account of Owner, of whatever nature, if the total amount payable under such contract exceeds One Thousand Dollars ($1,000), as such amount may be adjusted to reflect changes in the Consumer Price Index, unless such contract is made under circumstances that the Operator reasonably considers to constitute an emergency or such contract is budgeted and approved by Owner. Notwithstanding the foregoing, Operator shall use its best efforts to contact and secure the approval of Owner should any such emergency expenditure be likely to exceed One Thousand Dollars ($1,000), as such sum may be adjusted pursuant to changes in the Consumer Price Index. Operator shall use its reasonable best efforts to secure for Owner all possible rebates, discounts, and other benefits to be derived from every contract. Any rebate, discount, or other benefit derived under any such contract, lease, or agreement shall accrue to the benefit of the Hotel. Operator shall not be responsible to Owner for the performance of any contract that is not recommended or approved by Operator; however, Operator shall make every effort to ensure the success of Owner's decision with respect thereto.

NOTE: The $1,000 limit on service contracts in the preceding clause is on the low end of the range. Large properties should have higher limits.

[Alternate Clause] NEUTRAL Operator will negotiate and enter into, on behalf of the Owner, service contracts required in the ordinary course of business in operating the Hotel, including, without limitation, contracts for electricity, gas, telephone, detective agency protection, vermin extermination, water, steam, cleaning, elevator and boiler maintenance, air-conditioning maintenance, master television service, laundry and dry-cleaning, and other services that Operator deems advisable. However, no contract with a duration in excess of one (1) year or involving an expenditure of more than Five Thousand Dollars ($5,000) per annum in the aggregate shall be entered into without Owner's approval.

NOTE: For purposes of the preceding clause, dollar limit on service contracts can range from $1,000 to $25,000 over terms of one to five years.

4.26 Operator to Enter Into Entertainment Agreements

NEUTRAL Operator will negotiate and enter into, on behalf of Owner, agreements for entertainment within the Hotel facilities for one hundred twenty (120) days or less.

4.27 Purchasing by Operator

OWNER Operator shall purchase such Consumable Supplies and other expendable items as are necessary to operate the Hotel, and shall pay for such supplies out of the General Account. When taking bids or issuing purchase orders, Operator shall be under a duty to use its reasonable best efforts to secure for and credit to Owner any discounts, commissions, or rebates obtainable as a result of such purchase.

[Alternate Clause] OWNER Operator shall promptly remit to Owner all discounts, rebates, profits, commissions, or other emoluments received by Operator or by any "Affiliate" of Operator, which term shall mean any corporation or other entity related to Operator or any officer, director, employee, or shareholder of Operator or of such related corporation or other entity, in connection with any purchase of materials or supplies delivered to or for the Hotel or in connection

with any contracts or agreements entered into on behalf of Owner or in connection with the Hotel. This clause is intended to ensure that neither Operator nor any Affiliate of Operator shall receive, directly or indirectly, any compensation other than that to be paid by Owner to Operator hereunder.

4.28 Purchasing From Operator

OWNER Whenever Operator shall contract with any company controlled by or under common control with Operator, the terms thereof shall be no less favorable to Owner than what Operator could have obtained in the public marketplace for materials or services of the same quality and quantity from independent third parties and on terms no less favorable to Owner than those pursuant to which the Affiliate provides similar services to any other Hotel owned or operated by Operator shall advise Owner of the substance of any such agreement.

4.29 Repairs, Replacements, and Improvements

OWNER Operator shall make or install, at Owner's expense, all necessary or desirable repairs, decorations, renewals, revisions, alterations, replacements, additions, and improvements in and to the site, building, furnishings, and equipment of the Hotel; provided, however, that such are included in the budget or do not exceed One Thousand Dollars ($1,000) per item.

NOTE: For purposes of the preceding clause, dollar limitations can range from $500 to $100,000. It is important to specify what is a repair and what is a capital replacement.

[Optional Additional Clause] OWNER Owner shall at all times have the right to do or arrange for any of such work itself. All such work done or arranged for by Operator involving a payment in excess of Ten Thousand Dollars ($10,000) shall be contracted for on a competitive bid basis. Operator shall not receive from Owner or from any contractor any markup or payment from any such contract.

[Alternate Clause] OWNER In accordance with the requirements of the Franchise and the standards applicable to a high-quality hotel, Operator shall (a) maintain the Hotel in good condition and repair generally and (b) maintain, repair, and replace when necessary the Operating Equipment and the FF&E, all out of funds made available for such purposes by Owner. Operator will keep the Hotel and surrounding property in a safe, neat, clean, and sanitary condition at all times and will promptly remove all garbage and trash and ice and snow from the sidewalks, adjoining driveways, and parking areas.

4.30 Cost of Maintenance and Repairs

NEUTRAL It is accepted in principle that over the term of this Agreement, expenditures on maintenance and repairs will average not less than live percent (5%) of gross revenue.

NOTE: The preceding clause provides a minimum amount of maintenance and repairs. However, this approach can cause problems, because operations and maintenance do not always vary as a percentage of total revenue. Many other factors, such as the property's age, ratio of food and beverage to rooms, location, and occupancy should be considered.

4.31 Operator to Provide Licenses and Permits

OWNER Operator will seek, on behalf and in the name of Owner (unless the law requires that a particular license be in the name of Operator), the necessary licenses and permits as may be required for the conduct and operation at the Hotel of the business herein contem

plated. including licenses and permits relating to signage and to the sale of alcoholic beverages. Owner agrees to cooperate fully with Operator in applications for such licenses and permits.

NOTE: Some contracts allow the owner or operator to terminate in the event certain licenses or permits cannot be obtained. It is very important for all licenses to revert to the owner at end of the operating term.

[Alternate Clause] OPERATOR Owner agrees to execute and deliver any and all applications and other documents and to otherwise cooperate to the fullest extent possible with Operator in applying for, obtaining, and maintaining such licenses and permits.

[Alternate Clause] OWNER Operator will maintain at all times throughout the term of this Agreement all licenses and permits required of Owner or Operator in connection with the operation and management of the Hotel.

4.32 Compliance With Government Rules and Regulations

OWNER Operator shall exercise its best efforts to conduct the business of the Hotel in, compliance with all applicable laws and to ensure that no activity or condition occurs on or about the Hotel in violation of any laws In the event that Operator shall have reason to believe that any laws may be violated on or about the Hotel, Operator shall promptly so notify Owner.

4.33 Contesting Government Regulations

NEUTRAL Owner shall have the right to contest or to cause Operator to contest any alleged violation of any law and to postpone compliance with the law pending the determination of such contest as permitted by law. In such event, Owner shall indemnity Operator and its employees from any resulting loss, cost, damage, or expense (including fees of attorneys approved or selected by Owner).

4.34 Operator's Bank Accounts

NEUTRAL Operator, on behalf of Owner, shall establish two bank accounts (the "Operating Accounts") for the Hotel in Operator's name, in banks approved by Owner (which approval shall not be unreasonably withheld), with Operator being the only party authorized to draw from the Operating Accounts unless otherwise agreed upon by the parties. One of the Operating accounts for the Hotel shall be known as the Depository Account and shall be used to deposit all cash and rental receipts generated by the Hotel. Operator shall deposit all funds collected from the operation of the Hotel in the Depository Account. The other account shall be known as the General Account and from it all disbursements for the Hotel shall be made. At the end of each Monthly Accounting Period, the amount in the Depository Account shall be drawn down to a minimal balance, and the excess funds shall be transferred to the General Account. Additionally, Operator regularly may draw funds from the Depository Account and deposit them in the General Account. In the event a nearby bank can be used to deposit funds directly into the General Account, the Operator may elect to not use a Depository Account. Funds from the General Account shall be disbursed by the Operator to pay its Base Management Fee, as well as to pay the normal and reasonable expenses of the Hotel incurred in the operation and maintenance of the Hotel pursuant thereto, including all expenses of the type deducted from Gross Revenues in determining Gross Operating Profit hereof and all expenditures of the type deducted from Gross Operating Profit in determining Cash Flow. It is understood and agreed that to facilitate the payment in expenses for the Hotel, Operator may elect to make such payments from an account maintained by Operator for making such payments with regard to

the Hotel and other properties operated by it and shall be entitled to withdraw from the General Account and to deposit to such other account, from time to time, an amount equal to the checks drawn upon such other account for the payment of expenses of such Hotel. All bank accounts shall be owned by Owner and shall be controlled and operated by Operator as the agent of Owner. The agency status of Operator shall be designated on the checks and drafts drawn on such bank accounts.

4.35 Transfer of Funds to Owner

OWNER Subject to maintaining adequate reserves for replacements and working-capital requirements, Operator, at Owner's request, shall transfer such funds as Owner shall specify to a bank account opened and maintained solely by Owner.

[Alternate Clause] NEUTRAL Within twenty-five (25) days after the end of each calendar month, and simultaneously with the delivery of the financial statements, Operator shall remit to Owner the balance in such bank accounts, less disbursements and advances made on behalf of and for the account of Owner, and less also such reasonable sums as Operator may reasonably deem necessary or appropriate to meet obligations that will or that Operator reasonably believes may become due thereafter, taking into account estimated future income. Operator is also authorized to draw as an advance on its Basic Fee for the preceding month directly from the bank account(s), provided all statements required by this Agreement have been delivered by Operator to Owner.

4.36 Owner to Furnish Working Capital

NEUTRAL On the formal Opening Date and thereafter from time to time throughout the Operating Term, Owner shall furnish to Operator (by deposit into the Agency Account) funds in the amounts requested by Operator to cause the Working Capital to be and remain at a level reasonably sufficient for the uninterrupted and effective operation of the Hotel. All such Working Capital shall be funds of Owner and shall be kept in the Agency Account to be utilized by Operator in Operator's sole discretion *in a* manner consistent with the practices of the hotel industry.

[Alternate Clause] NEUTRAL Owner shall provide to Operator the sum of Fifty Thousand Dollars ($50,000) as Initial Working Capital for use by Operator for initial inventories and operating supplies during the Preopening Period.

[Alternate Clause] NEUTRAL On or before the Effective Date, Owner agrees to deposit in the General Account the sum of Fifty Thousand Dollars ($50,000) (the "Initial Minimum Working Capital Balance"). Thereafter, at any time when the balance in the General Account shall be less than the Initial Minimum Working Capital Balance and the balance in the Depository Account is not sufficient to fund such deficit, Owner agrees to deposit to such General Account. as needed, an amount equal to such deficiency (the "Operator Advance"). The total of such deposits is not to exceed Eighty Thousand Dollars ($80,000) at any given time. Notwithstanding anything herein to the contrary, if, at any time, Owner deposits an Operator Advance to fund any such deficit, such Operator Advance shall be repaid to Owner by Operator without interest out of the General Account at such times when the amounts in the General Account exceeds the Initial Minimum Working Capital Balance.

4.37 Repayment of Funds Advanced by Operator

OPERATOR Operator shall in no event be required to advance any of its own funds for the operation of the Hotel, nor to incur any liability in connection therewith, unless Owner shall have furnished Operator funds necessary for the discharge thereof. If Operator shall at any time advance funds in payment of any expenditure of the Hotel, which Operator shall have the

right but not the obligation to do, Owner shall repay Operator immediately upon demand all or any part thereof with interest, at the prevailing prime rate of the bank or trust company serving as the depository for the Agency Account, which amount Owner hereby promises to pay.

[Optional Additional Clause] OPERATOR If Owner does not provide the Initial Working Capital funds within said thirty (30) days, Operator may elect to provide such funds, and shall be reimbursed therefor by Owner out of Owner's separate funds (not those of the Hotel) with interest at a rate equal to four (4) percentage points over the prime rate.

NOTE: In the preceding clause, the operator may want to add a sentence stating that it can withdraw reimbursable funds from operating cash flow.

4.38 Operator to Provide Cash Management

OWNER Operator shall provide cash management for the cash portion of the Working Capital. For the purpose of this Agreement, the term "cash management" shall mean expediting cash inflows, controlling cash outflows, and, if reasonably possible, investing the difference between cash inflows and outflows at a market rate.

4.39 Insurance Coverage

NEUTRAL Concurrently with the submission of the Annual Plan, Operator shall furnish Owner with a schedule setting forth the kinds and amount of insurance Operator intends to procure in connection with the operation of the Hotel. This schedule shall specify the kinds and amounts of insurance required to be maintained pursuant to any mortgage, lease, or other agreement, as well as such other kinds and amounts of insurance as Operator shall deem necessary or advisable for the protection of Operator and Owner. Promptly following the receipt of such schedule, Owner shall notify Operator of any changes that Owner shall elect to make in such schedule, and Operator shall thereupon forthwith apply for and obtain, if obtainable, all such insurance from such companies and through such brokers as Owner shall direct.

4.40 Types and Amounts of Insurance

NEUTRAL Owner shall also provide and maintain the following insurance throughout the Operating Term:

A. Public liability insurance having a minimum per occurrence limit of One Hundred Million Dollars ($100,000,000) against all claims that may be brought anywhere in the world for personal injury (including bodily injury), death, or damage to property of third persons. This insurance shall include coverage against liability arising out of the ownership or operation of motor vehicles, as well as coverage in the said amount against all claims brought anywhere in the world arising out of alleged (i) sale and/or sale of intoxicating beverages ("Dram Shop" coverage); (ii) assault or battery; (iii) false arrest, detention, or imprisonment or malicious prosecution; (iv) libel, slander, defamation, or violation of the right of privacy; (v) wrongful entry or eviction; and (vi) contractual liability.

B. Workers' compensation insurance or insurance required by similar employee benefit acts as mandated by law, as well as insurance against all claims that may be brought for personal injury or death of Hotel Employees, such insurance to have a minimum limit of not less than One Hundred Thousand Dollars ($100,000) per occurrence.

C. Business Interruption Insurance covering loss of income to both Owner and Operator for a minimum period of one (1) year resulting from interruption of business caused by

the occurrence of any of the risks insured against under the property damage insurance referred to in item A.

D. Crime insurance, including bonds covering Hotel Employees for a minimum of One Million Dollars ($1,000,000) per loss.

E. Boiler and machinery insurance, including use and occupancy (loss of income) for all direct loss or damage to property caused by failure of boilers or breakdown of machinery, in minimum limits of One Million Dollars ($1,000.000).

Operator may reasonably require Owner to increase the limits of insurance coverage set forth hereinabove and may reasonably require Owner to carry other or additional insurance, it being reasonable for Operator to require insurance of the types and in the amounts generally carried on hotels owned or operated by Operator or its affiliates. Owner shall pay all premiums on the insurance required by items A, B, C, D, and E, but the cost of insurance required under items A, B, C, and D shall be an Operating Expense.

4.41 Insurance Policies

NEUTRAL Operator shall deliver to Owner, at the commencement of the Operating Term or promptly thereafter, original insurance policies or certificates covering all insurance required c' authorized to be maintained under this Agreement, and not less than live (5) days prior to the expiration of the then existing policies shall deliver to Owner such policies, renewals of policies, or certificates.

4.42 Disputes Over Insurable Value

NEUTRAL Any dispute between Owner and Operator as to full insurable value shall be determined as an expense of the Hotel by an appraiser jointly selected by the parties. The value determined by the appraiser so selected shall be binding upon both parties until changed by a subsequent appraisal, but neither party shall have the right to require another appraisal within two (2) years after an appraisal has been made in accordance with this provision. If the parties are unable to agree upon an appraiser within thirty (30) days after the request by one of them for such agreement, the matter may be submitted for arbitration.

4.43 Insurance Claims

NEUTRAL Owner shall give to Operator, and Operator shall give to Owner, prompt notice of any claims in excess of Ten Thousand Dollars ($10,000) made against Owner or Operator, and each party shall cooperate fully with each other and with any insurance carrier to the end that all such claims will be properly investigated and defended. Operator shall promptly engage legal counsel to defend any such claim against Owner, which counsel shall be approved by Owner.

4.44 Owner to Assume Liability for Inadequate Insurance

OPERATOR Owner assumes all risks in connection with the adequacy of any insurance or self-insurance program, and waives any claim against Operator and its Affiliates for any liability, cost, or expense arising out of any uninsured claim, in part or in full, of any nature whatsoever except for the gross negligence or willful misconduct of Operator, its servants, and employees.

4.45 Owner and Operator Waive Claims Against Each Other

NEUTRAL Provides' that Operator shall procure and keep in force all of the insurance required to be obtained by Operator pursuant to this Agreement, neither Owner nor Operator shall assert against the other any claims for any losses, damages, liabilities, or expenses (including attorney fees) incurred or sustained by either of them, to the extent that the same are covered by such insurance, on account of damage or injury to person or property arising out of the ownership, operation, or maintenance of the Hotel. The parties agree that all policies of insurance to be procured by Operator shall permit the foregoing waiver.

4.46 Operator to Keep Books of Accounts

NEUTRAL Operator shall keep full and adequate books of account and such other records as are necessary to reflect the results of the operation of the Hotel. Such books and records shall be kept in all material aspects in accordance with the Uniform System of Accounts for Hotels (The Uniform System of Accounts for Hotels, 8th rev. ed. 1986).

NOTE: The Uniform System of Accounts is updated periodically. The contract should specify the current edition. It is very difficult to sell and refinance hotels that do not follow this system.

[Alternate Clause] OWNER Operator shall establish and operate accounting and internal audit control systems reasonably acceptable to Owner, and in connection with the foregoing, Operator shall establish and maintain for the benefit of Owner complete, proper, .current, and accurate records and books of account reflecting all transactions of the Hotel and of Operator with respect to the Hotel. Such books and records shall be prepared on an accrual basis and otherwise in accordance with generally accepted accounting principles and the Uniform System of Accounts, consistently applied within each accounting period and from year to year. Operator shall store safely such books and records for a minimum of three (3) years following the Fiscal Year to which they are applicable, and' Operator shall not destroy or dispose of the same except by delivery to Owner for further storage or destruction as Owner may determine.

4.47 Storage and Inspection of Books and Records

NEUTRAL Except for the books and records that may be kept in Operator's home office or other suitable location pursuant to the adoption of a centralized billing system or other centralized service, the books of account and all other records relating to or reflecting the operation of the Hotel shall be kept at the Hotel. All books and records relating to the Hotel shall be available to Owner and its representatives at all reasonable times after each notice from Owner to Operator of Owner's desire to examine, audit, inspect, and transcribe same.

4.48 Books and Records Upon Termination

NEUTRAL Upon any termination of this Agreement in accordance with its terms, all books and records shall be forthwith turned over to Owner so as to ensure the orderly continuance of the operation of the Hotel, but such books and records shall thereafter be available to Operator at all reasonable times for inspection, audit, examination, and transcription for a period of not less than seven (7) years from the date of said termination.

4.49 Operator's Monthly Financial Reports

NEUTRAL Operator shall deliver to Owner at or prior to the end of each month an accounting for the operations of the Hotel, including a detailed profit and loss statement and balance sheet and cash forecast showing the results of the operation of the Hotel for the preceding month and for the fiscal year to date and the cash needs, it any, for the subsequent six (6) months. Such statement shall (a) be in the customary form with the schedules annexed and in the same detail as generally prepared by Operator for other hotels it owns or operates, (b) be taken from the books and records maintained by Operator in the manner hereinabove specified, and (c) follow the general form set forth in the Uniform System of Accounts for Hotels (8th rev. ed 1986), unless Owner reasonably specifies a different form, and shall be calculated on the accrual method.

NOTE: The timing for submission of the financial reports discussed ranges from 15 to 30 days after the cease of the accounting period.

4.50 Operator's Annual Financial Reports

NEUTRAL Within ninety (90) days after the end of each fiscal year, Operator shall deliver to Owner financial statements including a detailed balance sheet, a statement of sources and uses of funds, an income and expense statement, and a computation of the Incentive Management Fee, certified by the Independent Certified Public Accountant, showing the results of operations of the Hotel during such fiscal year. Such financial statements shall be calculated on the accrual method. Any disputes as to the contents of any such statements or any accounting matter hereunder shall be determined by the Independent Certified Public Accountant.

4.51 Operator to Prepare Additional Reports

NEUTRAL Operator shall render to Owner, and any persons so designated by Owner, at Owner's expense, any additional financial statements reasonably required by Owner.

[Alternate Clause] OWNER Upon request by Owner, from time to time, Operator promptly shall prepare or cause to be prepared additional reports showing aging of receivables, schedules of payables, schedules of supplies and inventory, detailed cash flow information, occupancy reports, reports on insurance claims, reports on the physical condition of the Hotel, information regarding marketing outlook, and information regarding other matters of interest to Owner. Owner shall pay Operator's reasonable expenses incurred in preparation of such reports. Upon Owner's request, from time to time, the General Manager and Owner (or its agents) shall meet and discuss the operations of the Hotel.

