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SAN DIEGO, CALIFORNIA

PERCENTAGE LEASE

BETWEEN

LESSOR: CITY OF SAN DIEGO, a Municipal Corporation

and

**LESSEE: TORREY PINES HOTEL ASSOCIATES,
a California General Partnership**

DATED: AUG 10 1987, 1987

**CITY OF SAN DIEGO PERCENTAGE LEASE
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**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and TORREY PINES HOTEL ASSOCIATES, a California general partnership, hereinafter called "LESSEE".

SECTION 1: USES

- 1.1. Preconditions. LESSEE intends to develop a hotel and related facilities ("Project") on the premises. CITY and LESSEE acknowledge that a portion of the Premises, as Premises are herein defined, is, at the date of execution of this Lease by LESSEE, under lease by CITY to Wansa Enterprises, Inc. ("Wansa"), therefore:
- a. LESSEE understands that CITY must provide for the termination of an existing lease with Wansa Enterprises, Inc., prior to being able to deliver possession of the leasehold premises to LESSEE.
 - b. LESSEE has agreed to provide Five Hundred Thousand Dollars (\$500,000) to CITY as advance rental so that CITY may utilize said Five Hundred Thousand Dollars (\$500,000) as part of the option price of One Million Eight Hundred Thousand Dollars (\$1,800,000) for the Wansa Leasehold. LESSEE has also agreed to pay consideration of Eighteen Thousand Three Hundred Thirty-three and Thirty-four One Hundredths Dollars (\$18,333.34) per month commencing January 1, 1988, subject to abatement under certain circumstances, as more particularly addressed herein, to assist CITY'S funding of its acquisition of the Wansa Leasehold. Payment of consideration on January 1, 1988 as provided above assumes (i) that all discretionary governmental approvals necessary for the construction of the Project have been obtained and are non-appealable, (ii) this Lease has been executed by CITY and LESSEE, and (iii) the Wansa option has been exercised or extended beyond January 1, 1988. If subparagraphs 1.1(b)(ii) and (iii) have been satisfied but 1.1(b)(i) has not, the payments referenced in this section shall commence on the first day of the month following the month in which Section 1.1(b)(i) has been satisfied.
 - c. LESSEE agrees to deliver the Five Hundred Thousand Dollars (\$500,000) payment to CITY fifteen (15) days prior to the date payment is to be made to Wansa Enterprises, Inc., under the terms of the option agreement authorized by City Council Resolution 264142 of September 30, 1985, and any amendments

thereto or extensions thereof which have been approved by LESSEE with regard to the timing of the payment of the Five Hundred Thousand Dollars (\$500,000). LESSEE understands and agrees that CITY shall not be obligated to exercise its option to acquire the Wansa Enterprises, Inc. leasehold unless and until all nonappealable discretionary governmental approvals necessary for construction of the hotel and related facilities have been obtained by LESSEE.

- d. CITY agrees that in the event LESSEE is, in LESSEE'S reasonable judgment unable prior to the payment to Wansa Enterprises, Inc. pursuant to said option agreement to do all of the following at a cost acceptable to LESSEE: (i) obtain all non-appealable discretionary governmental approvals necessary for construction of the hotel and related facilities, (ii) prevail in, or favorably settle, any litigation which may be commenced with respect to such approvals or which directly or indirectly challenges such approvals or the validity thereof, (iii) comply with or satisfy any new legislation relating to LESSEE'S proposed development of the premises and (iv) obtain leasehold mortgage financing for LESSEE'S development of the premises on terms acceptable to LESSEE, LESSEE may elect to terminate this Lease by written notice to CITY, whereupon (i) CITY will promptly refund the Five Hundred Thousand Dollars (\$500,000) advance rental without interest and any minimum rent paid up to such date, with interest earned thereon by CITY by placing said amount into an appropriate interest bearing account at the highest rate available to the CITY and (ii) this Lease shall be of no further force or effect. LESSEE agrees to use commercially reasonable efforts to (A) obtain such approvals, (B) favorably settle such litigation, (C) comply, at a cost acceptable to LESSEE, with such new legislation and (D) obtain such financing.

For the purposes of this Lease the term "non-appealable discretionary governmental approvals" shall mean discretionary governmental approvals which must be obtained by LESSEE and for which the statutory period for appealing or challenging such approvals has passed and no appeal or challenge has been officially filed.

- e. In the event CITY exercises its option and acquires the Wansa leasehold but LESSEE is subsequently prevented, for reasons outside of LESSEE'S control and for other than economic reasons, from obtaining a building permit for the hotel, or from proceeding with construction of the Project, anything to the contrary herein notwithstanding, all rent payments other than the Five Hundred Thousand Dollars (\$500,000) advance rent shall be abated for so long as LESSEE is unable to obtain such building permit or, from proceeding with construction of the Project due to a Force Majeure delay. How-

ever, in the event the building permit is not obtained by LESSEE by one (1) year from the Commencement Date as hereinafter defined for the reasons above referenced, or if LESSEE is precluded from proceeding with construction for any reason outside LESSEE'S control (other than economic reasons) prior to said date, then this Lease shall terminate and be of no further force or effect, and CITY agrees that LESSEE shall be entitled to a refund of rent paid up to such date together with the Five Hundred Thousand Dollars (\$500,000) advance rent payment, with interest earned on any such minimum rent by CITY by having placed said minimum rent payments into an appropriate interest-bearing account at the highest rate available to CITY. Such refunds shall be made in accordance with Subsection h. hereof.

- f. Notwithstanding the foregoing, if LESSEE has obtained a building permit for the above-grade structural improvement aspects of the hotel (the "Building Permit"), as opposed to grading, utility, and foundation permits, and at that time there is neither any of the above-described litigation nor legislation pending, LESSEE shall have no right to terminate this Lease and receive a refund of rental.
- g. Prior to LESSEE'S obtaining the Building Permit, LESSEE'S only monetary obligation under this Lease or any other agreement with CITY relating to development of the premises is its obligation to pay Five Hundred Thousand Dollars (\$500,000) advance rental, and Eighteen Thousand Three Hundred Thirty-three and Thirty-four One Hundredths Dollars (\$18,333.34) consideration per month as described in Section 1.1.b hereof. Prior to such time, LESSEE shall have no obligation under this Lease or any other agreement with CITY to make monetary payments to governmental bodies, for facilities benefit assessments, special assessments or similar fees, or to build or incur expenses with respect to any golf facilities for CITY.
- h. If LESSEE has paid CITY the Five Hundred Thousand Dollars (\$500,000) referenced in this Section, and if the Lease is terminated for any reason other than a default by LESSEE, subject to paragraph f. above, such sum shall be immediately returned to LESSEE unless it has previously been paid in connection with the exercise of the option to obtain the Wansa Leasehold in which case LESSEE shall be entitled to a return of said sum from rents paid to CITY by the operator of the driving range which succeeds Wansa. Commencing one month after this Lease is terminated, rental payments from such operator will be paid on a pro rata basis to CITY and LESSEE based upon the respective contributions to acquire the Wansa Leasehold. For example, if the total out of pocket payment by CITY (excluding contributions from the successor operator or any other parties) was One Million Dollars (\$1,000,000) and the contribution

by LESSEE was Five Hundred Thousand Dollars (\$500,000) rental payments or other consideration received by CITY from the successor operator will be paid in the ratio of 2 to 1 to CITY and LESSEE, respectively.

- i. The provisions of this Section 1.1 shall supersede and control any provisions to the contrary in this Lease.
 - j. Anything to the contrary herein notwithstanding, LESSEE acknowledges that the primary purpose for the proposed termination of the Wansa lease is to allow CITY to deliver possession of the WANSA leasehold area to LESSEE for the purpose of construction of the Project. Unless and until LESSEE has obtained all nonappealable discretionary governmental approvals for the Project in accordance with the terms of this Lease, CITY shall not be obligated to terminate the Wansa lease and neither CITY nor LESSEE shall be obligated to pay any amount whatsoever with respect to the acquisition of the Wansa leasehold.
- 1.2. Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this Lease and all easements now or hereafter appurtenant thereto. Said real property is hereinafter called the "premises" or "leased premises." The parties hereto acknowledge that LESSEE, at LESSEE'S sole expense, shall use its best efforts to have a parcel map (herein the "Parcel Map") approved and recorded containing a legal parcel substantially similar to the premises as depicted and described on Exhibit "A."
- 1.3. Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of hotel development and operation, including but not limited to one or more restaurants, cocktail lounges, banquet and meeting facilities, swimming, tennis, guest health facilities and parking facilities, all in accordance with the Development Plan described in Section 6.11 hereof, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises throughout the term hereof for the operation of a hotel and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. The foregoing shall not require LESSEE to continue the operation of facilities other than the actual hotel, such as restaurants, lounges, banquet and meeting rooms, swimming, and tennis and guest health facilities, if LESSEE reasonably determines that such facilities do not add to

the overall profitability of LESSEE'S hotel use of the premises. If the City Manager contests LESSEE'S determination that the discontinued facility does not add to the overall profitability of LESSEE'S hotel use of the premises, the City Manager shall notify LESSEE and the parties shall submit such determination to arbitration in accordance with the rules of the American Arbitration Association within thirty (30) days of such notification by CITY. The decision resulting from the arbitration shall be binding on LESSEE and CITY.

Except as provided below, from the date a hotel is opened for business from the premises until the expiration or termination of this Lease, LESSEE shall keep such hotel open for business without any interruption in the continuous operation thereof which is more than five (5) consecutive calendar days in duration. Any greater interruption in the continuous operation of such hotel, which is not permitted under the following provision, shall constitute a breach of this Lease. The foregoing shall not apply to interruptions in continuous operations which are (i) with the City Manager's prior written consent, (ii) due to remodeling and/or refurbishing or repair and restoration, provided LESSEE first notifies the City Manager of such remodeling, refurbishing, repair or restoration, and further provided that no such interruption of operation shall extend for a period greater than ninety (90) days nor affect more than thirty five percent (35%) of the rooms, without the prior written approval of the City Manager, or (iii) caused by forces outside of LESSEE'S control, including, but not limited to, war, strikes, lockouts, floods, earthquakes, fires, casualties, acts of God, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions and unusually severe weather. Unless otherwise provided herein, temporary interruptions in the operation of such hotel shall not fully or partially abate LESSEE'S obligation to pay rent hereunder.

- 1.4. Related Council Actions. By the granting of this Lease, neither CITY nor the Council of CITY is obligating itself or any other governmental agency, board, or commission, with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises. Notwithstanding the foregoing, CITY recognizes that it is in CITY'S best interest to expedite the processing of all required approvals for LESSEE'S development of the premises and CITY will use its best efforts to do so.
- 1.5. Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the

premises. CITY shall deliver possession of the premises to LESSEE at the commencement of the term, subject only to title exceptions as listed on Exhibit "B" attached hereto and as shown on final Subdivision Map No. 86-0679. If during the lease term, LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in such events, LESSEE and CITY shall seek recovery from whatever applicable title insurance has been obtained by LESSEE.

1.6. Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.
- d. CITY agrees to permit LESSEE to use park land southerly and westerly of the premises for a fire department emergency access road to serve the two southerly wings of the hotel. LESSEE agrees that the design of this road is subject to CITY approval and that design, construction and maintenance are the financial responsibility of LESSEE. The access road will be designed and constructed in such a way as to provide fire equipment access to the golf course as well as the hotel facilities.

The rights reserved herein by CITY shall be exercised in such manner and only in circumstances as will not unreasonably or materially interfere with LESSEE'S use of the premises and CITY will reimburse LESSEE for all damages, if any, to the improvements (including landscaping) located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as reasonably determined by the City Manager. CITY will pay the cost of maintenance and repair of all CITY installations made pursuant to these reserved rights. The provisions of this section are subject to the provisions of paragraph 6.3 hereinbelow.

- 1.7. Competent Management. Throughout the term of this Lease, LESSEE shall provide competent management of the leased premises. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a first-class hotel facility comparable

to the hotel on the premises. CITY acknowledges that Sheraton Operating Corporation will provide such competent management. The City Manager's approval, not unreasonably withheld, is required to change the operator of the hotel on the premises. Such approval shall be deemed given so long as the proposed operator has been in business as a hotel operator for at least ten (10) years and either operates five (5) or more first-class hotels of similar size and type or is operating a lesser number of similar hotels to the same standard as the then prevailing operating standard of similar hotels in the San Diego Mission Bay area and the San Diego Port area.