4.52 Annual Audit

OWNER Following the close of each Fiscal Year, Owner shall have the right to cause an audit of the books, records, and operations of the Hotel to be made by an independent certified accounting firm. Operator shall cooperate fully with such auditors and shall make available to them any and all information concerning the Hotel. Owner shall deliver to Operator copies of all financial reports regarding the Hotel promptly after they are received from such auditors. Any adjustments to the Management Fee required because of the results of such audit shall be made by the parties within ten (10) business days. The cost of any such independent audit shall be an administrative and general expense of the Hotel for the succeeding Fiscal Year, provided that such cost shall be an expense of the subject year in the event that such year is the last year of the term hereof.

4.53 Operator to Pay All Bills

NEUTRAL Operator will pay all proper bills and expenses incurred in the operation of the Hotel and will file and pay all sales and use, property, franchise, income, and other tax records and returns relating to the Hotel. Operator shall pay as a part of the operating expenses of the Hotel, when due, all charges for water, gas, electricity, and all other public services furnished to the Hotel. Operator likewise shall pay as part of the operating expenses of the Hotel the replacement cost of the Consumable Supply, Other Supply, and other type of supplies; all wages; and all other costs incurred for the property operation of the Hotel in accordance with the provisions hereof. Operator will furnish centralized computing services for the efficient processing of payroll services, financial statements, accounts receivable, and accounts payable.

[Alternate Clause] NEUTRAL Operator shall cause its accounting department to prepare and timely file all necessary reports with respect to withholding taxes, social security taxes, unemployment insurance, disability insurance, the Fair Labor Standards Act, and all other statements and reports pertaining to labor employment on Owner's payroll in or about the Hotel.

[Alternate Clause] NEUTRAL Operator shall maintain all required records and prepare and file all forms related to the collection and payment of all sales and use taxes. Operator shall make required payments to the appropriate taxing authority from funds collected therefore by the Hotel. Operator's responsibilities hereunder specifically exclude the preparation or filing of local, state, or federal income tax returns.

[Optional Additional Clause] OWNER Provided that Owner has timely furnished sufficient funds for the payment thereof, Operator shall indemnify Owner from any penalties incurred as a result of Operator's failure to file sales tax, payroll tax, or local lax returns on behalf of the Hotel, other than income tax returns, for any tax period commencing on or after the date hereof. Any penalties incurred by reason of such failure or Operator's part shall not be considered an expense of the Hotel.

4.54 Operator to Provide Centralized Accounting

NEUTRAL Operator shall make available, in connection with the operation of the Hotel, its complete system of central financial services utilizing Operator's home office financial staff and computer equipment for so long as Operator shall provide such services for at least ten (10) other hotels in this chain.

Such services shall include, without limitation, cash management; verification of daily work; preparation of payroll and benefits administration; preparation of payroll tax returns; handling of accounts receivable (including normal in-house collection activities) and accounts payable; billing under national credit cards; cash management; preparation of monthly internal operating statements; verification of financial controls; advice and monitoring of accounting and reporting systems and internal controls (relating to cash, inventories, and accounts receivable); and training and supervision of cashiers, front desk, and inventory personnel. Such services shall not include the cost of a certified audit or the preparation and filing of state and federal tax returns, other than payroll and sales tax returns.

[Optional Additional Clause] OPERATOR In addition to all other fees due hereunder, Owner agrees to pay to Operator an Accounting Fee of Two Thousand Dollars ($2,000) per month to reimburse Operator for the expense of off-premise central office bookkeeping and accounting services, including, without limitation, the cost of issuance of checks and preparation of payroll statements; provided, however, that such Accounting Fee shall, in accordance with Operator's current standard fee schedule therefore be subject to increase annually by the lesser of ten percent (10%) or the percentage of increase in the Consumer Price Index as specified hereinabove.

[Alternate Additional Clause]
OPERATOR

For so long as Operator provides the Centralized Accounting Servers described hereinabove, Operator shall receive a Centralized Financial Service Charge, in an amount equal to one and one-half (1 ½%) percent of Total Revenues, payable monthly in the same manner as the Basic Fee.

(Alternate Additional Clause)
OPERATOR

Operator *will* be paid a fee of $750, to be adjusted to reflect the Consumer Price Index, on January 1, 1989 and annually thereafter, as an administrative and general expense of the Hotel, for each Monthly Accounting Period as a non-allocatable reimbursement for centralized computer, payroll processing, checks, accounting, and bookkeeping services. It is expressly understood that no outside accounting services *will* be hired as an expense of the Hotel for any reason whatsoever, except for the annual audit.

4.55 Inventory

NEUTRAL

Operator shall, on or before the Opening Date, and for every third Year of Operation thereafter, conduct an inventory of all Furnishings and Equipment and maintain complete records of such at the Hotel.

4.56 Internal Audits

OWNER

At Operator's sole option, Operator may perform internal audits of the operation of the Hotel. The cost of each audit shall be borne exclusively by Operator and shall not be an Expense of Operation of the Hotel; provided, however, that the out-of-pocket travel costs of Operator's employees engaged in the performance of such audit(s) shall be considered a Reimbursable Expense.

4.57 Legal Actions for Guest or Tenant Default

NEUTRAL

Operator may institute, in its own name or in the name of Owner, as required by the law, at the expense of Owner, any necessary legal actions or proceedings to collect charges, rent, or other income for the Hotel or to oust or dispossess guests, tenants, or other persons in possession, and concessionaires, or to cancel or terminate any lease or concession for the breach thereof or default thereunder by the tenant or concessionaire; provided that Operator shall not institute any legal actions with respect to any lease of one (1) year or more or involving more than Ten Thousand Dollars ($10,000) without the prior written consent of Owner. Any legal counsel engaged under this provision shall be designated by Owner.

4.58 Legal Actions Against the Property

NEUTRAL

Operator may, but shall not be obligated to, take at Owner's expense appropriate steps to protest or litigate final court decisions for any violation, order, rule, or regulation affecting the property.

[Alternate Clause]
NEUTRAL

Operator and Owner shall use their best efforts to prevent any liens from being filed against the Hotel that arise from any maintenance, changes, repairs, alterations, improvements, renewals, or replacements in or to the Hotel. They shall cooperate fully in obtaining the release of any such liens. 11 such a lien arises that was not occasioned by the fault of either party, it shall be treated as an expense of the Hotel. If the lien arises as a result of the fault of either party, then the party at fault shall bear the cost of obtaining the lien release.

4.59 Operator to Provide Advertising, Promotion, and Sales

OWNER Operator will plan, prepare, and contract for advertising and promotions for the Hotel designed to publicize the Hotel and attract guests in accordance with the standards set by other high-quality first-class hotel operations. To this end, Operator shall arrange and make contracts for such advertising and promotion as it may deem advisable from time to time for the successful operation of the Hotel.

[Alternate Clause] OWNER Operator shall provide the Hotel with such advertising, public relations, and promotional services as are judged by it to be reasonably necessary and appropriate in order to promote the name and facilities of the Hotel and to maintain its identity as one of the Operator's Hotels. Such services shall include but not be limited to assistance in the following areas:

A. Developing and implementing the Hotel's communications plan following the Operator's guidelines. This task includes planning, publicity and internal communications, and organizing and budgeting the Hotel's advertising and public relations programs;

B. Selecting and providing guidance as required for the public relations personnel;

C. Preparing and disseminating news releases for trade and consumer publications, both national and international; and

D. Selecting an advertising agency.

Operator shall coordinate the Hotel's communications program with Operator's corporate communications program and shall include the Hotel in Operator's corporate identity programs and in its national advertising programs as appropriate.

4.60 Operator to Prepare a Marketing Plan

OWNER Operator will prepare on an annual basis a marketing plan that shall include, but not be limited to, projected occupied room-nights and average daily rate by market segment, a detailed program for advertising and promotion, a detailed program for sales strategies, and a competitive hotel analysis.

4.61 Operator to Utilize Franchisor's Marketing and Reservation Services

OWNER Operator shall cooperate with Franchisor to cause the Hotel to be included in the national advertising programs and central reservation system for all hotels franchised by Franchisor. Operator shall use its best efforts to secure bookings for the Hotel through the sales and reservations systems of Franchisor and Operator and shall encourage the use of the Hotel by and for travelers, organizations, groups, meetings, conventions, travel agencies, and other recognized sources of hotel business.

4.62 Operator's Centralized Marketing and Reservations

OWNER Operator shall provide, or shall cause an Affiliate to provide, in the operation of the Hotel and for the benefit of its guests, inter-hotel reservations, convention and business meeting marketing and promotions, sales promotions, publicity, public relations, and all other group marketing benefits, services, and facilities, including joint advertising programs to the extent appropriate (all herein collectively called "Centralized Services"), similar to those furnished to other hotels owned and operated by Operator. Owner shall pay Operator monthly, as an expense of the Hotel deducted in calculating Hotel Net Income, a Cen

tralized Services Fee of one and one-half percent (1 1/2%) of Hotel Gross Revenue for the proceeding month.

(Alternate Clause] NEUTRAL

Owner shall be charged for all costs of reservation equipment, communication facilities, and credit card company charges, and for its pro rata share of all central reservation services payable to third parties, on the same basis as other hotels owned or operated by members of Operator.

(Alternate Clause) NEUTRAL

Operator shall process reservations for the Hotel through Operator's reservations system. Any charges payable to third parties in connection with the securing of reservations for the Hotel shall be an operating expense of the Hotel

(Alternate Clause) OWNER

Owner's obligation to participate *in* the reservation system and related programs shall be conditioned upon the charges therefor being in an amount satisfactory to Owner. In the event the charges therefor are not satisfactory to Owner, Owner may elect not to participate in said system.

4.63 Joint Advertising and Sales Promotion

OPERATOR

It is understood and agreed that where advertising or sales promotion for the Hotel is supplied in conjunction with advertising for other of Operator's owned, operated, or affiliated hotels or motels, the cost of such advertising or sales promotion shall be prorated to the Hotel and the other hotels and motels benefited thereby on a per-room basis: provided, however, that within the total advertising and promotion budget for such fiscal year the cost of such joint advertising and sales promotion allocated to the Hotel shall not exceed one third (1/3) thereof. It is agreed that the Hotel is not benefited unless its name and location appear in the advertising.

4.64 Operator's Regional Sales Offices

OPERATOR

As a result of the growth of the number of hotels owned and/or operated by Operator. Operator is planning to establish regional sales offices in major metropolitan areas throughout the United States. Owner agrees to pay its pro rata share of the expenses of such regional sales offices to be allocated on a per-room basis in the same method as the joint advertising and sates promotion expenses are allocated. The expenses to be allocated to Owner shall not exceed one half of one percent of the Gross Operating Income of the Hotel in any one fiscal year and the per-room charge shall not include any profit for Operator.

4.65 Operator's Credit Card System

NEUTRAL

Operator may, from time to time, at its sole discretion implement a charge card system for the convenience of guests and for the promotion of Operator's Hotels. At any time when such a charge card system is in effect. Operator shall make such system available to the Hotel, and Owner hereby authorizes Operator to accept such charge card and all other charge or credit cards designated by Operator for all Hotel charges authorized in accordance with Operator's credit card billing policies, as they may be amended from time to time. Operator shall retain the right at any time during the term of this Agreement to discontinue utilization of its charge card system.

4.66 Operator's Logotype and Symbols

OPERATOR

Owner acknowledges that the Hotel's communications plan must be in accordance with Operator's sales, advertising, and public relations philosophies and must adhere to Oper

ator's corporate identity requirements. In furtherance thereof, Owner acknowledges that Operator's logotype shall be the only logotype or symbol used to identify the" Hotel.

4.67 Public Statements by Owner and Operator

NEUTRAL Owner and Operator shall coordinate with one another on all public statements, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this Agreement and/or the performance by either of them of their respective obligations hereunder.

NOTE: Many management contracts are confidential and the terms cannot be released by either party.

4.68 Operator to Provide Centralized Group Services

NEUTRAL Operator may, at the request of Owner and with Owner's approval in each instance, cause its affiliates or subsidiary companies to provide for the Hotel and its guests the full benefit of any reservation system hereafter established by Operator and its affiliates and, with Owner's approval, may cause any such companies to so provide such aspects of any accounting services or other group benefits and services as are made available generally to properties managed by Operator, all of which are collectively referred to herein as "Centralized Services." Owner hereby agrees that the Hotel may participate in all such Centralized Services on the terms and conditions hereinafter specified.

4.69 Cost of Group Services

NEUTRAL Operator shall not charge any profit for group services but shall be entitled to reimbursement for the cost of those specific services elected by Owner to be performed centrally and for the property's pro rata share of all costs and expenses incurred in connection with the rendition of group advertising, business promotion, and reservations services, allocated on the same basis as allocated to other properties owned or operated by Operator.

[Alternate Clause] NEUTRAL Operator's affiliated or subsidiary companies that provide Centralized Services shall be entitled to be reimbursed for the Hotel's share of the total costs incurred in providing such services on a system-wide basis to hotels and motor inns owned or managed by Operator or its affiliates or subsidiaries. Such costs may include, without limitation, salaries (including payroll taxes and employee benefits) of employees and officers of Operator and its affiliated and subsidiary companies, costs of all equipment employed in the rendition of such services, and a reasonable charge for overhead that does not include any profit. The Hotel's share of said costs shall be determined in an equitable manner by Operator as certified by Operator's chief financial officer taking into account, to the extent possible, differing cost factors relating to the individual properties covered. The Hotel's costs shall be an operating expense of the Hotel.

[Optional Additional Clause] OWNER Each time that Operator shall charge the operation of the Hotel for its pro rata share of Allocable Chain Expense for any period, it shall furnish to Owner a statement in sufficient detail to provide Owner with data supporting such charge. Owner may, in connection with any such statement for any period, cause an audit to be made of the books and records of Operator and its affiliates relating to the data furnished in such statement, including, without limitation, the Chain Expense and Allocable Chain Expense incurred during such period in the average number of key guestrooms during such period in hotels opened to the public and situated in the United States and operated by Operator or its affiliates.

[Optional Additional Clause]
OWNER

If Operator shall at any time institute major changes in the character or cost of its Group Services, the increased costs shall not be charged to Owner unless those changes have been implemented and the costs thereof allocated among at least two thirds (26) of the other hotels Managed by Operator in which Owner has no equity interest.

4.70 Emergencies

NEUTRAL

In the event that any circumstance shall occur that Operator reasonably and in good faith judges to be an emergency threatening the safety of persons or property (an "Emergency"), then Operator shall take such action and shall cause such things to be done as Operator reasonably and in good faith believes necessary. Operator shall inform Owner of any and all Emergencies as soon as practicable. It practicable, Operator shall obtain Owner's prior approval of any action in response to an Emergency.

4.71 Taxes and Assessments

OWNER

Operator shall obtain bills for real estate and personal property taxes, improvement assessments, and other like charges that are or may become liens against the Hotel and recommend to Owner payment thereof or appeal therefrom. Operator annually shall review and submit all real estate and personal property taxes and all assessments affecting the property to Owner and shall file all personal property tax returns.

Section 5 MANAGEMENT FEES

5.1 Management Fees-General

NEUTRAL

As consideration for the services to be rendered by Manager as set forth in this Agreement, Owner agrees to pay to Manager a basic management fee (the "Basic Fee"), an incentive fee (the "Incentive Fee"), and an accounting fee (the "Accounting Fee"), each to be determined and paid in accordance with the terms set out herein during each Operating Year of the Operating Term (and, unless otherwise provided, proportionately for a fraction of an Operating Year).

5.2 Amount of Management Fees-Basic Fee

NEUTRAL

Commencing on the Effective Date, Owner shall pay Operator a Basic Management Fee equal to five percent (5%) of the Gross Revenues of the Hotel. The Basic Management Fee shall be calculated for each Monthly Accounting Period during the Operating Term and three percent (3%) shall be payable by Operator to itself out of the Operating Accounts (as defined herein) prior to any distributions to Owner and prior to payment of any mortgage Indebtedness or obligations under any Equipment Leases, the remaining two percent (2%) being subordinated to the payment of principal and interest on the initial permanent or take-out loan on the Hotel, accrued without interest, and repaid.

5.3 Amount of Management Fees-incentive Fee

NEUTRAL

Commencing on the Effective Date, Owner shall pay Operator an Incentive Management Fee equal to fifteen percent (15%) of:

A. The annual Gross Operating Profit, less (i) annual ad valorem taxes, (ii) property insurance, (iii) the amounts paid into the Replacement Fund, and (iv) Nine Hundred Thousand Dollars ($900,000) (hereinafter call "Net Cash Flow"). In the event the hotel is refinanced, Net Cash Flow shall be adjusted by the difference

between Nine Hundred Thousand Dollars ($900,000) and the then actual annual principal and interest payments.

B. Sale or refinancing proceeds in excess of Eight Million Five Hundred Thousand Dollars ($8,500,000), including the distribution of funds related to the Replacement Fund and initial Reserve Fund.

NOTE: If the incentive fee is based on profits, then the method used to calculate profits should be clearly defined.

[Alternate Clause] OWNER The payment of Incentive Management Fees shall be made only to the extent of Cash Flow during such fiscal year. In any *year* in which Cash Flow is not sufficient to pay Operator the Incentive Management Fee, such unpaid Incentive Management Fee shall accrue and be paid from Cash Flow available in later years until such time as all accrued and unpaid Incentive Fees have been paid.

5.4 Payment of Management Fees

NEUTRAL On or before the twenty-fifth (25th) day following the expiration of each three (3) -month period of the Operating Term, Operator shall receive out of the Operating Account its Incentive Fee for the said three (3) -month period just ended. The Incentive Fee for each three (3) -month period subsequent to the prior three (3) -month period or periods of each Operating Year hereof shall be equal to the excess of the Incentive Fee, calculated on a cumulative basis from the commencement of the then current Operating Year to the end of such three (3) -month period in respect of which the Incentive Fee is being paid, over the aggregate of the Incentive Fee theretofore paid in respect of such Operating Year. To the extent that there may be insufficient funds in the Operating Account for such payment, Owner shall pay to Operator forthwith, on demand, such Incentive Fee. To the extent the cumulative Incentive Fee paid to Operator in any then current Operating Year exceeds, at any time, the actual cumulative amount of Incentive Fee to which Operator is entitled, Operator shall promptly refund the excess to Owner.

NOTE: The incentive fee can also be paid on a monthly basis.

5.5 Disputes Over Management Fees

OWNER If Owner questions any of the amounts or computations for any period (a) as shown by the Annual Statement of Operator's Fee, or (b) in determining Net Distributable Cash, or (c) as shown in statements submitted, and if Owner and Operator are unable to agree thereon, the matter in dispute shall be submitted for a binding decision by a Certified Public Accountant selected by the parties from the following list *(omitted]* in the order listed, subject only to their availability and to their independence, at the time, with reference to Owner, Operator or any affiliate or either:

[list parties]

Any expenses incurred in connection with such a resolution shall be treated as an expense of the Hotel. Owner shall be conclusively deemed to have accepted the accuracy and correctness of each Annual Statement of Operator's Fees unless Owner notifies Operator that Owner questions specific items therein within ninety (90) days after the later of its receipt by Owner or discovery of facts not reasonably in Owner's knowledge at the time it was received, but in any event not later than one (1) year from the date of the report.

5.6 Management Fee Definitions

NEUTRAL The term "Gross Income" shall mean all revenues, sales, or income of any kind, including service fees, resulting from the operation of the Hotel and over which Operator has any direct or indirect responsibility, including, but not limited to the following

A. Rental of rooms (excluding sales tax, hotel tax, and any other tax relating to room rental):

B. Rentals and other payments from licenses, sublessees, concessionaires, and others occupying space or rendering services at the Hotel (but not including the gross receipts of such licensees, sublessees, concessionaires, or others):

C. Food and beverage sales (excluding sales taxes and gratuities) from meeting rooms, restaurants, bars, and/or room service, it such services are conducted by Operator;

D. Subsidy payments;

E. Proceeds of use and occupancy insurance received or business interruption insurance payments (after deducting therefrom necessary expenses in connection with the adjustment or collection thereof): and

F. Any other form of income, from any source whatsoever, that is directly attributable to the Hotel, but not including the proceeds of any financing or refinancing, casualty or liability insurance proceeds, or condemnation proceeds

The following amounts shall not be included in determining Gross Income:

A. Gratuities or payments in the nature of gratuities that the Owner is obligated to pay over to employees;

B. Sums and credits received in settlement for loss, theft, or damage to property unless in excess of the cost of settlement of such loss, theft, or damage to property;

C. Excise, sales, or use taxes or similar charges that are required by law to be collected directly from patrons or guests or as part of the sale price of any goods or services or displays, and that must be remitted to governmental authorities; and

D. Credits or refunds to guests not previously deducted.

NOTE: The contract should contain specific definitions for all accounting terms used that are not clearly defined in *The Uniform System of Accounts for Hotels* or for which the parties require a modified definition.

[Alternate Clause] NEUTRAL Gross Operating Profit for the Hotel for any period shall mean and refer to Gross Revenues of the Hotel for such period, less the following expenses for such period incurred or authorized by Operator in operating the Hotel:

A. All wages and salaries of all employees (exclusive of salaries paid to corporate executive personnel of Operator, but including such wages, salaries, and other compensation chargeable to such employees used by Operator in connection with the operation and management of the Hotel) and all other payroll costs, fringe benefits, employer taxes, and similar charges related to employment: provided, however, that if any employee is also employed elsewhere by Operator, such compensation shall be equitably prorated among the Hotel and such other properties where such employee also is employed.

B. All departmental, administrative, and general expenses relating to the Hotel, including, without limitation, payments to the Marketing Fund and other advertising, promotional, and entertainment expenses; commissions; and the cost of heat, light, power, and other utilities.

C. All costs and expenses of routine maintenance, repairs, and minor alterations to keep the Hotel in good operating condition, which under generally accepted accounting principles are expensed currently rather than capitalized.

D. All license fees and permits relating to the Hotel or the operation thereof.

E. All amounts due under service contracts relating to the Hotel or the operation thereof.

F. The cost of all Consumable Supplies consumed in the operation of the Hotel.

G. A reserve for uncollectible accounts receivable in a reasonable amount determined y Operator and adjusted from time to time to reflect actual experience.

H. All costs and fees of accountants, attorneys, and other third parties who perform services required or permitted hereunder, which under generally accepted accounting principles are expensed currently -rather than capitalized.

I. All costs and fees of technical consultants and operational experts for technical or specialized services in connection with non-routine hotel work or matters that under generally accepted accounting principles are expensed currently rather than capitalized.

J. The Base Management Fee (as hereinafter defined).

K. All franchise royalties and other fees or expenses paid or payable by Operator under and pursuant to the Franchise Agreement pursuant to which the Hotel is operated or under or in connection with any renewal or extension thereof.

Section 6 EMPLOYMENT PRACTICES

6.1 Operator's Personnel Duties

NEUTRAL Operator shall select, employ, promote, terminate where appropriate, supervise, direct, train, and assign the duties of all personnel that Operator reasonably determines to be necessary or appropriate for the operation of the Hotel (collectively, the "Hotel Employees"). Operator shall employ its best efforts and exercise reasonable care to select qualified, competent, and trustworthy employees. To the extent possible, Operator shall use local labor in the operation of the Hotel.

6.2 Employee Training

OWNER Operator shall provide appropriate training for all Hotel Employees. Operator also shall cause the appropriate employees to attend any program required by Franchisor pursuant to the Franchise Agreement. The costs of attending any such meetings or seminars, including the cost of tourist-class travel, accommodations, and food, shall be an expense of the Hotel, but shall not unreasonably exceed the amount provided for such purpose in the Operating Budget.

6.3 Employee Conduct

OWNER Operator shall require each Hotel Employee to be at all times (to the greatest extent possible within the scope of his duties) clean, neat, well-groomed, well-postured, unobtrusive, and dignified and to conduct himself at all times and in all contacts with guests, patrons, other Hotel Employees, and members of the public in a friendly, cooperative, helpful, and responsive manner and otherwise in such a way as to contribute to the comfort and goodwill of the guests and patrons of the Hotel and other Hotel Employees and to enhance the reputation of the Hotel generally. Operator shall employ its best efforts to create and maintain among the Hotel Employees a business-like but congenial atmosphere, a spirit of cooperation and goodwill, and a sense of pride associated with providing quality products and services and performing their jobs well.

NOTE: The preceding clause asserts the Owner's interest in maintaining top quality employees. The attitude and conduct of employees is an important factor in the success of a hotel venture.

6.4 Employees Are Employed by Owner

OPERATOR Each Hotel Employee shall be the employee of Owner and not of Operator, and every person performing services in connection with this Agreement, including any agent or employee of Operator or its Affiliates or any agent or employee of Owner hired by Operator, shall be acting as the agent of Owner

[Alternate Clause] NEUTRAL The General Manager (or other such Hotel Employees as designated by Operator) shall be an employee of Operator, and Owner shall reimburse Operator monthly for the General Manager's salary and fringe benefits.

[Alternate Clause] OPERATOR All Hotel Employees and agents shall be on Owner's payroll. Manager shall not be liable to such employees for their wages or compensation.

6.5 Operator to Negotiate Labor Contracts

NEUTRAL Operator will negotiate on Owner's behalf, after consulting with Owner or, if Owner is not available, with Owner's attorney, with any labor union lawfully entitled to represent the Hotel Employees. However, Owner, in its discretion, may participate in such negotiations. No collective bargaining agreement or labor contract resulting from such negotiations shall be valid unless executed by Owner.

[Optional Additional Clause] NEUTRAL Owner's approval will not be withheld in any case if such contract is consistent with similar agreements commonly in effect in the area.

NOTE: When using the preceding clause, Owner should verify Operator's ability to conduct labor negotiations prior to signing the management contract.

6.6 Limits on Employee Compensation

OWNER Subject to the restrictions imposed by the Operating Budget, Operator shall set the salaries and fringe benefits of all Hotel Employees. Operator shall not. permit such compensation to exceed by a substantial amount the compensation paid to employees with similar skills and responsibilities at comparable hotels in and about the area.

NOTE: The annual plan should contain a wage survey of area lodging facilities.

[Alternate Clause] OWNER No Hotel Employee shall receive compensation in excess of Sixty Thousand Dollars ($60,000) per year without Owner's prior approval of the pay rate.

NOTE: The preceding clause provides ownership control over employee compensation. The $60,000 base should be adjusted to reflect local conditions.

[Alternate Clause] OPERATOR In determining employee salaries, Operator may pay such incentive salaries and bonuses to department heads and sales staff as Operator may deem appropriate, provided that such payments are pursuant to an incentive compensation plan that has been previously approved by Owner.

6.7 Limits on Employment Contracts

OWNER Operator shall not enter into, institute, or grant employee benefits or employment agreements with respect to Hotel Employees that (a) require more than thirty (30) days' notice of cancellation, (b) require more than a thirty (30) -day grace period for termination of funding or participation, or (c) require a penalty or extraordinary payment on cancellation or any such termination, except those benefits or agreements required pursuant to union contracts, as the same may be changed from time to time to comply with applicable laws.

6.8 Selection of General Manager

OWNER The selection of the General Manager, as well as his salary, shall be subject to Owner's prior written approval, which shall not be unreasonably withheld.

(Alternate Clause] OWNER The General Manager shall be selected by Operator, but his employment, termination, or transfer to another Hotel shall be subject to the prior approval of Owner. In the event that the General Manager shall resign or be terminated or shall be absent from the Hotel for any period in excess or ordinary vacations and leave time, Operator shall replace the General Manager with a qualified person as soon as reasonably practicable.

6.9 Replacement of General Manager

OWNER If the General Manager shall not prove satisfactory to Owner, Owner may, in writing, request Operator to discharge the General Manager, setting forth therein the reasons for such action. It the grounds for removal set forth by Owner shall be sufficient to constitute a violation of the terms of this Agreement, Operator must discharge the General Manager.

[Alternate Clause] OPERATOR Operator may change or replace the General Manager of the Hotel at any time. The decision in regard to any change or replacement shall be at the sole discretion of Operator.

6.10 Owner May Not Rehire General Manager

OPERATOR Owner agrees that if the General Manager of the Hotel leaves the employ of Operator for any reason, Owner shall not hire the General Manager in any capacity for at least one (1) year following such termination.

NOTE: The preceding clause prevents the Owner from terminating the management company and retaining the General Manager, a practice that can sometimes be tempting from the Owner's point of view. Time periods for such clauses range from one to three years.

6.11 Salary for General Manager

OWNER Owner shall be given prior written notification, subject to its approval, of the appointment and total compensation package of the General Manager. Owner's approval of such compensation package shall not be unreasonably withheld or delayed.

6.12 Fringe Benefits for General Manager

OPERATOR The General Manager is entitled to annual holidays as well as reasonable time off from regular duties for the purpose of attending professional development seminars, managers' meetings, and industry conferences and conventions, and for the purpose of attending to such other business as may be reasonable in the hotel industry. Owner shall pay all reasonable expenses of the employee in attending such meetings, seminars, conferences, and conventions.

6.13 Owner May Not Give Orders to Hotel Employees

OPERATOR Owner may at any time consult or communicate with Operator regarding any of the Hotel Employees, but Owner shall not give orders to or otherwise interfere in the day-to-day activities of the Hotel Employees.

Section 7 TRADE NAMES

7.1 Use of Trade Name

OPERATOR In its operation of the Hotel, Operator may utilize trade names or trademarks that, in whole or in part, may be the same as or similar to the trade names or trademarks now or hereafter used by it or other members of Operator's Group, in connection with the operation of other hotels. The exclusive rights to the use of the trade names and trade marks will belong to Operator, and are not in any way to be considered appurtenant to the Hotel, irrespective of whether any of the trade names and trademarks are used by Operator for the first time at the Hotel or elsewhere. Upon the termination of this Agreement for any reason, all further rights to use the trade names and trademarks shall remain with Operator, and neither Owner nor any other occupant of the Hotel shall have any rights thereto.

[Alternate Clause] OPERATOR After termination of this Agreement, neither Owner nor any other owner or operator of the Hotel shall have the right to use the trade name or any trademarks, emblems, insignia, slogans, or distinguishing characteristics in connection with the operation of the Hotel or in any other manner.

[Alternate Clause] OPERATOR Operator has registered the name, trade name, trademark, and service mark of certain names for restaurants that are used in hotels owned and/or operated by Operator. Owner agrees that any such name, trade name, trademark, or service mark registered by Operator shall remain the exclusive property of Operator: provided, however, that Owner shall have the right to approve the name of any restaurants in the Hotel.

Section 8 SUCCESSORS AND ASSIGNS

8.1 Assignment by Operator

OWNER This Agreement, or any rights and duties expressed herein, shall not be assigned or transferred by Operator without the prior written consent of Owner. Transfer or issuance of the stock of Operator resulting in any change of control thereof shall be deemed a transfer of this Agreement by Operator.

[Alternate Clause] OPERATOR Operator, without consent of Owner, shall have the right to assign this Agreement to any successor or assignee of Operator that may result from any merger, consolidation, or

reorganization, or to any corporation or firm, fifty percent (50%) or more of whose voting stock or control is owned directly or indirectly by Operator, or to another corporation that shall acquire all or substantially all of the business and assets of Operator.

[Alternate Clause] OPERATOR

Operator shall have the right to assign its rights and obligations under this Agreement, or any portion thereof or interest therein, to any person or entity that acquires all or substantially all of the assets of Operator, or the partnership interest of any partner of Operator, without the consent of Owner; provided, however, that any such assignee shall expressly assume in writing the obligations of Operator (or the obligations, it any, of such former partner or Operator) hereunder, in which event the liability of Operator (or of such former partner of Operator, as the case may be) hereunder $hall terminate. Operator shall not have the right otherwise to assign its rights and obligations under this Agreement, except with the prior consent of Owner, which consent may not be unreasonably withheld. It is understood and agreed that any approval given by Owner to any assignment shall not be deemed a waiver of the covenant herein contained against assignment in any subsequent case. Any assignee who succeeds to the interest of Operator hereunder (or to the interest of an assignee of Operator hereunder) shall be deemed to be Operator hereunder for all purposes.

[Optional Additional Clause] OWNER

Any consent granted by Owner to any such assignment shall not be deemed a waiver against assignment in any subsequent case.

8.2 Assignment by Owner

OWNER

Owner shall have the absolute right to assign this Agreement to any person or entity acquiring all of Owner's right, title, and interest in and to the Hotel without the consent of Operator, provided, however, that any such assignee shall expressly assume in writing the obligations of Owner hereunder in which event the liability of Owner shall terminate hereunder and the assignee who succeeds to the interest of Owner hereunder (or to the interest of an assignee of Owner hereunder) shall be deemed to be Owner hereunder for all purposes.

[Alternate Clause] OWNER

Owner can sell or lease the property provided that the purchaser expressly assumes in writing all of the Owner's obligations under this Agreement.

8.3 Acceptable Purchaser

OPERATOR

Operator shall not terminate this Agreement if the proposed purchaser of the property from Owner is an "Acceptable Purchaser," which shall mean one that has (a) total assets of at least Twenty Million Dollars ($20,000,000) in 1989 dollars, (b) a financial net worth at least equal to twenty-five percent (25%) of the then fair market value of the Hotel (or such proportion if less than all of the Hotel is to be sold), (c) a reputation in the business world generally at least equal to that of Owner and its constituent transferors, (d) no significant part of its business in competition with Operator as a national or regional hotel chain (whether or not in direction competition with the Hotel), and (e) an agreement with Owner to execute at the closing of such proposed sale a document in writing assuming all of the Owner's obligations pursuant to this Management Agreement

[Alternate Clause] OWNER

If Owner's interest in the Hotel is contracted to be sold or leased, this Agreement shall remain in lull force and effect and binding upon Operator, except that Operator shall have the right to terminate this Agreement effective upon transfer of ownership of the Hotel if the purchaser or lessee is: (a) in the reasonably and good faith opinion of Operator, not of sufficient net worth to comply with the obligations reasonably anticipated at such time to be incurred by Owner hereunder, (b) a party who is generally reputed to be controlled by

persons known to be engaged in criminal activities or an associate or agent of criminals, or (c) not an operator of hotels or motels Operator shall notify Owner of its election to terminate this Agreement within fifteen (15) days of receipt by Operator of notice of any proposed sale of the Hotel. Operator shall not be entitled to exercise the right of termination it Owner shall have notified Operator in writing of the identity of the proposed purchaser or lessee with reasonable supporting background information pertaining thereto. and within fifteen (15) days of such notification, either (a) Operator does not signify in writing to Owner the manner in which any of such purchaser(s) or lessee(s) fall within any of the categories listed hereinabove, or (b) it, having signified as aforesaid, such objections are thereafter resolved to Operator's reasonable satisfaction, or if not so resolved, determined not to be valid pursuant to an arbitration proceeding.

[Alternate Clause]
OPERATOR

Owner and Operator recognize that certain Operator Affiliates are now engaged, and will in the future be engaged, in various gaming or casino business activities that are strictly regulated by governmental authorities, and that, by virtue of applicable licensing requirements and other regulations, such activities may be adversely affected by the character and reputation *of* persons with whom Operator does business Accordingly, Owner agrees to notify Operator in writing of the identity of any of the following persons or entities together, in each case, with such additional information concerning any such person or entity, and [tie officers and owners of such entity, as Operator may reasonably request:

A. Any proposed assignee of this Agreement in connection with any contemplated sale or lease of the Hotel;

B. Any proposed assignee/transferee of a controlling interest in Owner; or

C. Any proposed purchaser of a limited partnership interest in Owner in connection with the original offering of such interests or any proposed transferee of any such interest.

Operator shall have a period of ninety (90) days after receipt of such information to investigate the backgrounds and reputations of such persons or entities and shall have the right to disapprove any of the proposed transactions on the basis that it may jeopardize its gaming or casino business activities. Owner and Operator acknowledge the discretionary nature of the governmental regulations and licensing requirements imposed upon Operator Affiliates and agree that Operator shall have the widest possible discretion in withholding its approval if it determines in good faith that any proposed assignment of this Agreement is likely to have an adverse impact or would other wise jeopardize or delay any present or future gaming or casino business venture (including, without limitation, any approvals, temporary or permanent licensing requirements, or other regulatory procedures in connection therewith) engaged in by any Operator Affiliates.

[Optional Additional Clause]
OPERATOR

Any consent granted by Operator to any such sale, lease, or assignment shall not be deemed a waiver against sale, lease, or assignment in any subsequent case.

8.4 Right of First Refusal

OPERATOR

Owner shall extend to Operator a first right to purchase the Hotel in the event that Owner decides to sell the Hotel, or any part thereof, Owner shall extend to Operator in writing the opportunity to buy the Hotel upon certain terms and conditions (the "Offer"). Operator shall have thirty (30) days from its receipt of the Offer to accept same. Operator's failure to accept the Offer within such thirty (30) -day period shall be deemed Operator's refusal to purchase the Hotel on the terms and conditions offered, and Owner shall have the right to sell the Hotel upon the same terms and conditions con

tamed in the Offer, or upon terms more favorable to Owner, provided that a contract reflecting such transaction is executed by Owner and the new Purchaser within nine (9) months of the date Operator declines the Offer. In the event no contract has been executed within such nine (9) -month period, or if a contract has been executed during such period but such contract later fails, Owner must resubmit to Operator a written offer to sell the hotel, or any part thereof and, Operator shall again have thirty (30) days to accept or decline such offer.

8.5 Future Owners and Operators

NEUTRAL All references to "Owner" and "Operator" throughout this Agreement shall include and apply to their respective authorized successors and assigns; provided, however, that no assignment of this Agreement shall relieve the assignor of its obligations and liabilities under this Agreement.

8.6 Assignment as Collateral Security

OWNER Nothing herein contained shall prevent Owner from assigning this Agreement to any bank, insurance company, or other financial institution as collateral security to any first mortgage on the property.

8.7 Subordination to Mortgages

OWNER It is mutually agreed that this Agreement is subject and subordinate to the lien of all and any mortgages (the term "Mortgages" shall include both construction and permanent financing as well as secondary or junior financings and personal property financing and shall include deeds of trust and similar security instruments) that may now or hereafter encumber or otherwise affect the Hotel and to all and any renewals, extensions, modifications, recastings, or refinancings thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgage, trustee, beneficiary, or secured party. However, as confirmation of such subordination, Operator shall, at Owner's request, promptly execute any requisite or appropriate certificate or other documents.

Operator agrees to negotiate in good faith with Owner with respect to any modifications to this Agreement or any ancillary agreement that may reasonably be required or requested by any such construction or permanent institutional first mortgagee. Operator agrees that the operation is expressly conditioned upon the approval hereof by such mortgagee and the satisfaction by Owner and Operator of such additional conditions and requirements as may be imposed by such construction or permanent institutional first mortgagee.

It is agreed that in the event any party shall succeed to the interest of Owner through foreclosure or through a deed in lieu thereof, no liability or outstanding obligation of Owner to Operator that arose prior to such foreclosure or deed shall bind, obligate, or become a liability of such party, but Owner shall remain liable therefore.

It requested to do so by any mortgagee, Operator shall furnish to such mortgagee a copy of any financial report, statement, schedule, or plan required under this Agreement, to be submitted by Operator to Owner.

A copy of all notices of default under this Agreement shall be provided to any mortgagee of the Hotel, and such mortgagees shall be given a reasonable opportunity to cure such default. In addition, upon the request of any mortgagee or of either party hereto, Owner and/or Operator shall provide for such requesting party or such mortgagee estoppel certificates that shall state that this Agreement is in full force and shall specify any known defaults, if any, thereunder. Operator shall certify to such mortgagee, and/or to

Owner, that all preconditions and the full effectiveness of the Agreement have been satisfied and that the Operating Term has commenced.

Section 9 CONDEMNATION, DAMAGE, OR DESTRUCTION

9.1 Partial Condemnation

NEUTRAL If only a part of the Hotel shall be taken or condemned and the taking or condemnation of such part does not make it unreasonable or imprudent, in Operator's reasonable opinion, to operate the remainder as a hotel of the same type and class as immediately preceding such taking or condemnation, this Agreement shall not terminate, but out of the award to Owner so much thereof as shall be reasonably necessary to repair any damage to the Hotel, or any part thereof, so as to render the Hotel a complete and satisfactory architectural unit as a hotel of the same type and class as immediately preceding the taking or condemnation, shall immediately be made available for this purpose, subject to the interests of any mortgagee; and the balance of the award, after deduction of the sum necessary for restoration, shall be distributed to the Owner.

In the event of a taking or condemnation of all or part of the Hotel for temporary use, this Agreement shall remain in lull force and effect. Restoration, repairs, and alterations shall be commenced promptly after the termination of the taking or condemnation for temporary use and same shall be completed with diligence. Operator's fees shall be computed on the basis of actual Gross Income and Adjusted Gross Operating Profit.

To the extent that any of the provisions of this Article conflict with the terms of any mortgage or other secured financing covering the Hotel, the terms of such mortgage or other secured financing shall supersede the provisions herein.