- 1.8. Use of Torrey Pines Golf Course by Hotel Guests. In obtaining starting times at the Torrey Pines Golf Course, hotel guests will be subject to the same procedures that are then extant for the general public. CITY and LESSEE agree that in order to protect the interest of the general public concerning its access to the golf course, hotel guests will not receive preferential starting times. Starting times for special tournaments or group play (32 or more players) shall be requested in advance by written application to the Torrey Pines Golf Course management. Tournament/group events will be scheduled consistent with golf course policy regulating the equitable distribution of limited tee times available to organizations for tournament or group play. CITY warrants to LESSEE that the Torrey Pines Golf Course is a dedicated public park and that a change in the use thereof to non-park use presently requires passage of a City of San Diego ballot measure by two-thirds (2/3) vote. As soon as reasonably possible, CITY shall notify LESSEE of any proposal, plan or initiative of CITY, or any other governmental authority which involves or regards substantial modification of the golf course or a change in the use thereof. In recognition of LESSEE'S interest in the continued operation and maintenance of the Torrey Pines Golf Course, CITY agrees that, except for circumstances outside its control, such as a water shortage or other acts of nature, and so long as the means of maintaining the golf course are reasonably available to CITY, CITY shall cause the operator of the golf course to operate and maintain the golf course in a manner equivalent to or better than the present operation and maintenance of the golf course. If CITY does not continue operation of the golf course as provided above, LESSEE specifically agrees that LESSEE'S sole remedy shall be a cause of action for monetary damage actually resulting from such event.
- 1.9. Limitation on Merchandise Sales. Merchandise offered for sale by hotel shops or elsewhere on the Premises will not include golf shoes, clubs, bags, balls or other golf equip-

ment, nor shall it include clothing or other items bearing a Torrey Pines Golf Course logo.

SECTION 2: TERM

- 2.1. Commencement. The term of this Lease shall be fifty- five (55) years commencing on the date ("Commencement Date") CITY delivers possession of the entire premises to LESSEE in insurable condition, in accordance with Paragraph 1.5 hereof, and free and clear of any liens or other leasehold interests or encumbrances. "Lease Year" as used in this Lease shall mean each calendar year during the term of this Lease except that (i) the first Lease Year shall be the period from the first day of the first full month immediately after the Commencement Date until the immediately following December 31st and (ii) the last Lease Year shall be the period from January 1st of the year of the 55th anniversary of the Commencement Date until the 55th anniversary of the Commencement Date. Notwithstanding the foregoing, the effective date of this Lease with respect to rights and obligations which are not related to LESSEE'S possession of the premises, and not contingent upon the commencement of the term hereof, shall be the date this Lease is executed by both CITY and LESSEE.
- 2.2. Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the premises after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3. Quitclaim and Surrender of LESSEE'S Interest. On execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises which shall be held by CITY subject to a fiduciary duty not to record or threaten to record the same except in the event of the expiration or earlier termination of this Lease. Such quitclaim shall be recorded only as a means of confirming CITY'S title to the premises after expiration or termination of this Lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor-in-interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this Lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof,

and in a decent, safe and sanitary condition. In the case of termination of this Lease by CITY prior to the end of the specified lease term, any liens and encumbrances which remain of record must be approved in writing by the City Manager.

- 2.4. Memorandum of Lease. Within ten (10) days after the Wansa Leasehold is acquired, LESSEE and CITY shall execute a memorandum of this Lease in recordable form and shall record the same. The memorandum will contain (i) a description of LESSEE'S interest under this Lease, (ii) a statement that CITY'S review and approval of development plans when available for property adjacent to the premises, more particularly described in Exhibit "F" hereto, shall be conducted in coordination with LESSEE and after CITY'S due consideration of LESSEE'S comments on such development plans to ensure that the proposed development is consistent with LESSEE'S development of the premises, (iii) a CITY covenant not to lease such adjacent property during the term of this Lease for hotel or restaurant use without LESSEE'S prior written consent, (iv) LESSEE'S consent to the operation of a food facility within the Scripps Clinic Aerobic Center on such adjacent property serving patients, staff and guests of Scripps Clinic and not directly competitive with uses on LESSEE'S premises, (v) a statement that CITY has granted LESSEE the right to use park land southerly and westerly of the premises for a fire department emergency access road to serve the two southerly wings of the hotel, and (vi) a statement of the Commencement Date and the expiration date of the lease term.

SECTION 3: RENT

- 3.1. Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, 92112-41615, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2. Rent.

- a. Advance and Minimum Rent. LESSEE shall pay CITY Five Hundred Thousand Dollars (\$500,000) advance rent, subject to the rent credit provision contained in Paragraph 8.2 below and Section 1.1 Preconditions hereto. The monthly minimum rent established for the twelve (12) month period commencing with the first payment made pursuant to Section 1.1.b. is Eighteen Thousand Three Hundred Thirty-three and Thirty-four One Hundredths Dollars (\$18,333.34); Thirty-six Thousand Six Hundred Sixty-six and Sixty-seven One Hundredths Dollars (\$36,666.67) for the twelve (12) month period thereafter; and Seventy-three Thousand Three Hundred Thirty-three and Thirty-four One Hundredths Dollars (\$73,333.34) for each month of the lease term thereafter, except as may be adjusted pursuant to subparagraph 3.2b below. The monthly minimum rent for the last month of the last Lease Year shall be a pro rata portion of the then payable minimum rent based on a thirty (30) day month.

If the minimum rent is greater than the percentage rent, on a calendar month basis, then one-twelfth (1/12) of the annual minimum rent computed by adding all monthly minimum rent payments required in any particular Lease Year (hereinafter "Annual Minimum Rent") is required to be paid for that month. Minimum rents are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section 3.3 Payment Procedure, hereof. If the monthly installment of minimum rent is less than the percentage rent for the month in question, percentage rent will be payable in accordance with subsection c. and Section 3.3 below.

Provided, however, in the event that the combined total percentage rent payments and monthly installments of minimum rent during any Lease Year equal or exceed the required Annual Minimum Rent for that year, then for the balance of such year, LESSEE shall discontinue paying monthly installments of the minimum rent and shall continue paying only percentage rents until the beginning of the ensuing Lease Year. Provided further, in the event minimum rents paid plus percentage rents paid exceed the Annual Minimum Rent and also exceed the rent which would have been paid if the percentage rent had been paid on total gross income, the excess over the percentage rent on total gross income shall be credited against the next payable rent as it becomes due. It is the intent of this provision that LESSEE shall pay monthly installments of the Annual Minimum Rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term shall prevail on an annual basis and any adjustments necessary to effectuate

such intent shall be made as soon as possible after the end of each Lease Year.

- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the sixth (6th) Lease Year of this Lease and at the beginning of each five-year (5) period thereafter during the term, the Annual Minimum Rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the five (5) Lease Years preceding the adjustment date. Said Annual Minimum Rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly minimum rents at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate, shall be paid to CITY within thirty (30) days following written notice. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.
- c. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

Percentages

Seven Percent (7%) for
first 20 Lease Years
Seven and One-half Percent
(7-1/2%) for Lease Years
21 through 30, then

Adjusted subject to a maximum of eight percent (8%) for Lease Years thirty-one (31) through forty (40), then adjusted each ten (10) years thereafter with no maximum.

Business Activities

Room Rentals (including but not limited to hotel rooms, banquet and meeting facilities)

Three Percent (3%) for first
20 Lease Years
Four Percent (4%) for lease
years 21 through 30, then

Food and Nonalcoholic
Beverages

Adjusted subject to a five
percent (5%) maximum for
Lease Years 31 through 40
and each 10 years of the
lease term thereafter, all
subject to a five percent
(5%) maximum rate for the
lease term.

Six Percent (6%) for first
20 Lease Years
Seven Percent (7%) for lease
years 21 through 30, then

Alcoholic Beverages

Adjusted with a maximum of
eight percent (8%) for Lease
Years 31 through 40 and each
10 years thereafter, all sub-
ject to an eight percent (8%)
maximum rate for the Lease
Term.

Seven Percent (7%) for first
20 Lease Years
Ten Percent (10%) for lease
years 21 through 55

Lobby and Gift Shops

Seven Percent (7%) for first
20 Lease Years
Ten Percent (10%) for lease
years 21 through 55

Coin-operated Machines

Fifty Percent (50%)

Of LESSEE'S Commissions
from Coin-operated
Telephones

Ten Percent (10%) for the
first 20 Lease Years
Fifteen Percent (15%) for
Lease Years 21 through 55

All other authorized
uses (including, but
not limited to, tennis
and guest health
facilities and parking
facilities)

In the event of a use which is incidental or related to an
above specified primary use, at the request of LESSEE, if
the City Manager approves the incidental or related use the

City Manager shall approve the same percentage rent for such incidental or related use as applies to the primary use identified by LESSEE so long as the City Manager reasonably determines such incidental or related use is in fact reasonably related to and associated with the subject primary use. Except as provided above, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.7 Unauthorized Use Charge hereof.

- d. Percentage Rate Adjustment. At least six (6) months prior to the end of the thirtieth (30th) Lease Year of the term of this Lease and at least six (6) months prior to the end of each ten (10) Lease Year thereafter, the parties hereto, by mutual consent or through appraisal as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income from room rentals, food and non-alcoholic beverages, and alcoholic beverages to be paid CITY effective upon the first day of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.2e below. In the event that such adjustment is not made by mutual consent prior to six (6) months before the end of said thirtieth year and subsequent ten-year periods, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- e. Percentage Rate Appraisal. In the event the parties do not agree on the amount of adjustment to said percentage rates at least six (6) months prior to dates specified above, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of LESSEE and CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser at least five (5) months prior to the subject date, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser who in turn will select a third qualified M.A.I. professional independent real estate appraiser with at least five (5) years prior experience including experience appraising values and rentals of major hotels, which third appraiser will be employed to set the percentage rates to be applied to LESSEE'S percentage rate adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten (10) days, then the parties agree that a third appraiser meeting the criteria set forth above will be requested to be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either CITY or LESSEE with prior notice thereof to the other party. CITY and LESSEE agree that each will

submit the names of at least 2 but not more than 4 proposed qualified MAI appraisers for consideration by the presiding judge. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the third mutually selected or court-appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected or appointed to complete the appraisal.

In establishing the percentage rates for the items being appraised, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for lease at then applicable Annual Minimum Rent on the open market for the authorized purposes of this Lease at the commencement of the rental period under review. Such appraisal is to reflect the entire economics of this Lease; thus, the appraiser shall consider the terms of any prospective adjustments in the minimum rent and percentage rent and any other economic aspects of this Lease. The appraiser will be guided by prevailing market percentage rates for similar hotels subject to a percentage ground lease primarily within the Southern California area, if available. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the ten-year period, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. Any deficiency shall be paid by LESSEE to CITY within sixty (60) days after determination of the new percentage rate(s). IN NO EVENT, HOWEVER, SHALL ANY RENT ADJUSTMENT BY APPRAISAL RESULT IN ANY DECREASE IN ANY PERCENTAGE RENTAL RATE(S).

- 3.3. Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:
- a. One-twelfth (1/12th) of the Annual Minimum Rent until the full annual rent is achieved in any Lease Year.
 - b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business

conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.

- c. The percentage rental due CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current Lease Year.
- e. Payment in the greater of the two following amounts: One-twelfth (1/12th) of the Annual Minimum Rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this Lease, and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

- 3.4. Gross Income. "Gross income or receipts" as used in this Lease, shall include all income resulting from use or occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this Lease. All rent received by LESSEE from sublessees, concessionaires or other

occupants of the premises in situations where CITY receives a percentage of gross income from the operations of such sublessees, concessionaires or other occupants will be excluded from calculation of gross income for the purposes of rental determination. However, LESSEE agrees that CITY shall be paid rent at the percentage rates indicated hereinabove for all gross income received by such sublessees, concessionaires or other occupants.

3.5. Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issues a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within ninety (90) days after the end of each Lease Year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, and within ninety (90) days after the end of each Lease Year, LESSEE shall deliver to CITY an audit of such statement prepared by a certified public accountant in accordance with generally accepted accounting principles.