9.2 Use of Award for Partial Condemnation

OPERATOR Any compensation or award received by Owner with respect to any taking of the property in partial condemnation shall be used first for any restoration, repair, replacement, or rebuilding required by Operator and, thereafter, any excess shall be divided between Owner and Operator in such proportion that Operator will receive twenty percent (20%) of that fraction of the excess determined by dividing the then-remaining number of years in the term of this Agreement (including partial *years* and assuming exercise of all options to renew) by the remaining number of years in the useful life of the Hotel (for Hotel purposes) prior to the taking.

9.3 Total Condemnation

OPERATOR If the whole of the Buildings and the Land shall be taken or condemned by reason of any eminent domain, condemnation, compulsory acquisition, or like proceeding by any competent authority for any public or quasi-public use or purpose, or if such a portion thereof shall be taken or condemned as to make it imprudent or unreasonable, in the reasonable opinion of Owner, to use the remaining portion as 'a hotel of the same type and class as immediately preceding such taking or condemnation, then, in either of such events, this Agreement shall terminate with respect to the Hotel as of thirty (30) days after written notice from Owner to Operator of Owner's decision to terminate this Agreement under this provision, Owner and Operator each shall have the right and authority, as to their respective interests in such hotel, to defend at their own expense against any such taking or condemnation or to sue for or appeal from any such award and, in the exercise of such right, to compromise and settle any such action or award solely as to their own interest in the Hotel, on such terms as they may deem advisable. Operator shall continue to manage

the Hotel and to perform all of the duties required hereunder until such time as this Agreement terminates as herein provided.

9.4 Award for Total Condemnation

OWNER If, in Operator's reasonable opinion, it is not possible to use the remaining portion of the Hotel as a hotel of the type and class immediately preceding such taking or condemnation, then Operator may terminate this Agreement as of the date of such event. Operator shall not be entitled to participate in any award of such taking or condemnation.

[Alternate Clause] OWNER All proceeds of any condemnation shall belong to Owner, except to the extent that separate award is made to Operator. Operator shall have the right to seek an award in an eminent domain, condemnation, compulsory acquisition, or like proceeding only if such action by Operator is not likely to, and does not, in Owner's opinion, prejudice any of Owner's rights or diminish or adversely affect any award or proceeds sought by or awarded to Owner.

[Alternate Clause] OWNER Owner shall receive the whole of any award for any complete expropriation; provided, however, that Operator may separately claim, prove, and receive an award for any separately compensable rights of Operator taken in such expropriation only if Operator shows, to Owner's satisfaction, that such claim may be made separately from Owner's claim, and that any award would not adversely affect the timing or amount of the award to which Owner is entitled.

(Alternate Clause] OPERATOR Operator shall have the right, during the first ten (10) full Fiscal Years of the Operating Term, in the case of either total or partial taking or condemnation, either to institute or to intervene in any available administrative proceeding or judicial action intended to determine just compensation for such taking, for the purpose of representing Operator's compensable interest in any award thereof arising from this Agreement and more specifically from Operator's right of quiet enjoyment pursuant to this Agreement. Such award, after first paying any amounts due any mortgagee and all borrowings of the joint venture owning the property and returning Owner's initial capital contribution to Owner, shall be apportioned between the parties hereto in consideration, without limitation, of the following factors: (a) recoupment by Owner of its investment, (b) return on investment to date, (c) actual loss of income, in the event of partial taking or condemnation, (d) loss of reasonably anticipated future income, in the event of total taking, (e) length of unexpired term and any renewals thereof, and/or (f) proportion that Operator's fees under this Agreement bear to return to Owner after Operator fees. Any award that does not recognize such separate and compensable interest in Operator shall be the subject of arbitration between the parties hereto pursuant to the provisions of this Agreement. Thereafter, Operator may institute a proceeding and shall be entitled only to any separate award made to Operator that does not reduce the award otherwise payable to Owner.

[Alternate Clause] OPERATOR In the event that this Agreement terminates owing to a full condemnation, the aggregate of the awards or other proceeds of the taking (including any interest included in or paid with respect to such award or proceeds) shall be paid to Owner; provided, however, that if such awards or other proceeds of the taking shall represent loss of income to Operator, Operator shall be entitled to a fair and equitable share of such awards or other proceeds to the extent of such loss of income.

9.5 Taking for Temporary Use

NEUTRAL In the event of a taking of all or part of the Hotel for temporary use, this Agreement shall remain in full force and effect, and the following shall be applicable:

A. It the taking is for a period not extending beyond the Operating Term, the awards or other proceeds on account of the taking (including any interest included or paid with respect to such awards or proceeds) other than any portion of such awards or proceeds specifically identified as compensation for alterations or damages to the Hotel shall be included in Gross Revenue and Operating Profit for the Operating Year or Years in which received. When and if, during the Operating Term, the period of temporary use shall terminate, Owner shall make all such restorations, repairs, and alterations as shall be necessary to restore the Hotel to its condition prior to such taking for temporary use and shall complete the same with diligence.

B. If the taking is for a period extending beyond the Operating Term, the awards or other proceeds on account of the taking (including any interest included or paid with respect to such awards or proceeds) other than any portion of such awards or proceeds specifically identified as compensation for alterations or damages to the Hotel for the period of the taking up to the staled expiration of the Operating Term shall be included in determining Gross Revenue and Operating Profit for the Operating Year or Years in which received, and the remainder of such awards or other proceeds (including interest as aforesaid) shall be paid to Owner.

9.6 Owner's Options After Fire or Casualty

OWNER If the Buildings, Operating Equipment, or Furniture, Furnishings, and Equipment for the Hotel shall be damaged or destroyed to the extent of twenty-five percent (25%) or more of its replacement cost during the Operating Term by fire or other casualty, Owner shall have the right and option, upon notice served upon Operator within sixty (60) days after such fire or other casualty (or within ten (10) days after ascertaining the amount of such proceeds of insurance, if later), to either (a) replace and restore the Hotel to the condition that existed prior to such destruction and to have the full proceeds from the insurance thereon, in which case this Agreement shall continue in full force and effect, or (b) to terminate this Agreement as to the Hotel, provided that such notice of termination shall be voidable at the option of Operator and by written notice to Owner it, within one (1) year after such notice is given to Operator, Owner (or any affiliate of Owner) shall commence to repair, restore, rebuild, or replace the destroyed Buildings, Operating Equipment, or Furniture. Furnishings, and Equipment with the intent of operating the Hotel as a hotel, motel, or other transient lodging facility. In case of such termination by Owner, the amount of any Incentive Fee due to Operator under this Agreement shall be agreed upon mutually.

9.7 Termination for Total Destruction

NEUTRAL Owner shall be entitled to elect, by written notice given to Operator within ninety (90) days after a fire or other, casualty, to terminate this Agreement, it one of the following conditions is met:

A. The Hotel is damaged or destroyed to such an extent that the cost of repairs or restoration exceeds, in Owner's determination, eighty-five percent (85%) of the full replacement cost (excluding excavations, footings, and foundations) of the Hotel; or

B. The major food and beverage facilities in the Hotel are rendered substantially unusable for their intended use during the last eighteen (18) months of the Operating Term; or

C. The percentage of the guestrooms in the Hotel referred to in column x shall be rendered unsuitable for use by guests as a result of any damage or destruction to the whole or any part of the Hotel when the Operating Term shall have no more than the number of years to run set forth in column y, as follows:

Percentage *of* Rooms Rendered Unusable *x*	*Years y*
55	Five
40	Four
30	Three
20	Two
10	One

[Alternate Clause] NEUTRAL If the percentage of the guestrooms in the Hotel referred to in column a shall be rendered unsuitable for use by guests as a result of any damage or destruction to the whole or any part of the Hotel when the term of this Agreement shall have no more than the number of years to run that is set forth in column *b* below, as follows:

a	*b*
50	Five
40	Four
30	Three
20	Two
10	One

then Owner or Operator may terminate this Agreement within thirty (30) days after the occurrence of such damage or destruction by giving notice to the other party hereto irrespective of the insurance coverage applicable to said damage or destruction.

9.8 Uninsured Casualty

OWNER If the whole or any part of the Hotel shall be damaged or destroyed by any cause for which insurance coverage was not required to be maintained by Owner, and the cost of the Casualty Restoration with respect thereto shall exceed thirty percent (30%) of the replacement value of the Hotel, as determined by an independent licensed architect selected by Operator and Owner, then Owner may terminate this Agreement by providing written notice to Operator within thirty (30) days after the occurrence of such damage.

9.9 Payment to Operator for Casualty Termination

OPERATOR If all or any part of the Hotel is damaged or destroyed to such an extent that the estimated cost of the Casualty Restoration exceeds fifty percent (50%) of the total replacement cost (without deduction for depreciation) of the Hotel, then, if Owner reasonably concludes on the basis of the factors existing at the time of such casualty that it would be uneconomic to repair and restore the Hotel, Owner shall have the right to terminate this Agreement with respect to the Hotel upon payment to Operator of a termination fee equal to five (5) times the total Base Fee and Incentive Fee (without any accrual or limitation based on Cash Available for Incentive Fee) earned by Operator with respect to the Hotel for the most recent full Operating Year. Notwithstanding such termination, the Hotel shall remain subject to Operator's right of first refusal pursuant to this Agreement.

NOTE: The termination fee included in the above clause is higher than most such fees. Usually the fee is two or three times the management fee.

9.10 Payment to Operator During Restoration

OPERATOR At all times until operations of the Hotel are fully recommenced, Owner shall pay to Operator each month an amount equal to the average total monthly payments paid to Operator for the twelve (12) months preceding the appropriation (or such lesser actual period, if the

Hotel has been managed by Operator for less than twelve (12) months) but in no event an amount that exceeds the sum of Total Revenue and the proceeds of business interruption insurance after payment or provision for payment of all other operating expenses of the Hotel, including debt service on indebtedness permitted to be incurred pursuant to this Agreement and taxes for such month.

9.11 Operator's Response to Casualties, Accidents, and Claims

OWNER Operator shall promptly investigate all accidents and claims for damage relating to the ownership, operation, and maintenance of the Hotel and related facilities and any damage or destruction to the Hotel and related facilities. Operator shall report to Owner any such incident that is material, together, if applicable, with the estimated cost of repair thereof.

[Alternate Clause] OWNER In the event of any damage or loss to the Hotel by fire or other casualty, Operator shall give immediate written notice thereof to Owner if the damage or loss involves more than Twenty-Five Thousand Dollars ($25,000).

[Alternate Clause] OWNER As agent for Owner, Operator shall promptly apply for the insurance covering such damage or loss, and in the Owner's name shall prosecute and negotiate for payment of such proceeds, employing counsel (to be selected by the Owner) if necessary for such purpose.

[Alternate Clause] OWNER Operator shall prepare any and all reports required by any insurance company as a result of any such incident and shall submit to Owner the paperwork concerning any material incident for approval prior to submission to any such insurance company.

9.12 Restoration of Hotel

NEUTRAL If the Hotel, or any portion thereof, shall be damaged or destroyed at any time or times during the Operating Term by fire or any other casualty, the Owner, at no expense or risk to Operator, shall, using diligence and dispatch, repair, rebuild, or replace the same (such repairing, rebuilding, or replacing being herein referred to as "Restoration") so that after such Restoration the Hotel shall be substantially the same as prior to such damage or destruction, and all proceeds of insurance, other than business interruption insurance, shall be made available to the Owner for this purpose. Owner shall use its best efforts to obtain the consent of any Mortgagee of the Hotel to make insurance proceeds available for application to such Restoration, and it such Mortgagee consents, Operator shall have the right to ensure that such proceeds of insurance shall be applied to such Restoration. If the Owner fails to undertake such Restoration within one hundred twenty (120) days after a fire or other casualty that affects a material portion of the Hotel, or fails to complete the same diligently, Operator may, at its option, terminate this Agreement by written notice to Owner, effective as of the date received by Owner. Operator shall supervise all aspects of the restoration at no cost to Owner, provided, however, that if the proceeds of insurance provide for a supervisory fee, such fee shall be paid to Operator.

Section 10 TERMINATION RIGHTS

10.1 Operator's Breach of Contract

OWNER Owner may terminate this agreement if Operator shall have committed a material breach of this Agreement, or otherwise failed to observe or perform any material covenant or provision of this Agreement, and Owner shall have served written notice upon Operator

setting forth the details of such alleged breach, and Operator shall not, within thirty (30) days after the mailing of such notice, have cured such breach to the reasonable satisfaction of Owner, or if such breach is of a nature that it cannot be cured within such thirty (30) -day period, Operator shall not within such thirty (30) -day period have commenced and at all times thereafter have diligently proceeded with all acts required to cure such breach and does not cure such breach to the reasonable satisfaction of Owner within sixty (60) days. Any such termination under this subdivision shall be without prejudice, however, to any and all other rights and remedies that the Owner may have for breach of this Agreement by the Manager.

[Alternate Clause]
OWNER

In the event that Operator violates any of its covenants and agreements herein, or fails to perform any of its obligations, undertakings, or conditions as set forth in this Agreement, and shall not cure such failure within thirty (30) days after written notice from Owner, Owner may terminate this Agreement upon ten (10) days' prior written notice to Operator.

10.2 Operator's Willful Misconduct or Fraud

OWNER

Owner may terminate this Agreement if Operator shall engage in any act of willful misconduct or fraud with respect to, or the misappropriation or diversion of funds or property of, Owner for Operator's own benefit.

10.3 Operator's Bankruptcy

OWNER

If Operator shall file in any court, pursuant to any statute of either the United States or any state, a petition in bankruptcy or insolvency, or for a reorganization, or for the appointment of a receiver or trustee of all or a substantial portion of Operator's property, or if Operator makes an assignment for or petitions for or enters into an arrangement for the benefit of creditors, or if a petition seeking relief under the bankruptcy laws is filed against Operator that is not discharged within ninety (90) days thereafter, then. Owner may terminate this Agreement upon written notice to Operator.

[Alternate Clause]
OWNER

If Operator shall file a voluntary petition for reorganization or for any arrangement under any provisions of any bankruptcy code now or hereafter enacted, Owner may terminate this Agreement upon written notice to the party filing such petition.

[Alternate Clause]
OWNER

If a petition shall be filed by any third party for the reorganization of Operator under any provisions of any bankruptcy code now or hereafter enacted and such proceeding is not dismissed within ninety (90) days after such filing, then Owner may terminate this Agreement upon written notice to the party against whom such petition was filed.

10.4 Appointment of a Receiver for Operator

OWNER

If a receiver, trustee in involuntary bankruptcy, or other similar officer shall be appointed to take care of all or a substantial portion of the property of Operator, then Owner may terminate this Agreement upon written notice to the party for whom such official has been accepted.

10.5 Operator's Assignment for Creditors

OWNER

If Operator makes a general assignment for the benefit of its creditors. Owner may terminate this Agreement upon written notice to the party making such assignment.

HVS

10.6 Operator Causes Licenses to Be Revoked

OWNER If the property's licenses or permits, including, but riot limited to, occupancy, food, and alcoholic beverage service, are revoked because of the wrongful acts of Operator, Owner may terminate this Agreement upon written notice to Operator.

10.7 Operator Causes Franchise to Be Terminated

OWNER If the Franchise is terminated as a result of the operation of the Hotel being in non-compliance with the Franchise requirements, Owner may terminate this Agreement upon written notice to Operator, unless such termination is due to Owner's failure to fund sums to maintain the Franchise in good standing.

10.8 Operator Not Active in Hotel Business

OWNER Operator shall be deemed to have ceased to be actively engaged in the business of operating and managing hotels and inns if less than sixty-six and two thirds percent ($66^{2}3\%$) of the total gross income of Operator and its wholly-owned Affiliates or wholly owned Related Entities shall be derived from the hotel, inn, catering, restaurant, beverage, and related businesses.

[Alternate Clause] OWNER If Operator and other members of its chain collectively shall cease to own, lease, or manage at least ten (10) hotels in the continental United States, Operator shall be deemed to have ceased to be actively engaged in the business of operating and managing hotels and inns.

10.9 Operator Fails to Provide Chain Services

OWNER Owner may terminate this Agreement if Operator shall fail to maintain, at Operator's expense, at all times during the Operating Term, a toll-free operator-tended inter-hotel reservation system pursuant to which persons located anywhere in the United States can, without long distance charge to such persons, make reservations by telephone at the Hotel.

10.10 Acquisition of Operator by Criminal

OWNER Owner may terminate this Agreement if Operator shall be acquired or controlled by a party who is generally reported to be controlled by persons known to be engaged in criminal activities or an associate of criminals.

10.11 Termination of Operator for Poor Operating Performance

OWNER In the event that the Payment to Owner as provided herein shall, for any three (3) consecutive full Fiscal Years, be insufficient to meet Owner's debt service requirements for the Hotel under the original mutually agreed financing plan for the Hotel after provision for real estate taxes, or if during the extended period of operation the Gross Operating Profit of the Hotel as defined herein shall, for any two (2) consecutive Fiscal Years, average less than one hundred fifty (150) times the average room rate for each such year times the number of available guestrooms in the Hotel, Owner shall have the right to issue a Notice of Termination of this Agreement, on three (3) months' notice to Operator. II such notice is accompanied by a declaration by Owner that it has determined to cease the use of the Improvements as a Hotel, this Agreement shall automatically terminate at the end of the three (3) months' notice period, provided, however, that if at any time within five (5) years thereafter the Improvements are again to be used as a Hotel, Operator shall have the right, but not the obligation, to reinstate this Agreement and to operate the Hotel in accor

dance with the terms and conditions thereof, except that the Operating Term shall be extended for the period in which the building has not been used as a hotel. If the Notice is not accompanied by such a declaration, Operator shall have the right to serve a notice of arbitration upon Owner pursuant to the terms of this Agreement, and the date of termination specified in the notice shall be extended until thirty (30) days alter a final award has been entered that Operator has not sustained the affirmative burden of proving, by a preponderance of evidence, that the failure to meet the performance standard was due to causes or conditions beyond Operator's control. In the event that the arbitrator shall determine that Operator has sustained the aforesaid burden of proof, the aforesaid notice of termination shall be nullified and shall have no force and effect.

NOTE: The preceding clause provides for termination due to the operator's failure to achieve specific profit levels.

[Alternate Clause]
OWNER

In addition to the foregoing rights of termination for default, if the Adjusted Gross Operating Profit for any two (2) consecutive fiscal years occurring after the first three (3) full Fiscal Years (i.e., Fiscal Years of not less than three hundred sixty-five (365) days) of the Operating Term of this Agreement shall be less than zero (0) for each such Fiscal Year, Owner may terminate this Agreement.

Operator shall have the right; but not the obligation, on one occasion and one occasion only, to pay Owner the difference between the actual Adjusted Gross Operating Profit for either of the two consecutive Fiscal Years that give rise to Owner's right to terminate on which Owner's said notice was based and zero (0) (or such amount to which it may have been reduced in accordance with the preceding paragraph), in which event Owner's notice of termination shall be deemed withdrawn, provided, however, that in the event the next fiscal year following such cure by Operator results in an adjusted gross operating profit of less than zero (0), Owner shall have the option to terminate.

NOTE: The preceding clause gives the operator the right to cure.

[Alternate Clause]
OWNER

Owner shall have the right, within sixty (60) days after the sixth (6th) anniversary of the Formal Opening Dale, to terminate this Agreement by giving Operator written notice during such sixty (60) -day period of Owner's intent to terminate this Agreement on a date set forth in such notice, which date shall not be less than ninety (90) days nor more than one hundred eighty (180) days after Operator's receipt of such notice, if Operator fails to achieve a Total Income Before Fixed Charges of at least $..... during the twelve (12) months immediately preceding the sixth (6th) anniversary of the Formal Opening Date.

If Owner so advises Operator of Owner's intent to terminate this Agreement in such a manner, Operator shall have fifteen (15) days from the date of receipt of such notice of termination during which Operator may cure such failure by loaning to Owner an amount equal to the difference between $ ..and the Total Income Before Fixed Charges actually achieved by the Hotel in the twelve (12) months immediately preceding the sixth (6th) anniversary of the Formal Opening Date.

In the event that Operator cures such failure described above by making a loan to Owner, such loan shall be evidenced by a promissory note from Owner to Operator, in form and substance satisfactory to Operator and consistent with the terms hereof, and shall bear interest at the rate of six percent (6%) per annum. Repayment of the full amount of the loan is to be made from Cash Flow beginning in the *year* following the seventh (7th) anniversary of the Formal Opening Date, after payment of the Incentive Management Fees due and payable as provided for herein, and payments on such loan shall be made monthly or otherwise as such Cash Flow is available until such loan has been paid in full

NOTE: The preceding clause allows the operator to cure its default by making a loan.