- c. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under Section 3.5a. will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Lease; provided, however, that LESSEE shall be given reasonable advance written notice of such audits. Such audits will be conducted no more frequently than once per calendar year and that such audits will be conducted at reasonable times during normal business hours and without unnecessary or unreasonable interference with the operation of LESSEE'S business.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

- d. Audit Cost. The full cost of an annual audit by CITY will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):

- (1) The audit(s) reveal an underpayment of more than five percent (5%), or more than Fifty Thousand Dollars (\$50,000) whichever is less, between the rent due as reported and paid by LESSEE pursuant to this Lease and rent due as determined by the audit; or
- (2) LESSEE has failed to maintain complete and true books, records, accounts and supporting source documents reasonably satisfactory to allow for the expeditious and efficient conduct of CITY'S annual audit.

Then, in either aforesaid events, LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.6 "Delinquent Rent and Audit Fees" within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against rents next coming due. Any overpayment determined after the end of this Lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit findings.

- e. Default. LESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with the covenants of this Lease, a breach of this Lease and cause for termination.

- 3.6. Delinquent Rent and Audit Fees. If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) (being a total of ten percent (10%)) which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. This paragraph applies solely to delinquent rent and is not intended to apply to an underpayment of rent by LESSEE which is discovered upon the conduct of an audit.

In the event any annual CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of said audit plus ten percent (10%) interest per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event any annual CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment.

LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE'S default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

- 3.7. Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use not consented to by CITY and which is not listed in Section 3.2c of this Lease. This payment is subject to the due date provided in this Lease for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge

or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

**SECTION 4: ASSIGNMENT; ENCUMBRANCE; SUBLETTING; ADDITIONAL
CONSIDERATION TO CITY**

- 4.1. Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this Lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this Lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2. Financing and Encumbrance. LESSEE shall have the right at any time and from time to time to subject this Lease, its leasehold estate and any or all improvements thereon to a mortgage or deed of trust of an "Institutional Lender" (as defined below) as security for a loan or other obligations of LESSEE, provided that, prior to completion of the improvements contemplated by the Development Plan, the proceeds of any financing or refinancing shall be used exclusively for the development and construction of such improvements on the premises. After the completion of such development, LESSEE shall have the right without CITY'S consent to refinance its leasehold estate and any and all improvements thereon from time-to-time, provided that the indebtedness secured by LESSEE'S estate hereunder, shall not exceed eighty percent (80%) of LESSEE'S estate as appraised in connection with any such loan. After the first twenty (20) years of the term of this Lease, the lessee may subject its leasehold estate and any improvements thereon to a mortgage or deed of trust in connection with a refinancing provided that the eighty percent (80%) requirement stated above is met and provided further that the lessee shall pay CITY two percent (2%) of the net proceeds of any such refinancing. For purposes of calculating the payment to CITY, net proceeds shall be determined as the total loan proceeds minus the following:
- i) any prior obligations against LESSEE'S interest in the leased premises and the improvements thereon, paid from the proceeds of the refinancing; and
 - ii) any financing costs incurred in connection with the refinancing, including, but not limited to, brokerage fees, fees paid to the lender, attorneys' fees, title and escrow costs; and

- iii) any proceeds from such refinancing expended in connection with improvements to the leased premises, including the purchase of any items of furniture, fixtures or equipment for the hotel with a usable life in excess of three (3) years as determined in accordance with hotel industry standards; and
- iv) the original equity of LESSEE, its successors or assigns (defined for the purposes of this paragraph as the initial equity of LESSEE, or the then current lessee under this Lease computed from the date of contribution without addition of any interest thereon or reduction due to cash flow from operations) unless such equity has previously been recaptured in connection with any prior refinancing of the leased premises; and
- v) any outstanding hotel operating deficits (other than from depreciation) incurred from the Commencement Date of the Lease, as that term is generally defined in the hotel industry, without interest thereon and without reduction for operating profits.

As an example of the application of the above formula, if, after the 20th lease year LESSEE refinances for Eighty Million Dollars (\$80,000,000) and if the net proceeds after deducting the amount specified above are Twenty Million Dollars (\$20,000,000), CITY would be paid Two Percent (2%) of the net proceeds, i.e., Four Hundred Thousand Dollars (\$400,000). If LESSEE transfers its interest in the premises to a new owner who pays LESSEE Ten Million Dollars (\$10,000,000) as consideration for the transfer, the new owner would be entitled to deduct said payment as its initial equity from the total amount of any subsequent refinancing. For instance, if the new owner refinances for One Hundred Million Dollars (\$100,000,000) paying existing encumbrances of Eighty Million Dollars (\$80,000,000), the new owner's initial equity of Ten Million Dollars (\$10,000,000) would then be deducted from the total in order to arrive at the net proceeds (assuming there was no other deduction). Therefore, under the last example CITY would be entitled to Two Percent (2%) of the resulting Ten Million Dollars (\$10,000,000) net proceeds, or Two Hundred Thousand Dollars (\$200,000).

LESSEE shall deliver to CITY such advance information as is required to verify compliance with this provision.

- 4.3. Institutional Lender. "Institutional Lender" shall mean any insurance company, domestic or foreign bank, trust company

or federally or state chartered savings and loan association, mortgage banker, credit union, pension, profit or retirement fund or trust, real estate investment trust, governmental agency or fund, or other domestic or foreign financing or lending institution whose loans on real estate or with respect thereto are regulated by state or federal law of the United States. Provided the City Manager does not reasonably object to such entity because of poor or questionable business or general reputation, "Institutional Lender" also includes the following entities: (i) any domestic or foreign institution engaged in making loans secured by real property having a net worth of more than Twenty-Five Million Dollars (\$25,000,000) (adjusted to reflect any increases in the Consumer Price Index for San Diego County, All Items, For Urban Wage Earners and Clerical Workers (1967=100), from the date of this Lease) and (ii) any corporation which is the wholly owned subsidiary of a domestic or foreign institution meeting such net worth criteria and such subsidiary is engaged in making loans secured by real property in the United States.

- 4.4. Assurance to Lender. If LESSEE shall subject the leasehold under this Lease to one or more deeds of trust to secure a loan permitted hereunder, and if LESSEE or the beneficiary under such deed of Trust ("Leasehold Beneficiary") shall, within thirty (30) days of its execution, send to CITY a true copy thereof, together with written notice specifying the name and address of the Leasehold Beneficiary and the pertinent recording information with respect to such deed of trust, CITY agrees that so long as any such leasehold deed of trust shall remain unsatisfied of record or until notice of satisfaction is given by the Leasehold Beneficiary to CITY, the following provisions shall apply:
- a. There shall be no cancellation, surrender or modification of this Lease by joint action of CITY and LESSEE without the prior consent in writing of the Leasehold Beneficiary.
 - b. CITY shall, upon serving LESSEE with any notice of default, simultaneously serve a copy of such notice upon the Leasehold Beneficiary. Notice of LESSEE'S default and all the notices by LESSEE to a Leasehold Beneficiary shall be given by registered or certified mail, return receipt requested, addressed to the Leasehold Beneficiary at the address last designated in writing to CITY by the Leasehold Beneficiary or LESSEE. The Leasehold Beneficiary, upon serving LESSEE with a notice of default under the provisions of any leasehold deed of trust, shall simultaneously serve a copy of such notice of default upon CITY, addressed to CITY at the address last designated in writing to the Leasehold Beneficiary by CITY.

- c. The Leasehold Beneficiary shall thereupon have the right, within thirty (30) days after the grace period available to LESSEE, to remedy or cause to be remedied the defaults complained of, whether it consists of the failure to pay rent or the failure to perform any other obligation, and CITY shall accept such performance by or at the instigation of such Leasehold Beneficiary as if the same had been done by LESSEE.
- d. In case of a default by LESSEE in the payment of money required to be paid under this Lease, CITY shall take no action to effect a termination of this Lease because of such default unless it has continued beyond thirty (30) days after expiration of LESSEE'S cure period. Nothing contained in this Section 4.4d or Section 4.4e shall require the Leasehold Beneficiary to cure or commence to cure any default consisting of LESSEE'S failure to satisfy and discharge any lien, charge or encumbrance against LESSEE'S interest in this Lease or the premises which is junior in priority to the lien of the deed of trust held by such Leasehold Beneficiary.
- e. In the case of any other default other than a monetary default by LESSEE, CITY shall take no action to effect a termination of this Lease by reason thereof unless such default has continued beyond the grace period available to LESSEE for curing said default, and then only after CITY shall have given Leasehold Beneficiary thirty (30) days after the expiration of LESSEE'S grace period for curing such default to do the following (provided that such Leasehold Beneficiary shall have paid, and shall continue to pay, to CITY all minimum rent and percentage rent, if Leasehold Beneficiary or a receiver is in possession of the premises, and otherwise complies with all other terms and conditions of this Lease except those requiring possession), to wit:
 - (1) Commence and diligently proceed to cure such default, if such default is susceptible of being cured by the Leasehold Beneficiary without the Leasehold Beneficiary obtaining possession of the premises; or
 - (2) Commence and diligently proceed to obtain possession of the premises (including possession by a receiver) and to cure such default in the case of a default which is susceptible of being cured when the Leasehold Beneficiary has obtained possession thereof; or
 - (3) Institute foreclosure proceedings within thirty (30) days and thereafter to complete such foreclosure proceedings or otherwise acquire LESSEE'S interest under this Lease with reasonable and continuous diligence, unless precluded from doing so by circumstances beyond the reasonable control of the Leasehold Beneficiary,

such as a stay of proceedings or an injunction granted by a court. A Leasehold Beneficiary shall not be required to continue such possession or continue such foreclosure proceedings if the default which prompted the service of such a notice has been cured.

- f. As long as there is a Leasehold Beneficiary, neither the bankruptcy nor the insolvency of LESSEE shall operate or permit CITY to terminate this Lease as long as all minimum rent and all charges payable by LESSEE hereunder continue to be paid in accordance with the terms of this Lease. During the period that a Leasehold Beneficiary shall be in possession of the premises, the Leasehold Beneficiary shall pay, or cause to be paid, all minimum rent and all percentage rent, and all charges payable to LESSEE hereunder.
- g. Any sale of this Lease and the leasehold estate in any proceedings for the foreclosure of any leasehold deed of trust, or the assignment or transfer of this Lease and the leasehold estate in lieu of the foreclosure of any leasehold deed of trust shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created, however, such transferee must be in good standing and of good general reputation in its business community, trade or industry.
- h. Following the acquisition of LESSEE'S leasehold estate by the Leasehold Beneficiary or its designee, either as a result of the foreclosure or acceptance of an assignment in lieu of foreclosure, the Leasehold Beneficiary or party acquiring title to the leasehold estate shall, as promptly as possible, commence the cure of all defaults hereunder to be cured and thereafter diligently process such cure to completion. Nothing herein contained shall require Leasehold Beneficiary, or its successor in interest, to cure any default of LESSEE referred to in Section 4.12a (2)-(4), and CITY'S right to effect a termination of this Lease based upon such default shall be deemed waived following the acquisition of LESSEE'S leasehold estate by the Leasehold Beneficiary or its designees.
- i. If this Lease shall terminate for any reason or be rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, to the extent permitted by applicable law, either Leasehold Beneficiary, or a person designated by such Leasehold Beneficiary, shall have the right, exercisable by notice to CITY within thirty (30) days after the effective date of such termination, to enter into a new lease of the premises with CITY. The term of the new lease shall begin on the date of the execution of the new lease and shall continue for the remainder of the term. The new lease shall otherwise contain the same terms and conditions

as those set forth herein, except for requirements which are no longer applicable or have already been performed. The new lease shall require the Lessee thereunder promptly to commence and diligently proceed to remedy all defaults on the part of LESSEE hereunder to the extent susceptible of being remedied. At the time of execution and delivery of the new lease: (1) the Leasehold Beneficiary shall have remedied all defaults on the part of LESSEE that are susceptible of being remedied by the payment of money required under the terms of this Lease, including loss of rent from date of termination to date of commencement of new lease; (2) the Leasehold Beneficiary shall have paid or caused to be paid to CITY all reasonable expenses, including reasonable attorneys' fees, which CITY shall have incurred by reason of the termination of this Lease and the preparation, execution and delivery of the new lease and which have not otherwise been received by CITY from LESSEE or other party in interest under LESSEE. The provisions of this Section 4.4(i) shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 4.4(i) were a separate and independent contract among CITY, LESSEE and each Leasehold Beneficiary.

- j. In the event of a default by LESSEE and LESSEE'S failure to cure such default within the grace period available to LESSEE, the Leasehold Beneficiary shall, within thirty (30) days after the exercise of each of the rights granted to the Leasehold Beneficiary pursuant to Sections 4.4(e), 4.4(e)(1), 4.4(e)(2) and 4.4(i) (collectively the "Leasehold Beneficiary Rights") and, as a condition for the perfection of such rights, notify CITY of the exercise of any such rights. Within thirty (30) days following CITY'S receipt of the Leasehold Beneficiary's notice, CITY may request the Leasehold Beneficiary to submit to CITY an itemized written statement, certified by an officer of Leasehold Beneficiary, of all sums then owing to Leasehold Beneficiary secured by the leasehold deed of trust. A copy of CITY'S request shall be sent simultaneously to LESSEE. CITY shall have, at any time no earlier than thirty (30) and no later than sixty (60) days after delivery of each such certified statements, the option to purchase the interest of the Leasehold Beneficiary in the leasehold by paying to the Leasehold Beneficiary all sums owing on the date of purchase that are secured by the leasehold deed of trust, and upon payment of such sums all rights of the Leasehold Beneficiary under Section 4.4 of this Lease shall cease and terminate and CITY shall thereupon have the right to terminate this Lease or pursue any other remedy provided herein, as if there were no Leasehold Beneficiary. The failure of CITY to exercise the option granted to CITY under this Section 4.4(j) with respect to the exercise by the Leasehold Beneficiary of any of Leasehold Beneficiary's rights shall not preclude CITY from exercising

such option with respect to any subsequent exercise of any such rights.

- k. If two (2) of more Leasehold Beneficiaries each exercise their rights hereunder and there is conflict which renders it impossible to comply with all such requests, the Leasehold Beneficiary whose Leasehold deed of trust would be senior in priority if there were a foreclosure shall prevail. CITY shall be entitled to rely on a mortgage title insurance policy issued by a title insurer licensed to do business in California for determining such priority and shall incur no liability of any kind whatsoever to LESSEE or to any Leasehold Beneficiary because of such reliance.
- l. No Leasehold Beneficiary shall become personally liable for the performance or observance of any covenants to be performed by LESSEE unless and until the Leasehold Beneficiary becomes the owner of LESSEE'S interest hereunder upon the exercise of any remedy provided for in the Leasehold deed of trust or unless and until the Leasehold Beneficiary enters into a new lease with LESSEE pursuant to Section 4.4(i). In either event, upon the assignment of the leasehold estate by the Leasehold Beneficiary, such assignment shall have the same effect as if it were an assignment to a Qualified Assignee pursuant to Section 4.5.
- m. CITY agrees that the name of the Leasehold Beneficiary may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by LESSEE hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold deed of trust or collateral document shall so provide.
- n. CITY agrees promptly after submission to execute, acknowledge and deliver any agreements modifying this Lease requested by any Leasehold Beneficiary, provided that such modification does not decrease LESSEE'S obligations or decrease CITY'S rights pursuant to this Lease, or make any substantive change to the lease terms.
- o. If the proceeds from any insurance policies or arising from a condemnation are to be held by any Leasehold Beneficiary and distributed pursuant to the provisions of this Lease, the Leasehold Beneficiary may reserve its rights to apply to the deed of trust debt all, or any part of, such proceeds which are not required for the repair and restoration of the premises.
- p. The Leasehold Beneficiary shall be given notice of any arbitration proceedings (other than those respecting percentage rental adjustments) by the parties hereto, and shall have the right to intervene therein and be made a party to such

proceedings, and the parties hereto do hereby consent to such intervention. In the event that the Leasehold Beneficiary shall not elect to intervene or become a party to such proceedings, the Leasehold Beneficiary shall receive notice of and a copy of any award or decision made in said arbitration proceedings.

- 4.5. LESSEE'S Right to Assign. So long as the premises continue to be operated by competent management in accordance with Section 1.7, and the Improvements contemplated by the Development Plan have been completed, LESSEE shall have the right to assign or otherwise transfer LESSEE'S interest in this Lease and the estate created by this Lease with the City Manager's prior written consent, not unreasonably withheld.

CITY'S consent shall not be withheld if LESSEE'S proposed assignee is a Qualified Assignee. A "Qualified Assignee" for the purpose of this Lease is defined to mean an assignee, including but not limited to a Successor, whose net worth as of the date of the assignment is not less than LESSEE'S net worth as of the date of this Lease and be in good standing and of good general reputation within their respective business community, trade or industry.

- 4.6. Net Worth. For the purposes of Section 4.5, "net worth" shall mean the amount by which the total assets shall exceed the total of all liabilities, as determined by an independent certified public accountant in accordance with generally accepted accounting principles.

- 4.7. Successor. For the purposes of Section 4.5, "Successor" shall mean any entity in which: a) The Sheraton Corporation ("Sheraton"), or a surviving corporation in connection with a corporate reorganization of Sheraton by merger or consolidation, directly or indirectly owns a ten percent (10%) or greater interest; or b) North American Taisei Corporation ("Taisei"), or a surviving corporation in connection with a corporate reorganization of Taisei by merger or consolidation, directly or indirectly owns a fifty percent (50%) or greater interest.

- 4.8. Conditions Precedent to Consent and Release. Subject to Section 4.9, upon LESSEE'S satisfaction of the following conditions precedent, as applicable, CITY shall provide its consent to an assignment to a Qualified Assignee or other assignee and, effective upon such assignment, LESSEE shall be released from all further obligations and liability under this Lease after an assignment to a Qualified Assignee or other assignee consented to by the City Manager:

- a. As to Qualified Assignees, LESSEE shall give CITY at least thirty (30) days prior written notice of the proposed assignment, with appropriate documentation which evidences that the proposed assignee is a Qualified Assignee.
 - b. As regards an assignment to other than a Qualified Assignee, LESSEE shall deliver such information regarding the assignee's net worth, financial strength and general business reputation as City Manager reasonably requests and CITY shall either reasonably approve or disapprove of the same within thirty (30) days of its receipt of such information. Such information shall be deemed approved if CITY'S written disapproval of the same is not received by LESSEE within such time. City Manager shall not unreasonably withhold or delay informing LESSEE of the specific information which must be reviewed in connection with CITY'S consideration of such assignee.
 - c. The proposed assignee shall, in recordable form, expressly assume all the covenants and conditions of this Lease.
 - d. No outstanding uncured notice of default exists against LESSEE hereunder as of the effective date of the assignment.
- 4.9. Arbitration In Event of Disagreement on Qualified Assignee Status or CITY'S Refusal to Consent. Prior to the date thirty (30) days after the time LESSEE has complied with the requirements of section 4.8a, CITY may give notice to LESSEE of a valid objection that the proposed assignee is not a Qualified Assignee or, as regards other assignees, that such proposed assignee does not meet the requirements of this Lease with respect to net worth, competent management and general business reputation. CITY'S failure to give notice within that time shall constitute a waiver of objection to the assignment and a release of LESSEE. Promptly after CITY gives notice of objection, unless LESSEE yields to CITY'S objection, the issue shall be arbitrated in accordance with the rules of the American Arbitration Association. If the arbitration awarded is in favor of LESSEE, the assignment shall be effective as if CITY had not objected. If the award is in favor of CITY, LESSEE shall rescind the assignment.
- 4.10. LESSEE'S Non-liability After Assignment. On any assignment made in accordance with the provisions and conditions of this Lease, LESSEE shall have no further obligation under this Lease, and, as between CITY and LESSEE, LESSEE shall be considered to have assigned to assignee all claims against CITY arising under this Lease, unless LESSEE shall have given CITY written notice to CITY to the contrary. Nothing herein contained shall be construed to release LESSEE from any ob-

ligation to be performed by LESSEE before the effective date of the assignment.

- 4.11. LESSEE'S Right to Sublet. Provided (i) LESSEE has given CITY prior written notice of a proposed sublease (ii) such sublease has a term less than five (5) years (including options) and (iii) such sublease relates to a shop, restaurant, recreational or parking facility which is a part of the hotel but not to room rentals, LESSEE shall have the right to sublet portions of the premises and to assign, extend or renew any such sublease without any prior consent unless as a result of such renewal or extension the total term of such sublease exceeds five (5) years. Any other sublease requires the City Manager's prior written consent which consent will not be unreasonably withheld. All sublessees must be in good standing and of good general reputation within their respective business community, trade or industry and all subleases must, by their terms, be subject to the terms and provisions of this Lease.

4.12. Defaults and Remedies.

- a. Default. A default under this Lease shall occur in the event that:
- (1) LESSEE shall default in the performance of any covenant or condition required by this Lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue such cure to completion; or
 - (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
 - (3) LESSEE shall be adjudicated a bankrupt; or
 - (4) LESSEE shall make a general assignment for the benefit of creditors;
- b. Remedies. If any default by LESSEE shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default under the applicable provision of this Lease, CITY has the following remedies in addition to all other rights and remedies provided by law or equity, to which Landlord may resort cumulatively or in the alternative:

- (1) Re-entry. CITY may at CITY'S sole election re-enter the premises, and without terminating this Lease, at any time and from time to time relet and/or operate the premises and improvements, subject to the competent management standard of Section 1.7, for the account and in the name of LESSEE or otherwise. CITY shall competently operate the hotel or cause the hotel to be competently operated and shall apply all rents and net operating profits from reletting and operation of the premises to the accrued obligations of LESSEE under this Lease after deducting CITY'S reasonable operating expenses. Any reletting may be for the remainder of the term or for a longer or shorter period. CITY may execute subleases in LESSEE'S name and shall be entitled to all rents and rent operating profits from the use, operation, or occupancy of the premises or improvements or both. LESSEE shall nevertheless pay to CITY on the due dates specified in this Lease the equivalent of all sums required of LESSEE under this Lease, plus CITY'S expenses, less the avails of any operation of the premises by CITY or any reletting or attornment to which LESSEE is entitled. No act by or on behalf of CITY under this provision shall constitute a termination of this Lease unless CITY gives LESSEE notice of termination.
- (2) Termination. CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.12a.(1) Default and Remedies, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.
- (3) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (4) CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or

to pay the costs of correction performed by or at the direction of CITY.

- (5) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated lessee a new lessee reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

- 4.13. Eminent Domain. In the event the premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then both CITY and LESSEE may participate in such action or proceeding and the interests of CITY and LESSEE (or Leasehold

Beneficiary), in the aware and the effect of the taking upon this Lease shall be as follows:

- a. Partial Taking. In the event of such taking of only a part of the premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY and LESSEE for the conduct thereon of the operations permitted hereunder, this Lease shall terminate and end as to the portion of the premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the premises not so taken and the minimum rent shall be equitably abated.
- b. Substantial Taking. In the event of the taking of only a part of the premises, leaving the remainder of premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable in the opinion of LESSEE for the conduct thereon of the operations permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.
- c. Total Taking. In the event the entire premises are taken, this Lease and all of the rights and obligations thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
- d. Apportionment, Distribution of Award for Total or Substantial Taking. On a total or substantial taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be paid to CITY to be distributed and disbursed in the following order of priority:
 - (1) First, all real and personal property taxes constituting a lien on LESSEE'S interest in the premises and/or improvements thereon.
 - (2) Second, the balance due under any note and mortgage encumbering LESSEE'S interest in the premises and/or any improvements thereon.
 - (3) Third, to CITY, a sum equal to the value of the land taken (as opposed to the Improvements thereon) comprising the Premises, valued as a unimproved land, subject to this Lease.
 - (4) Fourth, to CITY, any expenses or disbursements reasonably paid or incurred by or on behalf of CITY for or in connection with the condemnation proceedings.

- (5) Fifth, to LESSEE, any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of LESSEE for or in connection with the condemnation proceedings.
 - (6) Sixth, to CITY, the value of the reversionary interest in the Improvements.
 - (7) Seventh, to LESSEE, the balance of the award.
- e. Apportionment, Distribution of Award for Partial Taking. On a partial taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be paid to CITY and shall be distributed and disbursed in the following order or priority:
- (1) First, to the cost of restoring any improvements located on the premises.
 - (2) Second, any sum due under any note and mortgage encumbering LESSEE'S interest in the portion of the premises and/or any improvements thereon, as taken.
 - (3) Third, to CITY, a sum equal to the value of the land taken (as opposed to the improvements thereon) valued as unimproved land subject to this Lease.
 - (4) Fourth, to CITY, the value of the reversionary interest in the improvements taken.
 - (5) Fifth, to CITY, any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of CITY for or in connection with the condemnation proceedings.
 - (6) Sixth, to LESSEE, any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of LESSEE for or in connection with the condemnation proceedings.
 - (7) Seventh, to LESSEE, any residue.
- f. Transfer of Rights. Notwithstanding the foregoing provisions of this Section 4.1, CITY may, in its discretion and without affecting the validity and existence of this Lease, transfer its interests in the premises in lieu of condemnation to any authority, other than to CITY itself, entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have hereunder to recover from the said authority the fair market value of LESSEE'S interest in accordance with the provisions of this Lease.