[Alternate Clause] OWNER

If, after the first two (2) lull calendar years of operation, the Hotel has no Gross Operating Profit in any Operating Year, Owner may, at its option, terminate this Agreement, unless Operator advances the necessary funds required to fully cover (a) any negative Gross Operating Profit; (b) plus an amount equal to a fifteen percent (15%) annual return on equity funds *(as* hereinafter defined) invested in the Hotel. Should Operator advance any funds necessary for such purpose. Operator shall be reimbursed for any such advances out of future Adjusted Gross Operating Profit, if any, derived from the operation of the Hotel; provided, however, that such reimbursement shall not result in a negative Adjusted Gross Operating Profit and provided that such reimbursement shall reduce Adjusted Gross Operating Profit upon which any Incentive Fee is computed Such reimbursement shall be in an amount equal to the amount so advanced plus interest on the balance of funds advanced outstanding from time to time at a rate of fifteen percent (15%) per annum, provided, however, that such reimbursement shall be payable only from funds remaining after Owner shall have received a fifteen percent (15%) return on Equity Funds invested in the Hotel

[Optional Additional Clause] OWNER

In addition to the other provisions regarding termination herein provided, Owner shall have the right to terminate this Agreement if after five (5) full years of operation of the Hotel, eighty percent (80%) of the Adjusted Gross Operating Profit for any subsequent Operating Year does not equal at least a fifteen percent (15%) annual return for equity funds invested in the Hotel.

As used herein, the term "Equity Funds" shall mean all funds invested in or loaned to Owner by its principals and applied to the construction and operation of the Hotel over and above all borrowed funds, plus lair market value of all other assets, such as land contributed by the principals in Owner to Owner in return for a capital account credit, but only to the extent such assets are used in connection with the Hotel.

[Alternate Clause] OWNER

Owner shall have the right, at its option, to terminate this Agreement on thirty (30) days' written notice to Operator if, for any two (2) consecutive Fiscal Years during the Operating Term, the amount of Gross Operating Profit is less than the amount corresponding to each of the following Fiscal Years:

Year	Gross *Operating Profit*	*Percentage of Market Study Projections*	*Percentage Cash on Equity*
1988	$1,197,000	95	5.3
1989	1,447,000	95	13.4
1990	1,619, 000	95	19.0
1991	1,692,000	90	21.4

For each *year* thereafter, the Gross Operating Profit number will be adjusted by the Consumer Price Index. In the event the Hotel were to be wholly or partially closed for business during any such year, for reasons beyond the control of Operator, then the foregoing performance standards shall be equitably adjusted.

Notwithstanding the above, Operator shall have a one-time right to cure the termination by paying to Owner, within five (5) business days, the amount that the actual Gross Operating Profit was deficient for each of the two Fiscal Years. If Operator makes this payment, the termination will be waived; however, if the actual Gross Operating Profit is less than the amount corresponding for the immediately succeeding Fiscal Year, Owner will again have the right to cancel this Agreement, and, as Operator will have already used its one-time right to cure, Operator will not be able to cure. If this Agreement is terminated as a result of this provision, the Incentive Fee to Operator will remain in effect.

[Alternate Clause] OWNER

A "Negative Earnings Event" shall occur if, at the completion of any Fiscal Year, the cumulative Performance Test Cash Flow for all Fiscal Years through such Fiscal Year is less

than One Dollar ($1). "Performance Test Cash Flow" shall mean Cash Flow Available for Debt Service less Notional Free and Clear Cash Flow.

"Notional Free and Clear Cash Flow" shall be (a) none ($0) through and including that Fiscal Year (the "Base Year") in which the Renovation Program is completed, (b) One Million Five Hundred Thousand Dollars ($1,500,000) for the first full Fiscal Year following the Base Year, (c) Two Million Five Hundred Thousand Dollars ($2,500,000) for the second full Fiscal Year following the Base Year, (d) Three Million One Hundred Thousand Dollars ($3,100,000) for the third full Fiscal Year following the Base Year, and (e) Three Million Four Hundred Thousand Dollars ($3,400,000) for the fourth full Fiscal Year following the Base Year and each Fiscal Year thereafter.

If a Negative Earnings Event shall occur, Owner may elect to terminate this Agreement upon written notice to Operator, within ninety (90) days after receipt of the annual financial statements as provided herein disclosing the occurrence of such a Negative Earnings Event. In this event, this Agreement shall terminate on the last day of the second (2d) calendar month following the month in which such notice was given.

A Negative Earnings Event shall not be a default hereunder, nor shall a default here-under be a Negative Earnings Event.

[Alternate Clause]

OWNER

Beginning in the fourth (4th) lull or partial Fiscal Year of operation of the Hotel. Operator shall achieve a level of performance (the Performance Standard) that is at least equal to eighty-five percent (85%) of the approved budgeted Gross Operating Profit or any revised approved budgeted Gross Operating Profit. If Operator fails to achieve the Performance Standard for three Fiscal Years of any five (5) -fiscal-year period, Owner shall have the option to terminate (his Agreement. Notwithstanding the foregoing, if the Performance Standard is not met for any Fiscal Year, the Performance Standard shall be deemed to be met for such Fiscal Year to the extent that the deficiency for that Fiscal Year ("Performance Deficiency") is cured by operations in the succeeding Fiscal Year. To the extent that operations in the next succeeding Fiscal Year do not cure the Performance Deficiency, Operator may at its option contribute an amount equal to the Performance Deficiency for such Fiscal Year by deposit in the Bank Account (as hereinafter defined) by April 30 of the second (2d) succeeding Fiscal Year, and upon such contribution, the Performance Standard shall be deemed to have been met for the Fiscal Year.

10.12 Termination by Owner Upon Payment of Termination Fee

OWNER

From the Formal Opening Date until the second anniversary of the Formal Opening Date, Owner shall have no right to terminate this Agreement except for those events of default set forth herein. Commencing with the second (2d) anniversary of the Formal Opening Date, this Agreement may be terminated by Owner for any reason by notice to Operator of Owner's intent to terminate this Agreement upon the expiration of a period of not less than ninety (90) nor more than one hundred eighty (180) days from the date of notice and payment of the following amounts:

A. If notice is given by Owner to Operator during the period commencing on the second (2d) anniversary of the Formal Opening Date, but prior to the fifth (5th) anniversary of the Formal Opening Date, Owner shall *pay* Operator a fee equal to one and one half (1 1/2) times the amount of Base Management, Centralized Service, and Incentive Fees earned by Operator for the twelve (12) months immediately preceding the date of termination.

B. If notice is given by Owner to Operator alter the fifth (5th) anniversary of the Formal Opening Date, and prior to the tenth (10th) anniversary of the Formal Opening Date, Owner shall pay Operator a fee equal to one (1) times the amount of Base Management, Centralized Services, and Incentive Fees earned by Operator during the twelve (12) months immediately preceding the date of termination.

C. If notice of termination is *given* by Owner to Operator after the tenth (10th) anniversary of the Formal Opening Date, Owner shall pay Operator a fee equal to seventy-five percent (75%) of the Base Management, Centralized Services, and Incentive Fees earned by Operator during the twelve (12) months immediately preceding the notice of termination. In no event, however, shall the amount paid Operator by Owner under this provision be greater than the amount determined by multiplying (i) the amount earned by Operator during the year commencing on the ninth (91h) anniversary of the Format Opening Date for Base Management Fees, Centralized Services, and Incentive Fees by (ii) a fraction, the numerator of which is the latest published Consumer Price Index figure available as of the date of termination and the denominator of which is the latest published Consumer Price Index figure available as of the tenth (10th) anniversary of the Formal Opening Date.

NOTE: Termination fees generally range up to three times the total management fee paid over the previous 12-month period.

[Alternate Clause] OPERATOR

If this Agreement terminates pursuant to Owner's election, Owner shall pay to Operator liquidated damages, representing the agreed. reasonable stipulated sum of all loses suffered by Operator because of such termination (including, without limitation, home office and key Hotel personnel commitments and loss of profits), in an amount equal to three (3) times annual fees and charges payable to Operator in the Fiscal Year ended immediately prior to the date on which Owner gives a termination notice to Operator.

[Alternate Clause] OWNER

Owner may terminate this Agreement without cause and upon thirty (30) days' prior written notice only in the event of a sale of the Hotel to a third party and then only as follows:

A. There shall be no right to terminate hereunder for the first three (3) years after the Effective Date;

B. If the Agreement is terminated in the fourth (4th) year, Owner will pay to Operator three (3) times the prior year's Base Management Fee as liquidated damages;

C. If the Agreement is terminated after the fourth (4th) year, Owner will pay to Operator the lesser of two and one half *(2½), or* the number of years remaining under the Initial Term, times the prior year's Base Management Fee as liquidated damages.

D. In addition, Operator shall be entitled to receive its Incentive Management Fee upon such sale, as per provisions of this Agreement.

10.13 Owner Indemnifies Operator After Termination

OPERATOR

As a further condition of termination for any reason, Owner and, if this Agreement terminates in connection with a sale, any successor Owner shall indemnify and keep Operator harmless against any and all losses, costs, damages, liabilities, claims, and expenses, including reasonable attorney fees, arising or resulting from the failure of Owner or any prospective purchaser, lessee, or operator to provide any of the services contracted for in connection with the business booked for the Hotel to and including the date of termination, including any and all business so booked as to which facilities or services are to be furnished subsequent to the date of termination.

10.14 Termination by Operator

OPERATOR

This Agreement and the employment of Operator may be terminated at the option of Operator ninety (90) days alter written notice, and, except as to liabilities or claims that shall have accrued or arisen prior to such termination, all obligations hereunder shall cease upon the happening of any of the events specified herein below.

10.15 Owner's Breach of Contract

OPERATOR Operator may terminate this Agreement if Owner shall have committed a material breach of this Agreement, and Operator shall have served written notice upon Owner setting forth the details of such alleged breach, and Owner shall not, within ten (10) days after the mailing of such notice in the case of a monetary default, have cured such breach, or if Owner shall not, within thirty (30) days after the mailing of such notice in the case of any other default, have cured such breach, or if such breach is of a nature that it cannot be cured within such thirty (30) -day period, and Owner shall not within such thirty (30) -day period have commenced and at all times thereafter have diligently proceeded with all acts required to cure such breach or does not cure such breach within sixty (60) days. Any such termination under this subdivision shall be without prejudice, however, to any and all other remedies that the Manager may have for breach of this Agreement by the Owner.

[Alternate Clause] OPERATOR In the event that Owner violates any of its covenants and agreements herein, or fails to perform any of its obligations, undertakings, or conditions as set forth in this Agreement, and shall not cure such failure within thirty (30) days after written notice from Operator, Operator may terminate this Agreement upon ten (10) days' prior written notice to Owner.

10.16 Owner's Bankruptcy

OPERATOR If Owner shall file, in any court and pursuant to any statute, of either the United States or any State, a petition in bankruptcy or insolvency or for a reorganization or for the appointment of a receiver or trustee of all or a substantial part of Owner's property, or if Owner makes an assignment for or petitions for or enters into an arrangement, for the benefit of creditors, or if a petition seeking relief under the bankruptcy laws is filed against Owner that is not discharged within ninety (90) days thereafter, Operator may terminate this. Agreement upon written notice to Operator.

[Alternate Clause] OPERATOR If Owner shall file a voluntary petition for reorganization or for any arrangement under any provisions of any bankruptcy code now or hereafter enacted, Operator may terminate this Agreement upon written notice to the party filing such petition.

[Alternate Clause] OPERATOR If a petition shall be filed by any third party for the reorganization of Owner under any provisions of any bankruptcy code now or hereafter enacted and such proceeding is not dismissed within ninety (90) days after each filing, then the Operator may terminate this Agreement upon written notice to the party against whom such petition was filed.

10.17 Appointment of a Receiver for Owner

OPERATOR If a receiver, trustee in involuntary bankruptcy, or other similar officer shall be appointed to take care of all or a substantial portion of the property of Owner, then Operator may terminate this Agreement upon written notice to the party for whom such official has been accepted.

10.18 Owner's Assignment for Creditors

OPERATOR If Owner makes a general assignment for the benefit of its creditors, the Operator may terminate this Agreement upon written notice to the party making such assignment.

10.19 Owner Causes Licenses to Be Revoked

OPERATOR Operator shall have the right to cancel and terminate this Agreement with respect to the Hotel if Owner causes any material license, permit, or other governmental authorization

necessary for the operation of the Hotel in accordance with the provisions of this Agreement to be revoked, rescinded, or terminated or its renewal to be refused by the governing authority having jurisdiction thereof where such revocation, rescission, termination, or refusal to renew is due to circumstances beyond Operator's control.

10.20 Owner Falls to Provide Adequate Funds

OPERATOR Operator may terminate this Agreement upon Owner's failure to maintain agreed-upon minimum balance in the Property's operating bank account.

10.21 Owner Fails to Compensate Operator

OPERATOR Operator may terminate this Agreement it compensation due Operator from Owner is not received by Operator thirty (30) days after Operator has submitted a written request for such compensation.

10.22 Owner's Default Under Ground Lease or Mortgage

OPERATOR Operator may terminate this Agreement as a result of a default by Owner under the ground lease (if any) or the mortgage, or if the landlord or mortgagee shall declare a default or take any other action in pursuance of the remedies arising as result of such default.

10.23 Owner Not in Compliance With Municipal Laws

OPERATOR If Owner shall fail to comply with any rule, order, termination, ordinance, or law of any federal, state, county, or municipal authority and Owner is not in good faith contesting same, Operator may terminate this Agreement upon ten (10) days' written notice to Owner.

10.24 Condemnation of Property

OPERATOR Operator may terminate this Agreement if the property is condemned in whole or in part and if Operator determines that the remaining facilities are insufficient for the efficient and profitable operation of the property.

10.25 Owner Fails to Restore After Casualty

OPERATOR Operator may terminate this Agreement if the property or any portion thereof shall be damaged or destroyed by fire or other casualty and if Owner fails to undertake to repair, restore, rebuild, or replace any such damage or destruction within ninety (90) days after such fire or other casualty, or shall fail to complete such work diligently.

10.26 Owner Falls to Secure Financing

OPERATOR Operator may terminate this Agreement if Owner has not secured firm investment commitments and firm financing commitments in amounts and upon terms approved by Operator in order to finance the construction, furnishing, equipping, and operation of the property.

10.27 Owner Interferes in Operation

OPERATOR Operator may terminate this Agreement if Owner repeatedly fails or refuses to observe Operator's right of non-interference.

HVS

10.28 Termination by Operator for Any Reason

OPERATOR Operator may terminate this Agreement with or without cause if it gives thirty (30) days' notice in writing to Owner, without payment of any damages to Owner, after the first (1st) complete year of operation.

10.29 Operator May Not Terminate Because of Foreclosure

OWNER If any mortgagee or other person or legal entity shall become Owner of the property, or any part thereof, as a result of any foreclosure or a conveyance in lieu of foreclosure, Operator shall have no right or power to terminate this Agreement solely because of such change in ownership of the property, or any part thereof, and shall recognize the mortgagee or such other person or legal entity as Owner hereunder to the same extent as though it or they had been Owner hereunder as of the execution of this Agreement, provided that such mortgagee or such other person or legal entity shall agree in writing with Operator to be bound by the terms and conditions of this Agreement to the same extent as if such mortgagee or such other person or legal entity had been an original party hereto.

10.30 Termination by Mutual Consent

NEUTRAL This Agreement and the employment of Operator may be terminated at any time by mutual agreement of Owner and Operator.

10.31 Termination Because Hotel Does Not Open

NEUTRAL If the opening of the Hotel shall not have occurred by July 1, 1990, then this Agreement shall terminate, unless Operator, by notice given to Owner prior to such date, shall elect to continue them in full force and effect for such period or periods of time as it shall, in its sole discretion, determine by so stating in said notice.

10.32 No Default During Arbitration

NEUTRAL Notwithstanding the foregoing, neither Owner nor Operator shall be deemed to be in default under this Agreement if a bona tide dispute with respect to any of the foregoing events of default has arisen between Owner and Operator and such dispute has been submitted to arbitration.

10.33 Payment of Accounts After Termination

NEUTRAL All accounts due and owing as between the parties shall become immediately due and payable upon termination, including a pro rata share of the Basic Fee and Incentive Fee then due Operator, if any.

[Alternate Clause]

OPERATOR Upon termination of this Agreement after the Commencement Date for any reason, Operator shall be entitled to receive from Owner the following amounts, subject to Owner's right of set-off in cases of termination of this Agreement by Owner because of a breach of this Agreement by Operator:

A. Reimbursement of all expenses incurred with respect to the Hotel and to which it is otherwise entitled pursuant to this Agreement.
B. Payment of all of its Basic Fees, Deferred Fees (and accrued interest thereon), Incentive Fees, and Centralized Financial Services Charges to date of termination;
C. Payment of any other sums due Operator hereunder; and

D. Reimbursement of the actual cost, together with administrative costs incurred, of all non-cancelable or non-terminable employee benefits to which employees (whether employed by Owner or Operator, other than those who continue to be employed by Operator after such termination) and their covered dependents may be entitled alter the date of termination of this Agreement, including, without limitation, any amounts required to be paid pursuant to the Employee Retirement Income Security Act of 1974, as amended, in accordance with the terms of such documents or instruments as may be in force on the date of termination of this Agreement provided, that (i) the parties shall cooperate, to the extent reasonably practicable, in order to create plans and provide benefits such that there will be no liability pursuant to this section as a result of the termination of the coverage of any such employees pursuant to such plans; and (ii) the parties shall cause the trustee under any defined benefit plan that applies to employees of Owner pursuant to a collective bargaining agreement to determine, or cause an actuary selected by it to determine, as of the termination date of this Agreement, the excess of the accrued vested benefits over the balance of funds in such plan or, in the case of a multi-employer plan, the amount of the termination liability attributable to Owner's participation in the plan pursuant to the collective bargaining agreement relating to employees of the Hotel, and, at such times as such excess or termination liability is required to be funded, Operator shall fund twenty percent (20%) of such amount as of the termination date but will not, however, be obligated to fund amounts pursuant to this provision or the immediately following sentence that, in the aggregate, exceed the aggregate of Incentive Fees paid to Operator pursuant to this Agreement. Twenty percent (20%) of the cost of such determination and any costs associated therewith shall be paid by Operator. The balance of any amounts not required to be paid by Operator pursuant to this subsection D shall be Owner's obligation. Upon termination of this Agreement, Operator shall render a final accounting within forty-five (45) days after the end of the month of termination, regardless of the reason for such termination.

10.34 Operator to Remove Property After Termination

OWNER At the termination of this Agreement, Operator shall remove all its property from hotel's premises.

10.35 Operator to Deliver Property to Owner After Termination

OWNER Upon termination of this Agreement, Operator agrees to deliver to Owner any and all Furnishings and Equipment (along with then existing warranties, operating instructions, and service contracts). Operating Supplies, keys, locks and safe combinations, reservation lists, ledgers, bank statements for the Hotel Operating Account, budgets, accounting books and records, insurance policies, bonds and other documents, memoranda, schedules, lists, contracts, agreements, leases, licenses, correspondence, and other items required for' the operation of the Hotel, including the Working Capital and the Reserve Fund. Any of the foregoing which are held in Operator's name shall be assigned by Operator to Owner.

[Optional Additional] OWNER Upon termination of this Agreement, all of such books and records forthwith shall be turned over to Owner so as to ensure the orderly continuance of the operation of the Hotel, but such books and records shall be available to Operator at all reasonable times for inspection, audit, examination, and transcription for a period of three (3) years thereafter.

[Alternate Clause] OWNER Operator shall transfer to Owner (a) all of Owner's books and records regarding the Hotel that are in the custody and control of Operator, and (b) all Operator's right, title, and interest in and to all liquor, restaurant, and other licenses and permits, if any, used by

Operator in running of the Hotel; provided, however, that if Operator has expended any of its own funds in the acquisition of such licenses and permits, Owner shall reimburse Operator therefor if Owner requests such assignment and transfer of such licenses and permits.

10.36 Inventory at Termination

OPERATOR Upon termination of this Agreement, at the expense of Owner, Operator shall arrange for an independent agency to conduct an inventory of Furnishings and' Equipment (the cost of which shall be an Expense of Operation), copies of which shall be made available to both Owner and Operator.

10.37 Operator to Assign Licenses at Termination

OWNER Operator shall, in connection with the termination of this Agreement, surrender and assign to Owner any and all licenses, permits, and/or other authorizations or property required for the operation of the Hotel in accordance with the directions of Owner and with applicable governmental laws, regulations, orders, or other provisions.

10.38 Cooperation During Termination

NEUTRAL During the period of termination of this Agreement, Owner and Operator shall fully cooperate with each other in connection with all matters relating to the Hotel that took place prior to termination.