SECTION 5: INSURANCE RISKS

- 5.1. Indemnity. LESSEE shall at all times assume the defense of, relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from LESSEE'S use or operation of the premises, including but not limited to expenses incurred in legal actions due to death, injury, or damage that may be caused directly or indirectly by:
- a. any unsafe or defective condition in or on the premises within LESSEE'S control which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by LESSEE;
 - b. any operation, use, or occupation conducted on the premises by LESSEE and within LESSEE'S control;
 - c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees in the repair, maintenance or operation of the hotel; or
 - d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions;
- 5.2. Insurance. Subject to the terms of this Section 5, LESSEE shall take out and maintain at all times during the term of this Lease the following insurance at its sole expense:
- a. A blanket or umbrella public liability and property damage insurance policy in the amount of not less than One Hundred Million Dollars (\$100,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by LESSEE or by authorized representatives or guests, invitees, licensees, sublessees, servants or employees of LESSEE on or in connection with the use or operation of the premises.
 - b. Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.2 hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provisions reasonably satisfactory to CITY has been made in

advance in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises. This section 5.2-b shall be subject to the terms of Section 5.3.

- 5.3. Conditions. All insurance policies which LESSEE is required by this Lease to obtain will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without thirty (30) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. At least a Five Million Dollar (\$5,000,000) public liability and property damage policy shall be in effect upon commencement of the lease term. The public liability and property damage policy referred to in section 5.2 above shall be in effect upon completion of construction. "Course of construction fire insurance" with one hundred percent (100%) replacement cost coverage shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. All other insurance shall be in force on the first day of the lease term. CITY'S insurance coverage requirements shall at all times be designed to assure protection from and against the kind and extent of risk existing on the premises but shall not exceed the types and amounts of insurance which are generally available at commercially reasonable rates. A copy of the insurance policy will remain on file with CITY from the time required to be in effect and during the entire remaining term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Lease. LESSEE may provide blanket or umbrella insurance covering the premises and any other location or locations.
- 5.4. Modification. CITY, in its reasonable discretion, may require the revision of amounts and coverages of such policies obtained by LESSEE hereunder (if available at commercially reasonable rates) at any time during the term by giving LESSEE sixty (60) days' prior written notice. LESSEE also agrees to obtain any additional insurance reasonably required by CITY for new improvements, in order to meet the requirements of this Lease.
- 5.5. Accident Reports. LESSEE shall report to the City Manager any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses or any witnesses and other pertinent information.

5.6. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY. Notwithstanding the preceding provisions of this Subsection 5.6, if LESSEE fails or refuses to take out or maintain insurance as required in this Lease, or fails to provide the proof of insurance, CITY has the right to declare this Lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

5.7. CITY Indemnity; Driving Range. CITY agrees to indemnify and save LESSEE and its agents, employees and each partner of LESSEE and each officer, director, agent or employee of each partner of LESSEE harmless from any and all liability claims, damages or injuries to any person, including injury to LESSEE or its employees, and all expenses of investigating and defending against same alleged to have been caused by or related to golf balls hit or otherwise ejected from the replacement driving range to be constructed between North Torrey Pines Road and the 18th hole (of the North Course) of the Torrey Pines Golf Course.

CITY shall require the operator of the driving range to provide adequate supervision of the use of the driving range to protect against misconduct or malicious conduct thereon, and to at all times maintain the fences around the driving range in good condition and at their designed heights.

5.8. Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other casualty causing damage in excess of Twenty-five Thousand Dollars (\$25,000) that occurs on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY.

5.9. Repair and Restoration. If all or any part of the improvements situated on the premises from time to time are damaged or destroyed by fire or any other hazard, LESSEE shall, except as provided in Section 5.10 below, at no cost or expense to City, promptly and diligently repair, rebuild,

replace and restore the same to the extent of insurance proceeds actually recovered in the event of an insured casualty as required to remedy all such damage or destruction. The proceeds from the insurance policy, if any, maintained hereunder shall be deemed to be held in trust to be used solely for said uses and purposes.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within sixty (60) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY shall determine an equitable deduction in the Annual Minimum Rent requirement for such reasonable period or periods that said premises are untenable by reason of such damage.

- 5.10. Uninsured Damage or Destruction. In the event the improvements situated on the Premises from time to time are damaged or destroyed by a hazard which LESSEE is not required to insure against by the terms of this Lease and if the cost of repairing such damage or destruction is more than ten percent (10%) of the full replacement value of the improvements situated on the premises at the time of such hazard, LESSEE shall be relieved of the obligation to repair, restore or reconstruct such improvements but may, at its election, perform such repair, restoration or reconstruction. In those cases where LESSEE has no obligation under this Lease to repair or restore and LESSEE has not elected to restore, LESSEE may terminate this Lease by:
- a. Giving CITY notice of the damage or destruction promptly but not later than thirty (30) days after the event, detailing facts that qualify the casualty under this provision, and stating LESSEE'S intent to terminate.
 - b. Curing or causing any monetary default to be cured within the applicable grace period.
 - c. Continuing to make all payments when due as required by the provisions of this Lease up until termination.
 - d. Paying in full any outstanding indebtedness incurred by LESSEE and secured by an encumbrance or encumbrances on the leasehold.
 - e. Delivering possession of the premises to CITY and quitclaiming all right, title and interest in the premises if, and promptly after, ceasing to do business on the premises.
 - f. Causing to be discharged all liens and encumbrances resulting from any act or omission of LESSEE.

- g. Removing, if CITY so requires, all fixtures and improvements as specified in Section 6.9 relating to LESSEE'S duty to remove fixtures and improvements upon termination or expiration of the lease term.
- h. Removing, at LESSEE'S costs, all damaged property from the leased premises.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1. Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. LESSEE further acknowledges that the premises are in the condition called for by this Lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.2. Entry of Inspection. CITY reserves and shall always have the right to enter the public portions of said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. Entry by CITY into non-public areas shall occur (1) during the normal business hours, (2) upon 24 hours' notice and (3) accompanied by an authorized representative of LESSEE. Such entry shall not unreasonably interfere with the operation of the premises and shall be conducted in such manner as to cause minimal disruption. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

- 6.3. Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 6.11 Development Plan, hereof, and with all applicable laws. The parties acknowledge that a security fence runs along and near the westerly boundary of the portion of the premises occupied by the hotel and that such fence crosses such boundary. Notwithstanding the foregoing, the parties agree that: CITY and its agents, employees and invitees will have access to the portion of the premises occupied by the golf course on the golf course side of the security fence and CITY shall have the exclusive obligation to maintain such area; and LESSEE and its agents, employees and invitees will have access and the exclusive obligation to maintain the portion of the golf course property on the hotel side of the security fence. The parties agree to indemnify and hold each other and their respective agents, employees and officers harmless from any cost, damage, liability, claims or expenses, and causes of action, arising from any activity conducted by any person on such party's side of the security fence.
- 6.4. Improvements/Alterations. No improvements, structures, or installations other than those contemplated by the General Development Plan shall be constructed on the premises, and the premises may not be altered by LESSEE, except as specified in this paragraph 6.4, without prior written approval by the City Manager. Further, LESSEE agrees that "major structural or architectural design alterations" to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld, subject to LESSEE'S compliance with all laws and ordinances applicable to such alterations. CITY and LESSEE agree that exterior alterations that do not cause a substantial change in architectural theme and all interior alterations that do not have a material adverse impact (except during the course of making such alteration) on gross income generated from the premises or which do not reduce the number of rooms available to hotel guests by more than ten percent (10%) from the initial number of rooms shall be deemed not to be "major structural or architectural design alterations" within the meaning of the preceding sentence and that such alterations do not require the prior written consent of CITY. LESSEE shall give CITY at least thirty (30) days prior written notice of LESSEE'S intent to commence any material alterations in order to enable CITY to record and/or post a notice of nonresponsibility with respect to such work. This prov-

ision shall not relieve LESSEE of any obligation under this Lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. LESSEE is authorized to and agrees to remove from the premises the existing driving range fencing, the golf cart storage facility, and equipment installed for radio and television broadcasts of golf course events. Such removal will be accomplished in a manner and timetable approved by CITY. CITY shall not be obligated by this Lease to make or assume any expense for any improvements, removals or other alterations.

- 6.5. Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.6. Construction Bond. With respect to any initial construction to be performed in connection with the General Development Plan and any alteration involving the expenditure of more than \$100,000 for hard construction costs, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.7. Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorneys' fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within ten (10) days of such filing either:

- a. Take all actions necessary to record a valid release of lien, or
- b. File with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims at all times of all persons seeking relief under the lien whereupon LESSEE

may contest any such claim and withhold or defer payment or pay under protest without such action constituting an event of default hereunder. In the event a final judgment has been rendered against LESSEE by a court of competent jurisdiction for the foreclosure of any lien arising from such claim and if LESSEE fails to pay such judgment or stay the execution of such judgment by lawful means, CITY shall have recourse to the security for such claim and may pay the same.

6.8. Taxes. From and after the Commencement Date, LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.9. Ownership of Improvements and Personal Property.

- a. All of the improvements constructed on the premises by LESSEE and all additions, alterations and repairs thereto by LESSEE shall be owned by LESSEE and shall be deemed a part of the realty until expiration of the term or sooner termination of this Lease. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. Notwithstanding the foregoing, anytime during the last five (5) years of the lease term, LESSEE may by written notice require CITY to indicate within six (6) months after CITY'S receipt of such written notice whether or not CITY requires LESSEE to remove the improvements, structures and installations on the premises upon expiration of the lease term. The failure

of CITY to indicate within such 6-month time period whether or not LESSEE is to remove the improvements on the expiration of the lease term shall entitle LESSEE to leave the improvements in place at the expiration of the lease term. If LESSEE fails to remove any improvements, structures, and installations within sixty (60) days after expiration or termination of the lease term as directed, LESSEE agrees to pay CITY the full cost of any removal. If LESSEE learns during the last five (5) years of the lease term that it will be required to demolish and remove the improvements, then, notwithstanding anything to the contrary contained in this Lease, LESSEE shall be required to maintain and repair the improvements only to the extent necessary to avoid unsafe or unsanitary conditions and, in the single event of more than \$1,000,000 worth of damage or destruction to the improvements, during the last five (5) years of the lease term, LESSEE may terminate this Lease by written notice to CITY provided the debt of any leasehold mortgage is paid in full; provided, however, any debris resulting from such damage or destruction shall be removed by LESSEE and the premises shall be put in a neat, safe, and sanitary condition.

- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay the Annual Minimum Rent to CITY at the rate in effect immediately prior to said expiration or termination until the removal is complete.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its non-proprietary personal property used in the operation of said premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said property.
- 6.10. Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, litigation challenging the approvals relating to LESSEE'S proposed development of the premises or new legis-

ation with respect to the same or other causes beyond the reasonable control of the party required to perform an act ("Force Majeure Events"), said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, except as expressly set forth above, this provision shall not apply to obligations to pay rental as required pursuant to this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay. Subject to the occurrence of Force Majeure Events, should LESSEE fail to obtain a Building Permit by one (1) year from the Commencement Date or to commence construction of the development within six (6) months after the issuance of the Building Permit, CITY may terminate this Lease by written notice to LESSEE. The City Manager may extend the date for commencement of construction for a period not to exceed three (3) months upon LESSEE'S request in advance of the expiration of said six (6) month period, setting forth reasons acceptable to CITY of why said period should be extended. In no event and despite any Force Majeure Event, shall the City Manager be obligated to extend the commencement date of construction beyond a total period of nine (9) months following the issuance of the Building Permit. Except for delays caused by Force Majeure Events, should LESSEE fail to commence or complete construction in accordance with the schedule of development which is a part of the General Development Plan, it is specifically agreed by LESSEE and CITY that CITY will be entitled (in addition to the minimum rent) to damages in the amount of Five Hundred Dollars (\$500) for every day of failure to meet said schedule of development until completion of development, said amount representing liquidated damages thereof. Except for delays caused by Force Majeure Events, in the event that construction is not completed within thirty (30) months following the date the Building Permit has been issued, CITY may terminate this Lease in which event, LESSEE shall be liable to CITY for all costs and expenses incurred by CITY arising from or related to entering into this Lease.

- 6.11. Approvals and General Development Plan. LESSEE has received approval for its project from the City of San Diego. The approval is subject to certain terms and conditions as outlined in Tentative Map 86-0679, Conditional Use Permit 86-0679 and Planned Commercial Development Permit 86-0679. LESSEE covenants and agrees to abide by the terms and conditions of the aforementioned map and permits. If LESSEE breaches any of the terms and conditions of the above map and/or permits, such event will be cause for a default of this Lease. LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the San Diego Coast

Regional Commission or other such authorized State body for any necessary coastal development permit authorizing the construction of improvements in the Coastal Zone. LESSEE will proceed with diligence to obtain such permit. LESSEE agrees to develop the leased premises in accordance with the General Development Plan ("General Development Plan") approved by the City Manager, described on Exhibit "C" attached hereto and filed in the Office of the City Clerk as Document No. RR-269077-2 which plan is hereby incorporated by this reference. The General Development Plan consists of plans detailing the improvements which are to be built on the premises and on and adjacent to portions of the golf course. Some of the documents which make up the General Development Plan are available and included in the documents now on file with the City Clerk's office. Other portions of the General Development Plan are not available at this time because the final design of certain improvements have not yet been completed. It is anticipated that prior to LESSEE'S commencement of construction, all plans for improvements described in Exhibit "C" will be available and included in the General Development Plan. Items a, b, c, d, e, and j of Exhibit "C" are now included. Items f, g, h and i, satisfactory to the City Manager, will be included prior to commencement of construction. The City Manager shall act promptly on the approval of any changes to said plan or the detailing of any reasons for its nonapproval. The General Development Plan covers the conceptual architectural design, materials of construction, elevations and colors of all structures, the plot plan of all structures and aboveground improvements, a complete landscaping plan with species and sizes, the uses of facilities, the schedule of development, the estimated construction costs and financing plan. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and documents evidencing any approved changes shall be filed with the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this Lease to termination by CITY.

- 6.12. Limitation of LESSEE'S Liability. From and after the completion of the improvements contemplated by the General Development plan, CITY expressly agrees that so long as LESSEE, or any approved successor or assignee of LESSEE'S interest under this Lease, shall be a corporation, a trust, a partnership, a joint venture, an incorporated association or other form of business entity, the obligations incurred by LESSEE or such successor under this Lease shall not constitute personal obligations of the officers, directors, trustees, partners, joint venturers, members, stockholders, or other principals or representatives thereof.

- 6.13. Facilities Benefit Assessment and Related Assessments. In the event Facilities Benefit Assessment fees or any other fees or assessments (other than fees normally paid or incurred on similar projects for the Building Permit or application fees required to obtain approvals for and construct the Project) are imposed in the University Community Plan Area by the City or County of San Diego or agencies or departments of either jurisdiction in connection with or as a condition of any approvals necessary for the construction of the improvements contemplated by the General Development Plan and such fees exceed Six Hundred Fifty Thousand Dollars (\$650,000), such excess plus simple interest thereon computed at the Bank of America reference rate, per annum, (from the time of payment), shall be credited against LESSEE'S rental obligations next becoming due after the application of any other rent credit and the application of any advance rent under the terms of this Lease. Notwithstanding the foregoing, LESSEE has agreed to fund an amount without a rent credit not to exceed Two Hundred Ninety-seven Thousand Dollars (\$297,000) for modification of the Genesee and North Torrey Pines Road intersection as specified in the conditions to the Tentative Map for the premises. No rent credit shall be allowed for any future fees or assessments imposed by any public agency in connection with modifications of the Project following commencement of operations of the hotel.

FBA
ASSESSMENT
\$726,400

SECTION 7: GENERAL PROVISIONS

7.1. Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
City Administration Building
202 "C" Street, M.S. 95
San Diego, CA 92101-4155

Attention: Property Director

or to any mortgagee, trustee, or beneficiary as applicable at such appropriate address designated in writing by the respective party.

Notices to LESSEE shall not be effective until a copy of such notice, delivered in the same manner as notice to LESSEE, is delivered as follows:

North America Taisei Corporation
444 South Flower Street, Suite 2240
Los Angeles, California 90017

Attention: Mr. Yasuo Sento

and

The Sheraton Corporation
Legal Department
Sixty State Street
Boston, MA 02109

Attention: Richard Braverman

- b. Any party entitled or required to receive notice under this Lease may, by like notice, designate a different address to which notices shall be sent.
- 7.2. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.3. CITY Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.4. Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.5. Equal Opportunity. LESSEE agrees to obtain the written agreement of all persons and entities with which LESSEE has entered into a contract relating to the construction, development or operation of the premises ("Contractors") requiring such Contractor to (1) abide by CITY'S Affirmative Action Program as it exists or is amended, and (2) to obtain the Agreement of all major subcontractors to abide by CITY'S Affirmative Action Program. A copy of the program effective as of the date of this Lease is on file in the City Clerk's

Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Affirmative Action Program each year. LESSEE further agrees to obtain the written agreement of each Contractor requiring such Contractor to (1) abide by the requirements of CITY'S Minority and Women Business Enterprise Program as set forth in Exhibit "E", which is hereby incorporated herein by this reference, and (2) to obtain the agreement of all major subcontractors to abide by the Minority and Women Business Enterprise Program. LESSEE shall use its good faith efforts to enforce both such programs and upon written Notice from CITY of a Contractor's or a subcontractor's violation of either such program, shall cooperate with CITY in enforcing LESSEE'S rights against such Contractor in such manner as to achieve the greatest degree of compliance with such programs as is reasonably possible.

- 7.6. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7. Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.8. Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9. Captions. Section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.
- 7.10. Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

- 7.11. CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or lessees shall include a condition that the contract, agreement or lease shall be subject to termination by CITY if LESSEE or with LESSEE'S knowledge, a contractor of LESSEE, employs an individual who LESSEE either knows or had reason to know has participated (within the twelve months immediately preceding such employment) in his/her capacity as a CITY officer or employee in negotiations with or otherwise has had an influence on the recommendation made to the City Council in connection with the selection of the contractor of LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12. Real Estate Broker's Commission. No broker's commission will be paid by CITY or LESSEE in connection with this Lease.

SECTION 8: SPECIAL PROVISIONS

- 8.1. Additional Improvements and Advance Payment. As additional consideration for entering into this Lease agreement, LESSEE agrees to design and construct, at LESSEE'S expense, a replacement driving range on a location identified by CITY and the following and only the following facility improvements:
- a. A golf cart storage facility with capacity for 150 carts, on a site mutually determined by City and Sheraton.
 - b. Any golf course modifications required incident to construction of the replacement driving range. The scope of such modifications will not exceed those required by the replacement driving range location designated by City Council Resolution R-266635 of September 22, 1986.
 - c. Modifications to the golf parking lot, as mutually agreed to by CITY and LESSEE to increase the number of spaces by a minimum of fifty (50 additional spaces).
 - d. Replacement practice putting greens, as necessary due to the relocation of other golf support facilities, not to ex-

ceed two putting greens in the vicinity of the new pro shop, resulting in a total of two.

- e. Design and construction of a pro shop and starter facility in substantial conformance with the conceptual design included in Mitigated Negative Declaration (EQD No. 86-0121) ratified by City Council Resolution 266636 of September 22, 1986.
- f. The reinstallation of equipment for radio and television coverage of golf course events.
- g. Design and construction of a pedestrian pathway northerly of the premises, within and exiting the North Torrey Pines Road right-of-way, to provide access to the southern entry to Torrey Pines State Park.

LESSEE agrees to undertake the design and scheduling of the replacement driving range and the aforementioned facility improvements, and the reinstallation of equipment for radio and television coverage in close coordination with CITY and the golf pro shop operator and to satisfy all requirements for construction and grading permits. The design and scheduling of these improvements are subject to CITY approval, however, as a condition to LESSEE'S obligations in this Section, CITY shall deliver possession of the property upon which the replacement driving range will be constructed within fifteen (15) days of written notice from LESSEE. LESSEE will advise CITY of estimated and actual costs for each improvement. Costs to be incurred for the design and construction of the pro shop and starter facility require prior approval by the City Manager. Notwithstanding anything to the contrary herein, the total cost LESSEE will fund for the improvements described in Subsection 8.1e above shall not exceed Five Hundred Thousand Dollars (\$500,000), and any additional cost for such improvements will be funded by CITY.

- 8.2. Rent Credits. CITY'S purchase of the Wansa Enterprises, Inc., leasehold will be funded in part by CITY. After the total purchase price for the Wansa leasehold has been paid by CITY, and after initial lease consideration payments by LESSEE equals the amount paid Wansa Enterprises, Inc., by CITY, LESSEE will be entitled to offset the rents payable next coming due under this Lease against the Five Hundred Thousand Dollars (\$500,000) advance rental payment. Upon LESSEE'S reasonable request, CITY shall provide an accounting to LESSEE of the payments to Wansa Enterprises, Inc., from CITY. After LESSEE has recouped the \$500,000 advance, LESSEE will be entitled to recoup costs in the same manner (including simple interest computed at the Bank of America reference rate) incurred in constructing the golf pro shop and starter

facility. In view of the fact that the golf pro shop and starter facility are to be constructed over the golf cart storage facility, the additional cost of special design features of the golf storage facility necessary to support the pro shop and starter facility and any additional excavation needed to accommodate the pro shop and starter facility and any additional cost of the site preparation for the pro shop and starter facility are to be considered costs of the golf pro shop and starter facility for purposes of such cost recovery. Said costs shall be detailed, documented, and verified to the reasonable satisfaction of the City Manager. The intent of the foregoing is to (1) provide rent credits only for the additional, or incremental, costs of adding the pro shop and starter facility as a second story of the golf cart storage facility, and (2) provide that LESSEE shall bear only the full cost of the golf cart storage facility assuming no second story thereof for the golf pro shop and starter facility.

SECTION 9: DEVELOPMENT AGREEMENT

9.1. Development Agreement.

- a. It is intended and determined that the provisions of this Lease shall constitute covenants which shall run with the premises and the benefits and burdens hereof shall bind and inure to all successors in interest to or assignees of the parties hereto.
- b. CITY agrees that the premises may be developed for hotel purposes as more particularly set forth in Community Plan Amendment No. 86-0679; zoning regulations applicable to the premises as of the date hereof; Planned Commercial Development Permit No. 86-0679; and Conditional Use Permit No. 86-0679 ("Entitlements"). CITY rules, regulations, ordinances, laws, general plans, the specific plan and official policies governing development, density, permitted uses, growth management and environmental considerations which affect the premises shall be those in force and effect upon the execution of this Lease by CITY ("Lease Date").

CITY may, prior to completion of construction of the Project and issuance of a Certificate of Occupancy for the Project ("Completion Date"), apply only such newer, modified rules, regulations, ordinances, laws, general or specific plans, and official policies which are not in conflict with those in effect on the Lease Date ; provided that such application shall not prevent development in accordance with this Section.

- c. Any application, processing and inspection fees, building codes, or construction standards and specifications, now existing or hereafter in existence, shall apply to the development pursuant to this Lease provided that: (i) such fees, standards and specifications are applicable to all applications for construction or building permits for private projects in CITY or apply to all public works within CITY and (ii) their application to the development of the subject property is prospective only as to applications for building and other development permits or approvals of tentative subdivision maps not yet accepted for processing; and (iii) their application shall not prevent development in accordance with this Lease.
- d. CITY hereby agrees that it will accept for processing, review and action all development applications for development permits or other entitlements for the use of the subject Property in accordance with the Entitlements and this Lease and further as follows:
 - (1) CITY will process in an expeditious manner all applications, including but not limited to, applications for the final subdivision maps for recordation, precise plan design, all plan checking, grading permits, utility connection authorizations, building permits, occupancy certificates, bond releases and all other discretionary and ministerial permits and certificates necessary, convenient or appropriate to permit LESSEE to grade, excavate, construct, develop, improve, use, sell and occupy the Premises.
 - (2) Subject to compliance with all applicable codes and completion of construction consistent with design review, CITY shall issue certificates of occupancy for the Project constructed on the Premises in accordance with this Lease.
- e. The City Manager shall cooperate with LESSEE in securing LESSEE all permits which may be required by CITY or any other governmental agency. Each party will cooperate with the other in execution of any documents or instruments required to fulfill the terms of this Lease.
- f. CITY hereby confirms and agrees that prior to the Completion Date any downzoning, growth limit controls, building permit limits, moratoria, limitation on utility services, or other actions having a similar effect which may be adopted by ordinance or resolution or initiative following the date this Lease is executed, shall not be applicable to the premises.