10.39 Use of Operating Supplies on Termination

OPERATOR Upon the expiration or earlier termination of this Agreement, Owner shall have the right to use in connection with the operation of the Hotel any and all items of Operating Supplies bearing the name of Operator, but shall not reorder any such items. However, it within fifteen (15) days after termination of this Agreement, Operator offers to buy any and all of said Operating Supplies bearing the name of Operator, trademarks, emblems, insignias, slogans, or distinguishing characteristics, at fair market value, Owner shall cease to use same and shall sell same to Operator. In the event of any dispute as to such fair market value, the Independent Auditor shall determine said value. Removal of Operator's name from the Hotel shall be at Operator's cost.

[Alternate Clause] OWNER Operator will purchase from Owner, for a purchase price equal to fair market value but not exceeding cost, all unbroken cases of operating supplies and expendable products then on hand at the Hotel or ordered or purchased and that bear only the identification of Operator.

Section 11 GENERAL PROVISIONS

11.1 Ownership of Hotel

NEUTRAL Owner covenants and agrees that its right, title, and interest in and to the Hotel will upon the Commencement Date be as detailed in the description of the hotel project, the survey, and the legal description of the land attached hereto as Exhibit I [omitted).

NOTE: The preceding clause assures the Operator that the contract is with the actual owner of the hotel.

11.2 Qualifications of Operator

NEUTRAL Operator is qualified in the supervision, operation, and management of hotels.

11.3 Engagement of Operator

NEUTRAL Owner desires to engage Operator to manage and operate the Hotel for the account of Owner, and Operator desires to accept such engagement, all upon the terms and conditions hereinafter set forth

[Alternate Clause] OPERATOR Owner turns over to Operator all control and discretion in the operation, direction, management, and supervision of the property

11.4 Furniture, Fixtures, and Equipment

NEUTRAL The phrase "Furniture, Fixtures, and Equipment" shall mean the furniture, furnishings, fixtures, and equipment installed and used in the Hotel, including, without limitation: (a) all necessary furniture and furnishings for guestrooms, public areas, and non-public areas (e.g., kitchen, laundry, and cleaning facilities, rooms for the use of employees, storage areas, front desk, and administrative offices), floor and window coverings; decorative light fixtures; and equipment. However, this phrase shall not encompass the Hotel's major mechanical and electrical equipment and systems (e.g., the elevators).

NOTE: The preceding clause provides a definition of furniture, fixtures, and equipment for the Hotel. Such a definition is important because such items are generally replaced from a Reserve for Replacement account.

11.5 Licenses

NEUTRAL Owner hereby certifies that it has all necessary food and liquor licenses authorizing sale and consumption upon the premises.

11.6 Franchise

OPERATOR Owner will keep in full force and effect the Franchise, if any, and will comply with all terms and conditions of such Franchise required to be performed by Owner.

11.7 Operator's Right to Quiet Enjoyment

OPERATOR Owner covenants to Operator that, so long as no grounds exist for termination of this Agreement by Owner, Operator shall and may peaceably and quietly possess, hold, occupy, enjoy, and manage the Hotel throughout the Operating Term, free from molestation, eviction, ejection, or disturbance by Owner, any person through whom Owner may derive title to the Hotel, or any other person claiming by, through, or under Owner. Owner agrees to pay and discharge any payments and charges and, at its expense, to prosecute or defend all appropriate actions, judicial or otherwise, necessary to ensure such peaceful and quiet possession of the Hotel by Operator.

[Alternate Clause] OPERATOR The parties acknowledge and agree that the continued operation by Operator of the Hotel pursuant to the terms hereof represents a valuable asset of Operator, and, moreover, is critical to the maintenance by Operator of its reputation in the hotel industry. Therefore, and notwithstanding any provision of law or of this Agreement otherwise pertaining, it is agreed that any attempt by Owner to disturb Operator's right to quiet enjoyment of the Hotel or to terminate this Agreement, other than in strict accordance with its terms, would

cause Operator to suffer great, incalculable, and irreparable harm, and may be enjoined by Operator in any court of law having jurisdiction, to the end that this Agreement may be specifically enforced in the aforesaid manner by Operator.

NOTE: Although the preceding clause is attractive from the operator's viewpoint, it sets the owner up for a massive damage suit if the contract is terminated. In addition, this provision might impact the principal-agent relationship that allows for termination of the agency. An owner would be unlikely to agree to this clause.

11.8 Initial Operating Term

NEUTRAL The phrase "Operating Term" shall mean and refer to that period commencing on the *Effective .Dale and ending at 11:59 PM on the last day of the fifteen (15th) full Fiscal Year* thereafter, or on any earlier date upon which this Agreement terminates pursuant to the provisions hereof.

[Alternate Clause] NEUTRAL The obligations of Owner and the services of Operator under this Agreement shall commence upon the completion of the construction of the Hotel and the issuance of all permits required for the operation of the Hotel (the "Commencement Date") and shall expire on December 31 of the fifteenth (15th) year following the Commencement Date, unless terminated sooner by the terms of this Agreement.

11.9 Renewal Terms

OWNER After the expiration of the initial Operating Term, the term of this Agreement shall continue on a calendar year-to-year basis unless canceled by Owner upon the giving of four (4) months' advance written notice.

[Alternate Clause] OPERATOR Operator shall have the right to extend the Operating Term for three (3) successive periods of ten (10) years each, provided that the following conditions are met:

A. Owner at such time is not entitled to terminate this Agreement by reason of Operator's default;

B. The Operating Term shall have been extended for all prior periods; and

C. Operator shall have given notice to Owner of its, election to extend the Operating Term on or before the first (1st) day of January on the last full calendar year of the Initial Operating Term, or any extension thereof then in force.

11.10 Delegation of Authority

OPERATOR The operations of the Hotel shall be under the supervision, direction, and control of Operator, and, except as otherwise specifically provided in this Agreement, Owner delegates to Operator sole and full responsibility for the proper and efficient operation, management, and maintenance of the Hotel.

NOTE: In the preceding clause, the phrase "without interference from Owner" can be added to strengthen the operator's position.

11.11 Establishment of an Agency Relationship

NEUTRAL In the performance of its duties as Operator, Operator shall act solely as agent of Owner. No provision of this Agreement shall constitute or be construed to be or create a partnership or joint venture between Owner and Operator.

11.12 Operator as Independent Contractor

OPERATOR Owner hereby appoints and engages Operator, and Operator hereby accepts such appointment on the terms and conditions hereinafter provided by this Agreement, to maintain, operate, manage, supervise, rent, and lease the Hotel on Owner's behalf. The performance of all activities by Operator hereunder shall be as an independent contractor and not as an agent of Owner, except as otherwise specifically provided herein. Operator's appointment and engagement hereunder encumbers the Hotel and runs with the Land upon which the Hotel is situated.

NOTE: The preceding clause attempts to make the owner-operator relationship an encumbrance that runs with the land in the manner of a lease, thereby giving the operator greater possessory rights. It is doubtful, however, whether a management contract can be construed as anything more than an agency agreement.

11.13 Use of Property

OWNER Operator shall use the property solely for the operation of a hotel under standards comparable to those prevailing in the hotel industry and for all activities in connection therewith that are customary and usual to such an operation. Operator, in any event, shall comply with and abide by all applicable laws and regulations

11.14 Nature of Agreement

NEUTRAL The relationship of Owner and Operator created hereby is that of a principal and agent, it being understood that Operator's agency is defined by virtue of this Agreement. Nothing herein contained shall constitute or be construed to be or create a co-partnership or joint venture between Owner and Operator with respect to the management of the Hotel as provided for in this Agreement.

11.15 Operator Does Not Guarantee Profits

OPERATOR Operator makes no guarantee, warranty, or representation that there will be profits or that there will not be losses from the operation of the Properly.

11.16 Reliance on Operator's Projections.

OPERATOR Owner hereby certifies that it has not relied on any projection of earnings, statements as to the possibility of future success, or other similar matter that may have been prepared by Operator, and understands that no guaranty is made or implied by Operator as to the future financial success of the Hotel.

11.17 Timely Consent by Parties

NEUTRAL Except as herein otherwise provided, whenever in this Agreement the consent or approval of Owner or Operator is required, such consent or approval shall not be unreasonably withheld or delayed and shall be in writing, signed by an officer or agent, thereunto duly authorized, of the party granting such consent or giving such approval. In cases where consent or approval is required, the failure to respond within twenty (20) Business Days of the receipt of the request for such consent or approval shall be conclusively deemed to constitute the requested consent or approval unless another period is expressly provided for in this Agreement in which case the other period shall apply.

HVS

11.18 Severability

NEUTRAL In the event any term or provision of this Agreement or any application thereto to any person or circumstance shall be declared prohibited, invalid, or unenforceable to any extent in any jurisdiction, as determined by a court of competent jurisdiction, such term or provision shall, in that jurisdiction, be ineffective only to the extent of such prohibition, invalidity, or unenforceability, or as applied to such persons or circumstances, without invalidating or rendering unenforceable the remaining terms or provisions hereof or affecting the validity or enforceability of such term or provision in any other jurisdiction or as to other persons or circumstances in such jurisdiction, unless such would effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of the Agreement on the party benefited by such term or provision.

11.19 Partial Invalidity

NEUTRAL In the event that any portion of this Agreement shall be declared invalid by order, decree, or judgment of a court, this Agreement shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship to Operator or Owner or constitute a substantial deviation from the general intent and purpose of said parties as reflected in this Agreement.

11.20 Binding Effect

NEUTRAL This Agreement shall be binding upon Owner and Operator and, as provided in this Agreement, their respective successors and assigns, provided that, except as specified in this Agreement, neither of the parties hereto shall assign their rights hereunder without the consent and approval of the other party. This Agreement contains the final and entire agreement between the parties hereto. No change or modification of this Agreement shall be valid or binding upon the parties hereto unless such change or modification shall be in writing and signed by the parties hereto. Neither the parties nor their agents shall be bound *by any* terms, conditions, statements, warranties, or representations, oral or written, not herein contained.

11.21 Notices

NEUTRAL Any notice, statement, or demand required to be given under this Agreement shall be in writing, sent by certified mail, return receipt requested, postage prepaid. Notices shall be sent to Owner at the address specified hereinabove or at such or to such other address or addresses as Owner shall designate in the manner herein provided. Notices shall be sent to Operator, at the address specified hereinabove, marked "Attention: President," with a copy to the attention of the Senior Vice President of Finance, or at such or to such other address or addresses as Operator shall designate in the manner herein provided. A notice shall be deemed to have been given on the day ten (10) business. days after it shall have been deposited as aforesaid in any post office or post box maintained by the United States Government.

11.22 Waiver

NEUTRAL The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No

waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

11.23 Construction of Additional Facilities

OPERATOR In the event a casino. restaurant, or cocktail lounge should be operated at the Hotel, Operator shall have the exclusive right to operate same and to include gross revenues in the total revenues of the Hotel and gross revenues less operating expenses in the Gross Operating Profit of the Hotel.

[Alternate Clause] OPERATOR In the event a casino should be operated at the Hotel, Operator shall have the exclusive right to operate same, and the excess of the gross amount wagered therein over the total amount of money won by wagerers will be included in the Total Revenue of the Hotel. The said excess, reduced by the Operating Expenses specified herein that relate to the casino, will be included in the Gross Operating Profit of the Hotel.

11.24 Operator Not Responsible for Owner's Obligations

OPERATOR Owner shall not represent in any proposed financing arrangement or to any proposed lender or participant in a private or public investment that Operator shall be in any way responsible for Owner's obligation in financing arrangement other than to state that the property will bear the name of Operator, will be managed by Operator, and will be a part of the Operator's hotel system.

11.25 Operator to Review Financing Instruments

OPERATOR In order to ensure Owner's full and faithful compliance with the terms of this Agreement and to prevent any misunderstanding on the part of a proposed lender or participant in any such investment offering, Owner shall, prior to the closing of any such proposed financing arrangement, inform and furnish Operator with the identity of the proposed lender and copies of the proposed closing documents, and Owner shall, prior to the printing of any prospectus concerning said private or public investment offering, furnish Operator with a copy of said prospectus, and said prospectus shall not be published or distributed without the prior written consent of Operator.

11.26 Modification of Agreement for Refinancing

OWNER If, in connection with any refinancing of the Hotel, any Mortgagee shall request modifications of this Agreement as a condition of such refinancing, Operator covenants not to unreasonably withhold or delay its agreement to such modifications, provided that such modifications are reasonable and do not increase the obligations or adversely affect the rights of Operator hereunder.

11.27 Exculpation

OWNER Operator agrees that it will look only to Owner's estate and property in the Hotel (or the proceeds thereof) for the satisfaction of Operator's remedies for the collection of a judgment requiring the payment of money by Owner in the event of any default by Owner hereunder, and no other real or personal property or assets of Owner or of Owner's individual principals shall be subject to levy, execution, or other enforcement procedures for the satisfaction of Owner's remedies under or with respect to this Agreement.

11.28 Real Estate Broker Indemnification

NEUTRAL Each party agrees to indemnity and hold the other party harmless from and against all loss, cost, damage, or expense (including reasonable attorney fees) suffered or incurred in connection with claims made by a real estate broker or other persons claiming, *by or* through the indemnifying party, entitlement to any brokerage fees or similar payment in connection with the negotiation and execution of this Agreement.

11.29 Consumer Price Index Adjustments

NEUTRAL Expenditure limitations and required minimums and maximums specified herein are based on the purchasing power of money as of the date of this Agreement. Notwithstanding Operator's authorization to revise the Operating Budget and Capital Budget as heretofore specified, said limitations, minimums, and maximums shall be subject to annual adjustment to retain the purchasing power intended at the onset of :his Agreement. The annual adjustment shall be based upon annual percentage increases or decreases in the Consumer Price Index for all Urban Consumers (1967 = 100) specified for "All Items" as published by the United States Department of Labor, Bureau of Labor Statistics.

11.30 Freedom of Action

OPERATOR Operator may engage in and/or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership financing, leasing, operation, management, brokerage, and development of real property, which may be adjacent to and/or competitive with, the Hotel. Owner shall not have any right by virtue hereof in and to such other business ventures or to the income or profits derived therefrom.

11.31 Owner's and Operator's Use of the Hotel

NEUTRAL Officers and employees of Operator or its parent company, or a reasonable number of persons designated by Owner may occupy guest rooms at a fifty percent (50%) discount from the rates charged to the public, provided, however, that lodging facilities may be utilized in such a manner only if space is available and not reserved or occupied by members of the public and is utilized in accordance with Operator's standard employee privilege program, as amended from time to time. The percentage discount may also vary from time to time as percentage changes are made and promulgated in Operator's employee benefit handbook or employee benefit card. In the event a room occupied by a person paying less than the full room rate, as provided hereunder, is needed to satisfy the demands of full-paying guests, such person shall be given the choice of vacating the room or paying full price for the room, so long as the demand for such room persists.

[Alternate Clause] OWNER Operator agrees that during the Operating Term and subject to availability, Operator will make rooms in the Hotel available (a) without charge to the officers of the general partner (and its constituent partners) of Owner, (b) at fifty percent (50%) of the normal rate for such rooms to the limited partners of Owner, and (c) at fifty percent (50%) of the normal rate for such rooms to certain brokers involved in marketing the interests in Owner's partnership (a list of such brokers shall be provided to Operator by Owner) for a period of one (1) year after the Closing. The provisions of this clause shall be limited to seven (7) nights for each calendar year period.

[Alternate Clause] OWNER Operator shall provide complimentary suites at the Hotel to Owner, its officers, directors, employees, agents, and guests upon request at such times as vacancy permits and at other times in reasonable amounts and upon reasonable notice. Operator shall provide

such complimentary accommodations to Franchisor as are required under the Franchise and shall provide complimentary accommodations to travel agents and others to the extent necessary to market and promote the Hotel as provided in the Operating Budget.

11.32 Employee Use of the Hotel

OPERATOR Operator, in its discretion and as is customary and usual in hotels, may provide reasonable food and lodging for full time employees of the Hotel, and allow them the reasonable use of Hotel facilities.

APPENDIX 5

Hotel Ground Leases

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel—Northeast	300	1966	30 years with two 15-year extensions	3% of room revenue and 1% of food and beverage revenue	.5182
First-class commercial suite hotel—South Central	260	1984	25 years and three 10-year options	During construction: $100,000 Years 1–2: $150,000 Year 3: $200,000 Year 4: $250,000 Thereafter: $300,000	1.61
Midrate commercial hotel—South Central	200	1968	33 years	3% of room revenue, 1% of F&B revenue	4.99
Midrate commercial hotel—North Central	230	1967	33 years with two renewals of 33 years each	$5,000 per year through original term	1.15
Proposed convention hotel—Northeast	300	1984	30 years from opening; right to renew for three additional 15-year periods each; maximum term is 75 full fiscal years beginning 1984	$180,000 from 1984 to 1987; in 1987, an amount equal to the greater of $225,000 for first 2 years and $250,000 thereafter or 2.75% of annual gross sales if landlord is not contractor (25% if landlord is contractor)	16.05
Midrate commercial hotel—Southeast	600	1973	99 years	4% of gross room rentals (up to 75% occupancy on any given night), 2% of gross F&B	5.96
Proposed midrate commercial hotel—North Central	180	1985	40 years with four successive 10-year options	$10 per year plus maintenance of a small city park; 12% of fair market value after 40-year-term	1.71
Midrate commercial hotel—South Central	300	1966	20 years with five 10-year renewals	$5,400 annually (CPI adjusted every 5 years)	1.625
Midrate commercial hotel—South Central	300	1967	33 years with one 33-year extension	3% of room revenue, 1% of F&B revenue, 10% of shop and store income	4.64

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel—South Central	300	1984	30 years and two 10-year extensions	2.5% of room revenue, 1% of F&B revenue, 2% of other income	.71
Convention hotel—Northwest	480	1980	20 years and two options of 20 years each	$30,000 per month in sixth year, additional rent of 5% of net cash flow	5.55
Motor hotel—Northwest	230	1973	75 years	$13,804.80 fiscal rental per year (adjusted by CPI equates to roughly $31,000 in 1987–1989); adjusted every 10 years	12.3
Luxury commercial hotel—Northeast	170	1986	10 years with two 10-year options	Year 1: $400,000 Year 2: $800,000 Years 3–10: $1,200,000 Bonus after 5.5% management fee (cumulative), landlord receives 100% of NCF to $300,000, 80% up to maximum of $750,000, 75% thereafter	1.02
Resort hotel—Southwest	125	1978	55 years with two 10-year renewal options	Base $90,000 quarterly; percentage is the greater of 8% of room revenue or 4% of gross sales	9.8
Midrate commercial hotel—Midwest	117	—	20 years with two 10-year options	Greater of 5.3% net receipts or $53,781 (in 1986) or $139,532 (in 2024)	2.5
Midrate commercial hotel—Midwest	120	—	20 years with four 5-year extensions	5.5% net room revenue or fixed $75,000 (in 1986) or $169,396 (in 2024)	2.75
Midrate commercial hotel—Northwest	123	—	20 years with four 10-year extensions	Year 1: $82,250 Year 2: $82,250 Thereafter: 5% of net revenue, buy-out option between 27th and 48th months at $780,000	1.6
Airport hotel—Southwest	272	1984	50 years	5% of room revenue, 4% of beverage revenue, 2% of food revenue	10.3
Proposed midrate commercial hotel—Northeast	230	1986	60 years	Greater of 3% of room revenue plus 1% of F&B revenue or $150,000 (years 1–10) or $200,000 (years 11–60); $50,000 added to percentage rent in year 11 and thereafter; $150,000 per year is fixed rent for first 4 years	2.55
Luxury hotel—Southeast	500	1982	99 years	$150,000 per year until constructed or 42 months, whichever is first; upon completion, $425,000 for 10 years during the succeeding 10-year period, rent fixed for 10 years at lesser of 10% FMV of land as vacant or greater of 2.5% of room revenue or 1.75 of gross revenue never to be less than $425,000	1.0

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Commercial hotel—Southeast	285	1984	50 years with two 20-year renewals	Greater of percent rent or base rent is paid Year 1: $300,000 (1%) Year 2: $300,000 (2%) Year 3: $300,000 (3.5%) Year 4: $315,000 (3.5%) Year 5: $331,000 (3.5%) Year 6: $447,000 (3.5%) Year 7: $365,000 (3.5%) Year 8: $383,000 (3.5%) Year 9: $402,000 (3.5%) Year 10: $422,000 (3.5%)	6.89
Motel—Southeast	130	1983	40 years with two 15-year options	Minimum: $120,000 Years 1–2: $125,000 Year 3: $130,000 Years 4–10: $135,000 Years 11–40: $145,000 Years 41–55: $155,000 Year 56 through end of term: 3% of gross in excess of $2,100,000	3.5
Hotel—Northeast	300	1985	—	4% of total revenue each year (loss in any one year may not be applied to other years' fees)	11.0
First-class hotel—Southeast	312	—	—	3% rooms, 1% F&Bs, $96,000 minimum	—
Motel—Southeast	130	1983	45 years plus option on two 15-year terms	Annual rent of $22,500 before opening, $45,000 annually first 5 years of operation, 15% increase every 5 years	3.4
Conference center—South Central	300	1986	99 years	Ground rent $300,000 per year plus 1% of gross revenues in excess of $150,000 up to $30,000,000	8.7
First-class hotel—Southwest	414	—	—	3.5% of room revenue, $155,000 minimum	—
First-class commercial hotel—South Central	300	1980	30 years with 20- and 10-year renewals	Greater of $5,000 per month or 5% of room revenue, 4% of beverage revenue, 2% of food revenue and 6% of miscellaneous income	8.65
Extended-stay hotel—South Central	—	1982	30 years with 20- and 10-year renewals	5% of room revenue, 4% of beverage revenue, 2% of food revenue, 6% of miscellaneous income; $79,540 minimum, adjusted in 10 years with increase to provide return on appraised value of land; maximum increase 20%	—

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
First-class commercial hotel—Southeast	—	1981	60 years with two 10-year renewal options	Greater of base rent or 4% of room revenue and 2% of alcohol sales. Years 1–10: $120,000 Years 20–30: $180,000 Years 21–30: $240,000 Years 31–40: $300,000 Years 41–50: $360,000 Years 51–60: $420,000 Capital improvements escrow escalating from 1% to 5%	10
First-class commercial hotel—Southwest	—	1981	75 years	$200,000 per year for 18 months, $400,000 per year thereafter, .3% of gross sales, applied against $400,000 per year base 7% of gross sales if lease is subordinated	5
Resort hotel—West Coast	—	1983	99 years	Years 1–2: $260,000 per year Years 3–11: $520,000 per year Thereafter: 10% of fair market value plus 15% of net cash flow	7.33
Midrate commercial hotel—West	—	1971	50 years	Year 1: $25,000 Year 2: $30,000 Years 3–8: $45,000 per year Thereafter: 7% of fair market value Percentage: 5% of room revenue, 3% of alcohol sales, 1.5% of food revenue	6.69
First-class commercial hotel—Southeast	—	1981	99 years	Years 1–2: $550,000 per year Year 3: $650,000 Year 4: $950,000 Thereafter: $1 million per year	16.5
Midrate commercial hotel—Southeast	136	—	—	5% rooms, $18,000 minimum	—
Resort hotel—West Coast	—	1970	55 years	Years 1–25: Minimum rent equals $50,000 or $250/room, greater of two renegotiated every 10 years thereafter, plus 5% room revenue, 1% food revenue, 3% beverage revenue, 5% other income, and 25% of sublease and concession	12
First-class commercial hotel—Northeast	—	*1977*	*99 years, 275 days*	*Greater of $96,000 per year or 5% room* revenue	*14.30*
First-class commercial hotel—Northeast	—	1985	49 years plus five 10-year renewals	$200,000/year or 3% of room revenue subordinate to first and second mortgages	—
First-class commercial hotel—Southeast	302	—	—	2.25% room revenue, 2% beverage revenue, 1% food revenue, $90,000 minimum	—

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
First-class commercial hotel—Southwest	417	—	—	3% room revenue up to $15,000,000, 3.25% room revenue greater than $15 million, $160,000 minimum	—
First-class commercial hotel—Midwest	384	1978	100 years	Years 1–3: $174,250 per year Thereafter: $29,750 additional rent Option to purchase in year 12, with 6-month notice, for $1.7 million plus 6% net proceeds from refinancing	—
Resort inn—Southeast	175	1985	20 years	Base rate $193,500 plus 3% gross sales	—
Beach resort—Southeast	160	1985	99 years	Base rent $100,000 per year Year 1: 2% quarterly gross earnings over $1.25 million Years 2–3: 2.5% quarterly gross earnings over $1 million Year 4: 3% quarterly gross earnings over $833,333 Renegotiate base rent after year 10	1.4
Budget hotel—Southwest	130	1976	20 years, amended 1977 and 1986, 2 successive 10-year options	Minimum rent $77,200 per year plus 6% gross sales greater than $125,000 per month exercise first option, increase base rent to $100,000 per year exercise second option, increase base rent to $125,000	1.88
Midrate commercial hotel—Northeast	62	1970	15 years with two 10-year extensions	Minimum rent: $65,100 Percentage rent: 25% gross room revenue exceeding four times minimum rent, 5% cocktail lounge receipts	3.6
Midrate commercial hotel—northeast	104	1986	10 years with three 10-year extensions	Minimum rent: $360,000 Percentage rent: 30% gross room revenue in excess of $1.2 million, 5% cocktail lounge receipts	3.6
Midrate commercial hotel—Southeast	253	1984	4 years with 1-year renewal	$1,862.69 per month	—
Midrate commercial hotel—Northeast	—	1971	15 years with three 10-year extensions	Minimum rent $79,200 plus 25% room revenue greater than four times minimum rent	—
Suite hotel—Midwest	266	1972	51 years with two 25-year options	Base rent: $53,120 Percentage rent: 4% room and F&B revenue	—
Resort hotel—Southeast	205	1972	41.5 years	Years 1–10: $31,500 per year Years 11–20: $42,525 Thereafter: 8% fair market value Minimum rent $26,000 and no less than 3.5% gross income	—
Suite hotel—Southwest	183	1979	51 years with one 10-year extension	7.5% gross sales	—

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel—Southeast	225	1969	20 years with three 20-year extensions	Minimum rent: $108,000 (increasing by $6,000 per year, reaching a ceiling limit of $245,000) Additional rent of 31% room revenue less real estate taxes and insurance payments	—
Midrate commercial hotel—Midwest	149	1969	21 years with seven 10-year renewals	Base rent: $119,819 annually, or 28% room revenue, 5% F&B revenue, and 25% other revenue	6.12
Suite hotel—Southeast	232	1988	10 years with a 5-year renewal	$5,000 per month plus 2% gross sales (minimum of $3 million)	3.6
Airport hotel—Northeast	293	1971	10 years with two 10-year options	Minimum rent: $30,000 year, plus percentage rent of 3% gross room revenue and 1% gross F&B revenue	7.84
Midrate commercial hotel—Northeast	117	1962	30 years with four 15-year extensions	$78,000 per year	8.5
Midrate commercial hotel—Northeast	152	1967	—	$45,000 per year	4.7
Midrate commercial hotel—Northeast	—	1964	5 years with nine 5-year options	Years 1–20: $12,000 per year Years 21–40: $13,000 per year Years 41–50: $14,000 per year	1.67
Midrate commercial hotel—Northeast	72	1977	8 years with one 12-year renewal and two 5-year renewals	Minimum rent: $79,000 Percentage rent: 20% gross receipts in excess of five times minimum fixed rent	—
Midrate commercial hotel—Northeast	557	1958	56 years	Minimum rent: $13,700, or 10% of room revenue, 10% of first $548,620 in food revenue, 5% of excess food revenue, and 10% of beverage and other revenue (excluding telephone)	5.25
Convention hotel—Northeast	557	1958, amendment 1983	55 years, extended 25 years	9% of room revenue and 10% of food revenue (up to $548,620), then 5% of remaining food revenue and 5% beverage revenue	5.25
Proposed beach hotel—Northeast	163	1988	99 years	Years 1–3: $25,000 Year 4: $75,000 Years 5–10: $100,000 Years 11–15: $100,000 plus average percentage increase of the CPI from years 5–10 (not to exceed 5%)	3.5
Convention hotel—Midwest	887	1975	99 years	$12,000 per year, increased by the CPI every 5 years	21,804 square feet
First-class commercial hotel—Northeast	350	1985	30 years	Payment of bond interest	.74

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Suite hotel—South Central	261	1985	open ended	$69,116 per year, adjusted every 3 years by CPI	48.896
Resort hotel—Caribbean Islands	—	1984	5 years with two 5-year options	Minimum rent $25,000 plus percentage of gross revenue: $2 million to $5 million at 3% $5 million to $8 million at 5% $8 million and greater at 6%	—
Resort hotel—Midwest	393	1974	25 years with five 10-year renewal terms	5% of gross room revenue plus a percentage of theater revenue: $400,000 to $900,000 at 4% $900,000 to $1 million at 5% $1,000,001 and greater at 9%	160
First-class commercial hotel—Midwest	316	1983	100 years	$100,000 per year	1.21
Midrate commercial hotel—Midwest	159	1985	15 years	$103,500 per year	—
Budget hotel—South Central	48	1982	30 years with one 10-year renewal and two 5-year renewals	$14,400 per year	0.8
Commercial hotel—Northeast	392	1979	75 years	Years 1–3: $50,000 per year if positive cash flow Years 4–40: $70,000 per year plus additional rent of $135,000	—
Suite hotel—Northeast	300	1986	—	Year 1: $48,000 Year 2: $48,000 plus 1% room revenue,1% F&B sales, 1% net income, and 5% rentals Year 3: Increase room and F&B revenue to 1.5% Year 4: increase room revenue to 2%	—
Budget hotel—Southeast	149	1987	—	Years 1–5: The greater of $234,700 or 5% of room revenue Thereafter: The greater of $352,051 or 6% of room revenue	—
Budget hotel—Southeast	145	1960	99 years with option to purchase in year 6 for $300,000 or in year 11 for the greater of $300,000 or fair market value of land	$24,000 per year	2.57
Budget hotel—Northeast	146	1961, amended 1967	50 years with two extensions of 20 years each	$15,000 per year	—
Downtown hotel—North Central	225	1963	25 years	The greater of $112,500 per year or 25% of room revenue and 5% of F&B revenue	0.48

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
First-class hotel—Midwest	621	1983	30 years	$500,000 annually plus percentage rent according to debt structure tied in with operating income	—
First-class commercial hotel—Southwest	—	1989	50 years	Minimum rent as follows: Year 1: $400,000 Years 2–10: $800,000 Thereafter: $1.2 million, plus a percentage of operating revenue	366,235 square feet
First-class hotel—Southwest	—	1986	50 years	Minimum rent as follows: Year 1: $200,000 Years 2–10: $400,000 Thereafter: $600,000, plus a percentage of operating revenue	734,741 square feet
First-class commercial hotel—Southwest	—	1968	60 years	Minimum rent: $68,500 per year, plus a percentage of operating revenue	325,910 square feet
Resort hotel—Southwest	—	1969	60 years	Minimum rent as follows: Years 1–10: $250,000 Years 11–20: $625,500 Thereafter: $825,000, plus a percentage of gross income	1,030,408 square feet
First-class convention hotel—Southeast	1,074	1972	99 years	Base rent at $309,363 per year, increasing $2,000 per year after year 25; reset base rent at $477,363 in year 26, increasing by $4,000 per year through year 40; base rent adjusted to $460,000 in year 41, increasing by $4,000 per year until year 50; thereafter, base rent will be determined through market appraisals performed every 25 years	—
First-class commercial hotel—Southwest	803	1973, amended 1977	40 years	$5,249,124 plus 10.25% repair costs; in years 5–15, an additional 15.86% of any excess expended over the reserve accounts	1.9
Midrate commercial hotel—Northeast	119	1988	45 years	$855,000 per year	3.0
Midrate commercial hotel—Northeast	71	1961	60 years	Minimum rent: $137,000, plus 10% of gross income in excess of $252,000 per year	—
Midrate commercial hotel—Northeast	71	1968	20 years	$200,000 per year plus 15% of gross income in excess of $786,534	3.0
Midrate commercial hotel—Southeast	—	1969	20 years with one option of 15 years	$138,000 per year plus 25% of annual gross sales in excess of four times the fixed rental	—

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Suite hotel—Midwest	237	1986	50 years with five 10-year renewals	The greater of $225,000 or percentage of suite revenue as follows: Years 1–3: X% Years 4–6: .3% Thereafter: 3.6%	6.55
Luxury commercial hotel—Southeast	497	1981	75 years	$555,556 paid in full	1.1
Motel—Southeast	—	1967	35 years with four 15-year options	$183,000 per year plus 25% of gross sales	—
Airport hotel—Southeast	—	1965	22 years with two 15-year options and two 10-year options	Years 1–15: $69,952 per year plus 10% gross sales in excess of $224,000 Years 16–22: Increase gross sales percentage to 25%	—
Midrate commercial hotel—Southeast	—	1971	22 years with three 10-year options	The greater of $40,000 per year or 7% of gross income from food and 5% from beverages, 25% of receipts from conference facilities rental, and 7% from other revenue	—
Midrate commercial hotel—Southeast	—	1982	10 years with two 5-year options	Minimum rental: $2,160,000 per year plus a percentage of gross sales starting at 5% for $750,000 to $1.5 million and increasing by 1% for every $150,000 increase in gross sales (maximum of 12% at $1.95 million in sales)	—
Midrate commercial hotel—Southeast	72	1968, amended 1969	25 years with six 10-year options	Minimum rent: $79,200 per year Percentage rent: 25% of annual gross room revenue exceeding $316,800	—
Convention hotel Midwest	1215	1988	50 years	Base rent as follows: Years 1–5: $150,000 per year Year 6: $975,000 Year 7: $2,100,000 Thereafter: $2,100,000 plus percentage of the CPI (between 5% and 10%).	80,000,000 square feet
Commercial hotel Northeast	—	1971	50 years with two 25-year options	Years 1–10: $15,000 plus .75% of gross receipts Thereafter: $20,000 plus 1% of gross receipts	—
Airport hotel Southwest	210	1974	30 years	Years 1–6: $144,000 per year Thereafter: Adjusted by CPI	6.61
Proposed first class commercial hotel Southeast	371	1985	30 years with two 10-year extensions	$220,000 to opening date; $440,000 to 1992; $528,000 thereafter or 3% or gross sales (whichever is greater)	1.76

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Budget hotel Midwest	130	1990	29 years	Minimum rent as follows: Years 1–5: $50,000 Years 6–10: $65,000 Percentage rent as follows: Years 1–4: 3% Years 5–10: 3.5% Thereafter: 5.5%	—
Budget hotel Midwest	130	1990	29 years	Minimum rent as follows: Years 1–5: $38,000 Years 6–10: $58,000 Percentage rent as follows: Years 1–5: 3% Years 6–12: 3% Thereafter: 5%	—
Budget motel—Midwest	129	1990	29 years	Minimum rent as follows: Years 1–5: $45,000 Years 6–10: $55,000 Percentage rent as follows: Years 1–12: 3% Thereafter: 5%	—
Budget hotel—Midwest	131	1990	29 years	Minimum rent as follows: Years 1–5: $60,000 Years 6–10: $67,000 Percentage rent as follows: Years 1–12: 3% Thereafter: 5%	—
Budget hotel—Midwest	134	1990	29 years	Minimum rent as follows: Years 1–5: $55,000 Years 6–10: $68,000 Percentage rent as follows: Years 1–5: 3% Years 6–12: 3.5% Thereafter: 5.5%	—
Budget hotel—Southeast	135	1990	29 years	Minimum rent as follows: Years 1–5: $90,000 Years 6–10: $101,000 Percentage rent as follows: Years 1–5: 3% Years 6–12: 4.5% Thereafter: 6.5%	—
Budget hotel—Southeast	133	1990	29 years	Minimum rent as follows: Years 1–5: $50,000 Years 6–10: $72,000 Percentage rent as follows: Years 1–5: 3% Years 6–12: 4% Thereafter: 6%	—
Commercial hotel—North Central	336	1981	25 years with five 25-year options	The greater of $135,000 or 3% of gross room revenue	7.11
International commercial hotel—Europe	223	1958	99 years	40,000 pounds sterling	26,643 square feet

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel — Northeast	154	1970	50 years with two 15-year options and one 10-year option	$26,500 per year, inflated every 7.5 years by the corresponding CPI change, beginning in 1979	—
Independent — Southeast	309	1984	99 years	$1,200,000 per year plus 75% operating income above $9 million	3.48
Airport hotel — Northwest	141	1970	21 years with six 5-year options	Years 1–6: $16,000, adjusted every five years to fair rental value as determined by an independent appraiser	189,051 square feet
Budget — Southwest	129	1983	30 years	Minimum rent: $60,000 Percentage rent: Amount by which 5% gross revenue exceeds minimum rent	3.2
Airport hotel — Southwest	750	1984	70 years, not to exceed 99 years	Minimum rent: $540,000, adjusted every five years by the CPI increase	3.7
First class commercial hotel — South Central	338	1975	25 years with two 5-year options	Minimum rent: $1,172,000 Percentage rent: 25% operating profit under $800,000 per year and 40% operating profit in excess of $800,000 per year	1.68
Limited service — Northeast	189	1987	49 years with one 49-year renewal	Fixed leverage attached plus 5% gross receipts exceeding the fixed	—
First class commercial hotel — Southeast	401	1982	49 years with five extensions not to exceed 99 years	Minimum rent: $600,000 per year	1.8
Suite hotel — Northeast	112	1986	16 years with one 15-year option	Commencement to completion date: $62,000 Thereafter: $124,000 fixed rent, increased by 4% annually	—
Commercial hotel — Northwest	248	1985	55 years	$40,000 per year, increasing at 5-year intervals to reflect the fair market rental	66.76
Suite hotel — Southeast	214	1985	50 years with an option to purchase	Years 1–7: 138,000 per year Years 8–13: 396,000 per year Thereafter: $600,000 per year, adjusted by CPI	8.7
Independent — Northeast	190	1981	26 years	Triple net plus $15,000 per year for easement rental; option to terminate in year 16	—
Budget hotel — Northeast	368	1986	30 years	$125,000 deposit plus annual payments as follows: Years 1–5: $1.5 million Years 6–9: $1.65 million Years 10–12: $1.7 million Years 13–18: $1.75 million Thereafter: $2 million, with a purchase option after year 8	—
Independent — Northeast	183	1978	15 years with eight 5-year extensions	Minimum rent: $252,000 annually Percentage rent: 1% of gross food sales, 2% of gross alcoholic beverage sales, and 3% of gross room revenue	3.5

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Commercial hotel—Southwest	—	—	20 years	Minimum rent as follows Year 1: $200,000 Year 2: $400,000 Thereafter: $600,000 or the cumulative total of percentage rents	—
Convention center hotel—Midwest	1,200	1987	50 years with one 25-year extension and one 24-year extension	Base rental as follows Year 1: $75,000 Years 2–7: $150,000 Year 8: $1.6 million Year 9: $1.8 million Thereafter: $2 million, increased by the CPI and capped at a minimum of 5% and a maximum of 10% total percentage rent is equal to the excess of the sum of percentages of gross revenue over base room F&B, and other revenue	—
Commercial hotel—Midwest	247	1983	65 years with seven 5-year options	Year 1: $29,430 Thereafter: $82,000	1.525
Resort hotel—Southeast	1,500	1991	99 years	Special fee of 3% total revenue Base rent as follows: Years 1–7: X% rooms, 5% beverage, 3% food Year 8: 7.5% rooms, 5% beverage, 3% food Year 9: 8% rooms, 5.5% beverage, 3.5% food Thereafter: 8.5% rooms, 6% beverage, 4% food, plus 25% of all sublease income and 7% other revenue	38.54
Casino hotel—South Central	150	1982	10 years with purchase option	Years 1–2: 27,564 Years 3–5: 30,324 Years 6–8: 33,072 Thereafter: $35,832	1.05
Casino hotel—South Central	150	1983	23.5 years with two 25-year extensions	First 6 months: $26,496 Second 6 months through year 2: $39,750 Year 3: $53,000 Years 4–10: 66,250 Thereafter: Appraised every 5 years, rent determined at 10% of appraised value but not less than 5-year rent	1.52
Midrate commercial hotel—Southeast	206	1981	17 years, renewable for 80 years	Interest and principal on bonds $60,468.75 monthly until 1997, $100 per year thereafter	14.57
Midrate commercial hotel—Southwest	149	1988	55 years	The greater of $100,000 or 7% of room revenue	3.0
Midrate commercial hotel—Southeast	203	1970	25 years with three 20-year renewals	$290,800 per year, payable in advance monthly installments of $24,233.33	—