- g. It is specifically understood and agreed to by and between the parties hereto that the Project is a private development; that CITY has no interest in or responsibility for or duty to third parties concerning any of said improvements until such time and only at such time as CITY accepts the same pursuant to the provisions of this lease; that LESSEE shall have full power over and exclusive control of the Project herein described subject only to the limitations and obligations of LESSEE under this Lease; and that the contractual relationship between CITY and LESSEE is that of landlord/-tenant.

CITY acknowledges and agrees that after LESSEE has received all discretionary approvals and permits required by CITY to proceed with LESSEE'S development of the Project on the premises, all other CITY action and permitting is simply ministerial.

SECTION 10: CONDITION SUBSEQUENT

- 10.1. Condition Subsequent. The Sheraton Corporation, one of the general partners of LESSEE, shall have the right, on behalf of LESSEE, to cancel and terminate this Lease upon paying to the CITY a cancellation fee of Twenty-two Thousand Two Hundred Fifty Dollars (\$22,250) and giving written notice to CITY prior to October 1, 1987 of its election to do so in the sole event that it has not, after diligently pursuing the same, entered into a written partnership agreement with North American Taisei on or before September 30, 1987. In the event of such cancellation, The Sheraton Corporation shall make available to CITY any studies, plans and similar documents pertaining to the premises that it has prepared or caused to be prepared.

SECTION 11: SIGNATURES

- 11.1. Counterparts. This Lease Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

11.2. Signature Page.

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date AUG 10 1987

By: [Signature]
Deputy City Manager

TORREY PINES HOTEL ASSOCIATES, a
California General Partnership

By: The Sheraton Corporation,
General Partner

Date _____

By: _____

Its: _____

By: North American Taisei
Corporation, General Partner

By: [Signature]
Toshimitsu Iimura
Its: Sr. Vice President

APPROVED AS TO FORM AND
LEGALITY THIS 14 DAY
OF August, 1987.

JOHN W. WITT, City Attorney

By: [Signature]
Deputy City Attorney

11.2. Signature Page.

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date AUG 10 1987

By: 
Deputy City Manager

TORREY PINES HOTEL ASSOCIATES, a
California General Partnership

By: The Sheraton Corporation,
General Partner

Date AUGUST 7, 1987

By: 

Its: VICE PRESIDENT

By: North American Taisei
Corporation, General Partner

By: _____

Its: _____

APPROVED AS TO FORM AND
LEGALITY THIS _____ DAY
OF _____, 1987.

JOHN W. WITT, City Attorney

By: _____
Deputy City Attorney

122:488EXB.A53

JN: 488

4/14/86

LEGAL DESCRIPTION

(SHERATON HOTEL)

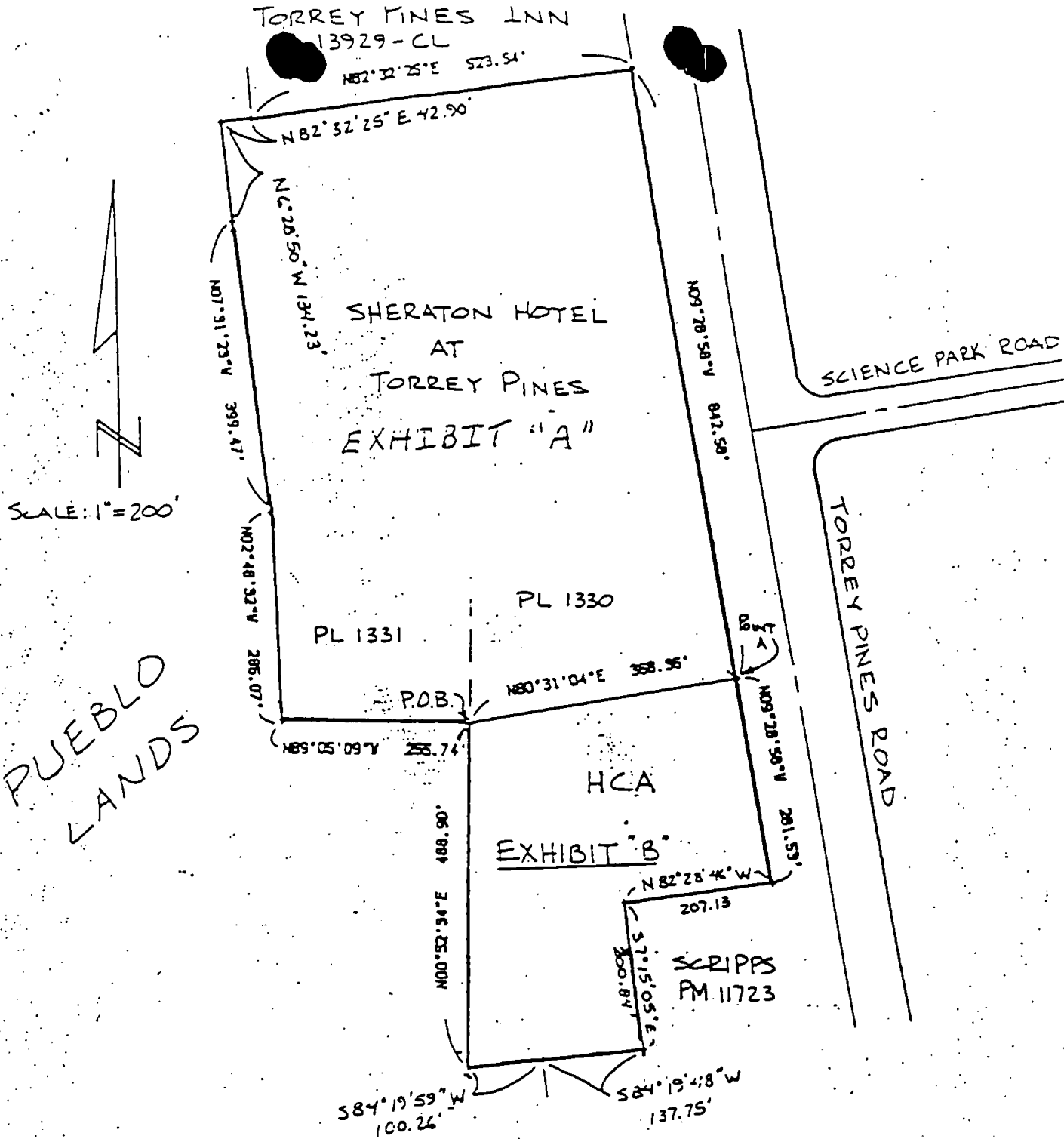
ALL THOSE PORTIONS OF PUEBLO LOTS 1325, 1326, 1330, AND 1331 OF THE PUEBLO LANDS OF SAN DIEGO IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AS MISCELLANEOUS MAP 36, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PUEBLO LOT 1325 WHICH IS THE COMMON CORNER OF PUEBLO LOTS 1325, 1326, 1330 AND 1331; THENCE ALONG THE COMMON LINE OF PUEBLO LOTS 1325 AND 1331 NORTH 89° 05' 90" WEST 255.74 FEET; THENCE LEAVING SAID COMMON LINE NORTH 2° 48' 32" WEST 285.07 FEET THENCE NORTH 7° 31' 23" WEST 399.47 FEET; THENCE NORTH 6° 28' 50" WEST 134.23 FEET TO A POINT THAT BEARS SOUTH 82° 32' 25" WEST 42.90 FEET FROM THE SOUTHWEST CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN LEASE AGREEMENT EXECUTED OCTOBER 2, 1961, FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SAN DIEGO AS DOCUMENT 629873, THE BOUNDARIES OF WHICH ARE SET OUT ON CITY ENGINEER'S DRAWING 13929-CL ON FILE IN THE OFFICE OF THE CITY ENGINEER OF THE CITY OF SAN DIEGO; THENCE NORTH 82° 32' 25" EAST 42.90 FEET TO SAID SOUTHWEST CORNER; THENCE CONTINUING ALONG THE SOUTH LINE OF SAID PROPERTY DESCRIBED

EXHIBIT A

4

IN SAID LEASE AGREEMENT NORTH 82° 32' 25" EAST TO THE SOUTHEAST CORNER OF LAST SAID PROPERTY; SAID POINT ALSO BEING A POINT IN THE WESTERLY RIGHT OF WAY LINE OF TORREY PINES ROAD, AS DEDICATED BY CITY OF SAN DIEGO ORDINANCE 7634 DATED MARCH 24, 1919, THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE SOUTH 9° 28' 56" EAST 842.58 TO POINT "A"; THENCE SOUTH 80° 31' 04" WEST 368.36 FEET TO THE POINT OF BEGINNING.



LEASE LINES

SHERATON HOTEL TORREY PINES

APRIL 10, 1986

Prepared by:

James A. Hutchison & Assoc.
Civil Engineers

24 Allison Ave., La Mesa, CA 92041

EXHIBIT A

*

THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT
IS: A FEE

TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:
THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION

AT THE DATE HEREOF EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS CONTAINED IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. GENERAL AND SPECIAL COUNTY AND CITY TAXES AND SPECIAL ASSESSMENTS, IF ANY, COLLECTED WITH SAID TAXES.

FOR THE FISCAL YEAR : 1987-88
A LIEN NOT YET PAYABLE.

THE LIEN OF SUPPLEMENTAL TAXES, IF ANY, ASSESSED PURSUANT TO THE PROVISIONS OF CHAPTER 3.5 (COMMENCING WITH SECTION 75) OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA.

2. A PIPE LINE, TOGETHER WITH A RIGHT OF WAY WITH RIGHT OF INGRESS AND EGRESS FOR PURPOSES OF OPERATION, AS REFERRED TO IN A LEASE EXECUTED BY THE CITY OF SAN DIEGO, AS LESSOR, TO UNITED STATES OF AMERICA, AS LESSEE. SAID LEASE WAS TO RUN FROM YEAR TO YEAR BUT NOT BEYOND JUNE 30, 1945.

REFERENCE IS HEREBY MADE TO ORDINANCE NO. 1981 NEW SERIES FILED OCTOBER 30, 1940 OF THE CITY OF SAN DIEGO.

SAID PIPE LINE IS OVER THE EAST 20 FEET OF THE WEST 25 FEET OF PUEBLO LOT 1330.

3. AN EASEMENT, AS REFLECTED IN AN INSTRUMENT CREATING OR REAFFIRMING SAID EASEMENT, AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES
IN FAVOR OF : SAN DIEGO GAS & ELECTRIC COMPANY, A CORPORATION
FOR : UNDERGROUND ELECTRIC DUCT SYSTEM
RECORDED : APRIL 23, 1969, RECORDER'S FILE NO. 70461
AFFECTS : UNDERGROUND ELECTRICAL SYSTEM FOR AMERICAN BROADCASTING CO., SAN DIEGO, CALIFORNIA, AND SHOWN ON EXHIBIT "A" ATTACHED TO SAID DOCUMENT

4. AN EASEMENT, AS REFLECTED IN AN INSTRUMENT CREATING OR REAFFIRMING SAID EASEMENT, AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES
IN FAVOR OF : THE CITY OF SAN DIEGO BY RESOLUTION NO. 211783
FOR : WATER LINE
RECORDED : OCTOBER 23, 1974, RECORDER'S FILE NO. 74-283032
AFFECTS : AS FOLLOWS:

EXHIBIT B

THAT PORTION OF PUEBLO LOT 1330 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN THE YEAR 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AS MISCELLANEOUS MAP NO. 36, BEING A STRIP OF LAND 15.00 FEET IN WIDTH, LYING 5.00 FEET NORTHERLY AND 10.00 FEET SOUTHERLY OF, MEASURED AT RIGHT ANGLES TO THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SCIENCE PARK ROAD WITH THE WESTERLY SUBDIVISION BOUNDARY OF TORREY PINES SCIENCE PARK UNIT NO. 1, ACCORDING TO MAP THEREOF NO. 6229 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY; THENCE NORTH 09°30'03" WEST ALONG SAID WESTERLY BOUNDARY 27.80 FEET; THENCE NORTH 09°28'03" WEST, 290.40 FEET; THENCE LEAVING SAID WESTERLY LINE SOUTH 80°31'57" WEST 76.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 80°31'57" WEST, 48.50 FEET TO A POINT OF TERMINUS.