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel—Southeast	170	1963	28 years and 10 months with one 20-year renewal option	Years 1–3: 6,333.30 per month Years 4–6: $6,500 per month $6,666.66 per month for the life of the lease, increased to $7,500 per month upon completion of additional facilities in year 15	—
Midrate commercial hotel—Southeast	304	1965	15 years with option of eight 5-year renewals	Tracts 1–5 as follows: Years 1–10: $1,800 per acre Years 11–X: $2,300 per acre 152,500 per acre yearly during renewal option Tracts 6–8: $900 per acre	12.72
First class commercial hotel—Southeast	126	1977	20 years with option to purchase by year 15 for $2,200,000	$11,333.34 per month	5.44
Midrate commercial hotel—South Central	313	—	30 years with two 10-year renewals	The greater of 2.5% of room revenue, 1 % of FEB revenue, and 2% of other revenue (not including telephone) or $150,000 annually	0.71
First class commercial hotel—Southeast	756	1980	25 years with five 10-year renewal options	60% of operating profit	5.79
First class commercial hotel—Southwest	746	1980	25 years with five 10-year renewal options	60% of operating profit	10.76
First class commercial hotel—Southeast	400	1981	25 years with five 10-year renewal options	60% of operating profit	15.01
First class resort hotel—Southeast	759	1980	25 years with five 10-year renewal options	60% of operating profit	189.39
First class resort hotel—Southwest	348	—	25 years with five 10-year renewal options	60% of operating profit	24.63
First class hotel—Northeast	444	1981	25 years with five 10-year renewal options	Years 1–39: 60% of operating profit Thereafter: 80% of operating profit	15
Conference center hotel—Northeast	209	1984	50 years with option to buy	Percentage of gross revenue that is contingent upon sales volume and mortgage interest rate	12.8
Proposed suite hotel—Northeast	120	1987	75 years with 25-year extension	Year 1–5: $125,000, with increase for each 5-year period calculated as basic annual rent + (basic annual rent × .4% increase in local CPI)	5.0
Proposed suite hotel—Northeast	460	1988	49 years, with three 33-year renewal options	Base rent of $1,009,040 with fixed annual increases of $10,090.40	16,924

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Proposed suite hotel—Northeast	460	1988	49 years with three 33-year renewal options	Base rent of $230,000 with fixed annual increases of $2,300	1,600
Midrate commercial hotel—Southwest	309	1967	55 years	Greater of $4,583.33 or 6.375% of gross room revenue plus 5% of F&B revenue	12.28
Propsed resort hotel—Southeast	760	1991	99 years	Special fee of 3% total revenue Base rent as follows: Years 1–7: 7% room revenue, 5% beverage revenue, 3% food revenue Year 8: 7.5% room revenue, 5% beverage revenue, 3% food revenue Year 9: 8% room revenue, 5.5% beverage revenue, 3.5% food revenue Thereafter: 8.5% room revenue, 6% beverage revenue, 4% food revenue, plus 25% of all subleased income and 7% of all other revenue payable monthly in arrears Incentive rent: 15% annual room revenue exceeding base projection	24.59
Midrate commercial hotel—Northeast	117	1973	25 years with five 15-year renewal options	$20,500 per month plus percentage rent of 33% of room revenue in excess of $210,000	4.7
Proposed midrate commercial hotel—Northeast	168	1986	50 years with two 10-year options	Years 1–5: $100,000 fixed rent, increasing 20% for each 5-year increment Percentage rent: 3% of room revenue	0.368
Resort inn—Southeast	276	1971	—	8% fair market value, 3% of gross income	14.53
Medical center hotel—South Central	389	1984	25 years plus five 10-year renewal options	$160,000 plus 3% of the first $15 million annual gross room revenue and 3.25% of room revenue in excess of stated amount	0.54
First-class resort hotel—Midwest	393	1974	25 years plus five 10-year renewal options	5% of gross room revenue plus percentage of revenue as follows: $400,000 to $900,000 at 4%; $900,001 to $1 million at 5%; 9% thereafter	160
First-class commercial hotel—Midwest	316	1983	100 years, after which all improvements become the lessor's	$100,000 annually plus rental of 100 parking spaces in lessor's adjacent parking garage	1.21
Midrate commercial hotel—Midwest	159	1985	15 years	$103,500 total rental, at $575 monthly	—
Budget hotel—Southwest	48	1982	30 years with one 10-year renewal and two 5-year renewals	$14,400 per year or 4.25% of room revenue, whichever is greater	0.8

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
First class commercial hotel—Northeast	392	1979	75 years	Years 1–3: $50,000 annually if positive net cash flow Years 4–40: Net rentable square foot area × $0.50, ground rent of $70,000 per year, and 12% of any monies loaned on convertibles	—
Suite hotel—Northeast	300	1986	—	Year 1: $48,000 Year 2: $48,000 plus 1% total room revenue, 1% F&B sales, 1% net income, and 5% office and retail rentals Year 3: increase to 1.5% room revenue and 1.5% F&B revenue Thereafter: 2% room revenue, 1.5% F&B revenue, 1% net income, and 5% rental revenue	—
Budget hotel—Southeast	149	1987	—	Years 1–5: The greater of $234,700 or 5% gross revenue Thereafter: The greater of $352,051 or 6% of gross room revenue	—
Midrate commercial hotel—Southeast	—	1971	25 years with one 25-year renewal option	$3,333 per month against 7% gross income derived from 5% beverage revenue, 25% of gross rental receipts, and 7% of other revenue; minimum increases for extended terms to 75% of average annual rent paid for previous 10 years, never less than paid in last year of preceding period	—

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APPENDIX 6

Selected Provisions of Lease of Land Only

A. Demise; Description and "Subject to" Provisions

Lessor hereby leases to Lessee, and Lessee hereby hires, on the terms and conditions hereinafter set forth, the following (which is hereinafter called the "Leased Property"):

All that certain lot, piece or parcel of land, *without the buildings or improvements thereon erected,* situate, lying and being in the ..... City of ..... County of ..... and State of…....., bounded and described as follows;

Beginning at a point..... (Include here a complete survey description of the Leased Property.)

Together with all the right, title, and interest, if any, of Lessor, in and to any streets and roads abutting the above-described premises to the center lines thereof.

There is not included in this lease the following, Title to which today has been conveyed, sold, and assigned by Lessor to Lessee: Any buildings, structures and improvements, or the furnishings, fixtures, personal property and equipment of every kind whatsoever located therein, now or at any time hereafter erected or situated on the Leased Property. Subject, nevertheless, to:

1. Rights of all tenants, licensees, concessionaires and occupants now in possession of portions of the Building pursuant to leases, licenses of agreements heretofore made by Lessor or any former owner of the Leased Property.

2. State of facts shown on survey made by ....., dated ....., 19.....and to any additional state of facts an accurate survey since that date, or an inspection, would show;

3. Any presently existing defects of title, easements, restrictions, and agreements affecting the Leased Property; but this lease is not subject to the lien of any mortgage which may have affected the fee title to Leased Property on the date hereof.

B. Initial Lease Term

To have and to hold the Leased Property unto Lessee, its successors and assigns, for a term of 25 years, commencing on December 1, 19..... and expiring at 12:00 noon on November 30, 20 ..... unless this lease shall terminate sooner, as hereinafter provided.

C. Acknowledgment of Split Ownership of Land and Building

The parties acknowledge that Lessee holds title to the Building, It is the intention of the parties that such separation of title to the Leased Property from title to the Building is not to change the character of the Building as real property, except that the furnishings and other personal property which constitutes part of the Building shall continue to be treated as the personal property of Lessee.

D. Nonseparability of Ownership of Leasehold Estate From Ownership of Building

It is also the intention and agreement of the parties that Lessee's ownership of the leasehold estate created hereby and the Building shall be nonseparable, and that any attempt to transfer title to the Building shall be void and ineffective unless accompanied by a valid transfer of this leasehold estate to such grantee; and likewise, any attempt to transfer this leasehold estate without a simultaneous conveyance of the Building to such assignee shall be void, and either event shall constitute an Event of Default under this lease.

E. Automatic Transfer of Building to Lessor at End of Lease

Lessee covenants that upon the expiration or earlier termination of this lease, Lessee shall without payment therefor execute, acknowledge, and deliver to Lessor a quitclaim deed and bill or sale conveying and transferring to Lessor all of the right, title and interest of Lessee in and to the Building and the furnishings, and personal property therein, and Lessee hereby appoints Lessor irrevocably as its attorney in fact, with an interest, to execute, acknowledge, and deliver on Lessee's behalf said deed and bill of sale.

F. Basic Rent

Section 1. Lessee shall pay to Lessor, at such place as Lessor shall from time to time designate, a rental (hereinafter called the "basic rent") as follows:

a. For the period commencing December 1, 19.,...., and continuing for 15 years at the rate of $375,000 per annum, in equal monthly payments of $31,250 each on the first day of each month in advance.

b. During the last 10 years of the initial lease term a rental in each year equal to the higher of:

i. 7.5 percent of the fair market value of the Leased Property, determined as of the end of the fifteenth year in the manner provided in Section 3 below; or

ii. The rent payable during the fifteenth lease year.

G. Basic Rent for Renewal Terms as Percentage of Reappraised Value of Land

Section 2. Lessee may extend the term of this lease for eight separate and successive periods (renewal terms) of 10 years each, upon the same terms and conditions as herein contained, except that (a) there shall be no further right of renewal for any period beyond November 30, 20...., and (b) the basic rent during each year of each renewal term shall be at an annual rate equal to the greater of (i) 7.5 percent of *the fair market value of the land exclusive of the Building* thereon, determined as of November 30 of the last year of the then immediately preceding lease term, in the manner provided in Section 3 below, or (ii) the basic rent payable for the last year of the preceding term.

H. Manner of Determining Fair Market Value for Setting Rent

Section 3. The fair market value of the Leased Property shall be determined as if the Leased Property were then free and clear of all liens, encumbrances and leases and were capable of being devoted *solely to hotel use;* provided, however, that if at the time of such determination the Building is not

being operated as a hotel, the fair market value of the Leased property shall be determined as if it were capable of being devoted to the highest and best use permitted under the ten-applicable zoning laws and regulations.

At least 60 days before the start of the sixteenth year of the initial term, and, if notice of renewal has been given, at least 60 days before the end of each lease term, Lessor and Lessee shall endeavor to agree on the then fair market value of the Leased Property If they have not reached agreement by the thirtieth day before the start of the sixteenth lease year or by the thirtieth day prior to the end of the then-current lease term, Lessor and Lessee shall each appoint a qualified and experienced appraiser, who shall be a member of a professional association of independent real estate appraisers. The two appraisers so appointed shall then jointly appoint a third appraiser similarly qualified, or if they cannot within 30 days after their appointment agree on the selection of the third appraiser, either Lessor or Lessee may apply to the President of the ..... County Board of Realtors, Inc. to appoint the third appraiser. A majority of the appraisers shall determine the fair market value of the Leased Property as soon as practicable, and the rent computed in accordance therewith shall be effective from the start of the relevant lease period, as provided in the preceding subdivisions of this Article ..... Until such new rent is fixed, Lessee shall continue to pay basic rent at the rate it had most recently been paying. If the new rent is higher, the deficiency shall be paid in a single payment by Lessee within 20 days after the decision of the majority of the appraisers shall have been rendered. Each party shall pay the fees and disbursements of the appraiser it selects, and each party shall pay one-half of all other fees, disbursements, and expenses of the appraisal process. The written decision of the majority of the appraisers shall be binding upon the parties as if Lessor and Lessee had themselves agreed on such fair market value. If either party fails to appoint a qualified appraiser, it shall have waived its right to do so and shall be bound by the sole decision of the appraiser appointed by the other party.

Section 4. The basic rent shall be paid to Lessor without notice or demand and without abatement, deduction or setoff, except as may be expressly allowed hereinbelow.

I. Limitation of Assignability of Lease

Lessee shall not assign this lease, unless the assignee simultaneously acquires fee title to the Building. Nor shall any total sublease be valid unless the total subtenant simultaneously acquires the leasehold estate in and to the Building.

J. Lessee's Right to Mortgage Lease and Building, But Not Without Building

Lessor hereby consents to Lessee from time to time mortgaging this lease and the Building (but not the fee title to the Leased Property), on the following terms and conditions:

a. No mortgage of this lease shall be effective unless such mortgage also encumbers the Building.

b. The leasehold mortgage shall provide that any condemnation proceeds which may be payable shall be applied in the manner set forth in this lease, and not otherwise.

c. There shall not be more than one leasehold mortgage in existence at any time.

K. Leasehold Mortgagee's Right to Receive Copy of Notice of Lessee's Default Under Lease and Opportunity to Cure Default

If Lessor shall have received written notice of the existence of a leasehold mortgage, together with a conformed copy of the note and mortgage, Lessor thereafter shall simultaneously send to the holder thereof a copy of any default notice or demand which Lessor shall send to Lessee. Such holder shall have an additional period of 15 days after the expiration of the applicable grace period allowing in Article ..... above in which to cure Lessee's default. In the event that this lease shall have been terminated by Lessor in accordance with the terms hereof and either (i) such leasehold mortgagee shall within said

additional 15-day period cure the default, or deposit with Lessor the cost of effecting such cure, or (ii) if the Event of Default which resulted in such termination shall have been any event which also constitutes an event of default under the leasehold mortgage, then, and in any such case, Lessee promptly upon the demand of the leasehold mortgage shall execute (1) a new lease to the leasehold mortgagee or its nominee upon the same terms and conditions contained herein, for a term equal to what otherwise would have been the balance of the then term hereof, together with options for renewal terms equal to the then-remaining renewal terms hereunder, and (2) a quitclaim conveyance to the new lessee of the Building, which conveyance shall recite that the grantee holds title to the Building which title shall revert to Lessor automatically, without payment, upon the termination of this lease or its replacement.

L. Prohibition Against Lessor's Acceptance of Voluntary Surrender of Lease Without Consent of Leasehold Mortgagee and Sublessee

Lessor shall not accept a voluntary surrender of this lease (even under circumstances where Lessee is herein expressly granted the right to terminate this lease) not permit a merger of the fee title and leasehold estate, nor agree to any modification of this lease without the prior consent of any leasehold mortgagee and any total subtenant. The exercise by Lessor of any right of cancellation pursuant to the terms of this lease shall not be deemed a "voluntary surrender," nor shall anything herein require that Lessor obtain the consent of any mortgagee or total subtenant before commencing any action or proceeding based upon a default hereunder by Lessee.

M. Right of Leasehold Mortgagee in Possession to Assign Lease Once Without Lessor's Consent

Notwithstanding any provision of Section..... of Article ..... hereof to the contrary, if a leasehold mortgagee shall acquire the leasehold estate in the Leased Property and title to the Building, or possession thereof, the mortgagee in possession (or new Lessee) shall have the right to assign the lease and simultaneously convey the Building to the assignee on one occasion only without Lessor's prior, written consent, provided only that there is delivered to Lessor promptly a duplicate original of the written instrument of assignment, in recordable form, containing the name and address of the assignee, and an assumption by the assignee of the lease and of all the agreements and obligations to be observed and performed by Lessee. Any subsequent assignment of this lease or of such new lease shall be valid only if made pursuant to the provisions of Sections ..... and ..... of Article ..... without reference to this section.

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APPENDIX 7

Selected Provisions of Sublease

A. Basic and Overage Rent

Section 1. Sublessee shall pay to Sublessor, at such place as Sublessor shall from time to time designate, an annual rental (hereinafter called the "basic rent"), in equal monthly installments in advance on the first day of each month as follows:

a. For the period commencing December 1, 19..... and continuing until November 30, 20..... at the rate of $1,745,000 per annum.

b. For the period commencing on December 1, 19..... and continuing throughout the balance of the initial term and throughout all renewal terms of this sublease, an amount equal to the aggregate of (i) $425,000 per annum, plus (ii) the then-current annual basic rent payable under the Ground Lease, plus (iii) the then-current annual debt service on any leasehold and building mortgage to which this sublease is subordinate. Sublessor shall give to Sublessee prompt notice, from time to time, of any increase in the basic rent under the Ground Lease.

If the basic rent under the Ground Lease shall not have been fixed at the start of the sixteenth lease year or at the date any renewal term of this sublease commences, Sublessee shall pay to Sublessor, within 20 days after demand therefore, the entire deficiency, if any, which Sublessor is required to pay to the Ground Lessor under Section ..... of Article ..... of the Ground Lease, together with all of Sublessor's expenses which may have been incurred in the appraisal process required under the Ground Lease. Thereafter, Sublessee shall make the payments of basic rent as required under the preceding paragraph of this subdivision (b).

c. (i) Whenever under the Ground Lease Sublessor is entitled to appoint an appraiser or apply for the appointment of an appraiser to help determine the fair market value of the land, Sublessee shall have the sale right, acting in the name and on behalf of Sublessor, to designate such appraiser, and to make such application. Sublessee shall pay all of the costs and expenses of the Lessee under the Ground Lease in connection with any appraisal process.

c. (ii) Except if the fair market value of the land has been determined by a majority of the duly appointed appraisers, Sublessee shall not voluntarily agree with the owner of the land as to either the fair market value of the land or the basic rent to be paid under the Ground Lease without the prior approval of Sublessee in each instance obtained.

d. In the event Sublessor fails to observe or perform any of its obligations, under this subdivision (d), the basic rent thereafter payable by Sublessee shall not be increased by reason of any increase in the Ground Rent.

e. The basic rent and extra rent shall be paid to Sublessor without notice or demand and without abatement, deduction, or setoff, except as may be expressly allowed hereinbelow.

Section 2. Sublessee shall keep records on a calendar year basis, commencing January 1,19..... Within 60 days after the end of each calendar year, Sublessee shall deliver to Sublessor a certified operating report, prepared by a certified public accountant, which shall include a statement of the net profit for such preceding year derived from the operation of the Leased Property (regardless of whether Sublessee is the operator). In determining such net profit, there shall be no deduction for the following: (a) any rent other than the basic rent, (b) salaries or fees paid directly or indirectly to any individual who is an officer, director, stockholder or member of Sublessee or any operator; (c) management fees in excess of 5 percent of the gross revenues collected by Sublessee; (d) income, franchise, or related taxes of Sublessee or any operator; (e) interest, depreciation or amortization arising in connection with the present investment of Sublessee or any operator in the sublease or the Leased Property. The only deduction for interest shall be interest charges in connection with the financing of any capital improvements, alterations, or installations, at rates not exceeding those normally charged by commercial banks in similar transactions.

Sublessee shall deliver to Sublessor with such report as "overage rent," a sum equal to 50 percent of the amount by which the net profit shown on such report exceeds $155,000. Sublessor may, during normal business hours, upon five days' written notice to Sublessee, inspect the operating books and records of Sublessee for the purpose of verifying any report within three years after the report is submitted to Sublessor.

Sublessee shall also furnish to Sublessor, within 15 days after written request is made by Sublessor, any other financial data or statements which may be required by the Ground Lessor, fee mortgagee, leasehold mortgagee, or by any bona fide prospective purchaser, subleasee, or mortgagee of the Leased Property

Section 3. The receipt by Sublessor of overage rent shall not be deemed to create any partnership or joint venture between Sublessor and Sublessee.

B. Renewal Rights and Renewal of Ground Lease

Sublessee may extend the term of this sublease for eight separate and successive periods (renewal terms) of 10 years each, upon the same terms and conditions as herein contained, except that there shall be no further right to renew beyond November 29, 20 ..... Written notice of each election to renew shall be given by Sublessee to Sublessor not less than 20 months prior to the expiration of the then-current sublease term. Sublessor covenants that if Sublessee gives notice of its election to renew this sublease, Sublessor shall promptly exercise its comparable option to renew the Ground Lease; and if Sublessor fails to do so within 10 days after receiving notice of renewal of this sublease, Sublessee is hereby authorized, in Sublessor's name to give notice of renewal of the Ground Lease to the Ground Lessor.

C. Subordination to Ground Lease and to Fee and Leasehold Mortgages

Section 1. This sublease is and shall be subordinate to the Ground Lease, and all renewals thereof, and to all leasehold and building mortgages and to every modification, extension, consolidation, and replacement of such leasehold and building mortgages which may now or hereafter encumber the Lease Property, provided that the aggregate payments for interest and principal (excluding the principal payment due at maturity) required to be made thereunder shall not in any one year exceed $1,370,000, and provided further that the leasehold mortgagee shall agree not to terminate this sublease upon a foreclosure of the leasehold mortgage if Sublessee is not then in default in the performance or observance of Sublessee's obligations hereunder. Sublessee shall execute any documents to indicate such subordination which Sublessor shall submit to Sublessee.

SELECTED PROVISIONS OF SUBLEASE

Section 2. If Sublessor shall default in the payment of any rent due under the Ground Lease, or any leasehold mortgage installment of interest or principal, Sublessee may at its option pay such rent or debt service installment, and may deduct such payment, together with interest at 16 percent per annum and any costs paid by Sublessee, from the installments of basic rent next becoming due hereunder.

Section 3. Notwithstanding anything in this sublease to the contrary, Sublessee covenants that (a) it will duly comply with all of the provisions of the Ground Lease and of any leasehold and building mortgage to which this sublease is at any time subordinate, except for the payment of basic rent under the Ground Lease or interest and principal under any such leasehold mortgage; and (b) it will execute and deliver any documents which may be necessary to permit the due compliance with all the provisions of any such leasehold mortgage and the Ground Lease by the party responsible thereunder for such compliance.