5. THE RIGHTS OF THE PUBLIC TO USE ANY PORTION OF SAID LAND LYING WITHIN NORTH TORREY PINES ROAD OR THE "PROPOSED ROAD" AS SHOWN ON PLAT ATTACHED TO LEASE RECORDED OCTOBER 24, 1961, RECORDER'S FILE NO. 184967.

~~6. AN AGREEMENT TO WHICH REFERENCE IS HEREBY MADE FOR FULL PARTICULARS~~

~~DATED : OCTOBER 4, 1965~~

~~BY AND BETWEEN : WANSA ENTERPRISES, INC., A CALIFORNIA CORPORATION AND THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION~~

~~REGARDING : OPTION AND RIGHT OF ENTRY AGREEMENT~~

~~RECORDED : OCTOBER 4, 1965, RECORDER'S FILE NO. 85-388613~~

~~NOTE: SAID DOCUMENT CONTAINS NO LEGAL DESCRIPTION.~~

~~7. ANY POSSIBLE UNRECORDED LEASEHOLD INTEREST OF THE FOLLOWING 3 COMPANIES AS DISCLOSED BY THE ASSESSORS OFFICE OF SAN DIEGO COUNTY:~~

~~A. WANSA ENTERPRISES, INC.~~

~~B. BILLINGHAM CONSTRUCTION INC.~~

~~C. TORREY PINES INN, INC.~~

8. THE REQUIREMENT THIS COMPANY BE FURNISHED A FULL COPY OF THE LEASE TO BE INSURED AND ANY AMENDMENTS THERETO.

9. THE REQUIREMENT SAID LEASE OR A MEMO THEREOF BE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

10. ANY MATTERS WHICH MAY BE DISCLOSED BY AN INSPECTION OF SAID LAND.

NOTE: THE COUNTY RECORDER'S OFFICE WILL CHARGE, IN ADDITION TO THE REGULAR RECORDING CHARGES, AN EXTRA \$20.00 RECORDING FEE, UNLESS A DOCUMENT EVIDENCING A CHANGE OF OWNERSHIP IS ACCOMPANIED BY A "PRELIMINARY CHANGE OF OWNERSHIP REPORT." IN LIEU OF SAID REPORT, SIGNED BY THE TRANSFEREE, THE RECORDER WILL NOT CHARGE AN EXTRA FEE IF THE DOCUMENT IS ACCOMPANIED BY AN AFFIDAVIT THAT THE

EXHIBIT B

GENERAL DEVELOPMENT PLAN

The General Development Plan consists of:

- a. Plot Plan - For the Lease Premises.
- b. Development Schedule - For the Leasehold Improvements.
- c. Financial Plan - For funding the Project.
- d. Schematic Elevations - For Hotel and other Leasehold Improvements.
- e. Landscape Plan for the Leased Premises.
- f. Plot Plan for Replacement Driving Range, Golf Storage Facility, Pro Shop and Starter Facility, Parking Lot Modifications, replacement of putting greens, radio and television equipment location and pedestrian pathway north of premises within North Torrey Pines Road.
- g. Development Schedule for Improvements described in subparagraph f above.
- h. Schematic elevations for golf storage facility pro shop and starter facility.
- i. Landscape plan for improvement referred to in subparagraph h above.
- j. Estimated construction cost summary for improvements referred to in subparagraph a.
- k. Terms and conditions of Conditional Use Permit, Parcel Map and Planned Commercial Development.

Approved as to form and legality:

Approved:

John W. Witt, City Attorney

James L. Spotts,
Property Director

9.06S General Development Plan

EXHIBIT "C"

Sheraton T.P. Lease
06/08/06/87/TMM

RECEIVED
JUL 13 1987
ECO. DEV. DEPT.



The Sheraton Corporation

MICHAEL W. CUNNINGHAM
VICE PRESIDENT
ASSISTANT DIRECTOR OF DEVELOPMENT
NORTH AMERICA DIVISION

July 2, 1987

Mr. Richard D. Johnson
Project Coordinator
City of San Diego
Economic Development Division
1200 Third Avenue, Suite 1620
San Diego, California 92101

Dear Dick:

In conjunction with the finalization of the ground lease, we have been asked to submit the General Development Plan for the Sheraton at Torrey Pines. The items which we are required to submit relative to the Development Plan include:

1. Conceptual architectural design
2. Materials of construction
3. Elevations and colors of all structures
4. Plot plan of structures and above-ground improvements
5. Landscape plan with species and sizes
6. Uses of facilities
7. Development schedule
8. Estimated construction costs
9. Financing plan

During the course of the past year, I believe that we have submitted, and satisfied for purposes of the General Development Plan, a number of the items reflected above. The majority of these items can be referenced to specific documentation and various approvals which have already been given for the project. Therefore, rather than having to put together all of these items in one place, which would be a major, time-consuming effort, we would suggest that this letter and its reference of these items to other documentation constitute the General Development Plan for purposes of satisfying the lease provisions.

EXHIBIT C - 1

1. Conceptual Architectural Design.

The conceptual architectural design is set forth in Figures 3-5, 3-6, 3-7, 3-8, 4-13, 4-14, and 4-15 of our EIR #86-0679 which was approved pursuant to City Council Resolution #268646 resulting from the City Council consideration on June 22, 1987. Additional architectural drawings are on file with the City Planning Department in conjunction with our EIR, our Conditional Use Permit approved pursuant to City Council Resolution #268647, our Planned Commercial Development Permit approved pursuant to City Council Resolution #268648 and our Tentative Map approved pursuant to City Council Resolution #268649.

2. Materials of Construction

Figure 4-15 of our EIR sets forth the primary materials of construction which will include earth tone split face concrete block and concrete with a sand blasted finish for the main walls of the structure. There would be wood trellises and railings on the balconies and wood paneling would be used around the balcony doors which would be clear sliding glass.

3. Elevations and Colors of all Structures

The elevators and colors are on file with the City Planning Department in conjunction with our EIR #860679. The color of the structure will generally be a natural earth tone color resulting from sand blasted concrete and wood construction.

4. Plot Plan of Structures and Above-Ground Improvements

Reference should be made to the Tentative Map #860679, approved pursuant to Resolution #268649, as well as to the EIR #860679, Figures 3-5, 3-6, 3-7 and 3-8. The tentative map is set forth in the EIR as Figure 3-4.

5. Landscape Plan with Species and Sizes

A detailed landscape plan regarding species and sizes is on file with the Planning Department as provided by SWA Group, our landscape architectural consultant. Additionally, landscape features are set forth in the EIR #860679 in Figures 3-9 and 3-10.

6. Uses of Facilities

EIR #86-0679¹ sets forth the uses of the facilities in Table 3-1 with additional narrative relative to the uses commencing on page 3-1 and continuing through page 3-6.

EXHIBIT C-1

Mr. Richard D. Johnson
City of San Diego
July 2, 1987
Page 3

7. Development Schedule

I have asked Welton Becket to provide you under separate cover an updated development schedule relative to the critical path and scheduling for both the driving range/pro shop project as well as the hotel.

8. Construction Costs

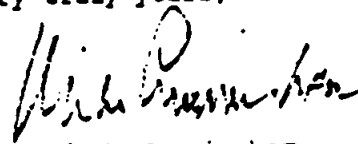
Attached is a summary of our current project budget. This budget is preliminary at this time and is subject to modification as our plans and project costs are refined at a later date. In summary, this is a \$60.0 million project.

9. Financing Plan

As of this date, the hotel will be developed by a joint venture consisting of The Sheraton Corporation and North America Taisei Corporation. The joint venture anticipates obtaining First Leasehold Mortgage financing in the approximate amount of \$45-46 million with the balance of the project costs to be funded in cash by the joint venture partners. In-depth discussions are currently under way with two prime potential lenders; however, until such time as the hotel project is approved, we do not expect to receive a formal commitment. Nevertheless, we do not anticipate any difficulty in finalizing acceptable mortgage financing.

Dick, I believe this should suffice for purposes of submitting the General Development Plan. If you have any questions, please do not hesitate to call.

Very truly yours,



Michael W. Cunningham

MWC:wms
Attachment

cc: R. Cameron
Y. Sento

EXHIBIT C-1

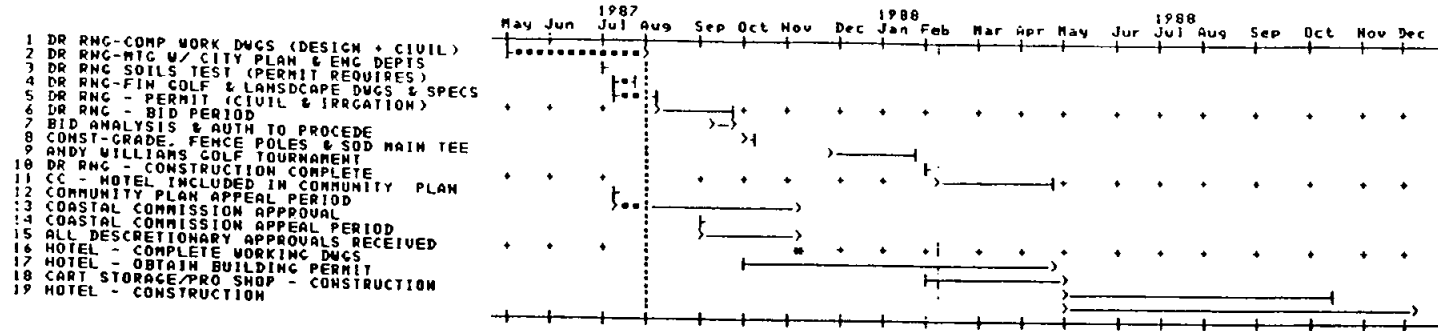
SHERATON AT TORREY PINES

ESTIMATED PROJECT COSTS

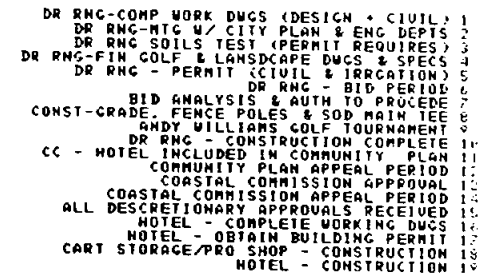
Rent		\$ 660,000
Construction		
Hotel	25,240,000	
Parking Structures	5,000,000	
Site Development/Landscaping	3,000,000	
Driving Range & Support Facilities	<u>800,000</u>	34,040,000
Furniture, Fixtures and Equipment		7,200,000
Architectural and Design		3,400,000
General and Administrative		4,500,000
Construction Interest		2,900,000
Pre-opening Expense and Initial Working Capital		2,600,000
Contingency		1,700,000
Operating Deficit Reserve		<u>3,000,000</u>
TOTAL		<u>\$60,000,000</u>

EXHIBIT C-1

SHERATON AT TORREY PINES
COMPLETION SCHEDULE
5 AUGUST 1987



SHERATON AT TORREY PINES
COMPLETION SCHEDULE
5 AUGUST 1987



Consistent with the provisions of the Ground Lease, Lessee agrees that upon receipt of any non-appealable discretionary approvals and after payment is made to the City, that it will proceed diligently to obtain all necessary Building Permits and to construct the project improvements in an expeditious manner.

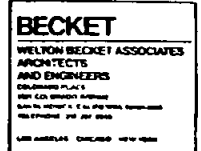


EXHIBIT C 1

EQUAL OPPORTUNITY PROGRAM REQUIREMENTS

A. PROPOSAL REQUIREMENTS AND CONDITIONS:

GENERAL -- The Bidder's attention is directed to the provisions for the requirements and conditions which must be observed in the preparation of the proposal form and the submission of the bid.

B. MINORITY AND WOMEN BUSINESS ENTERPRISE:

This Project is subject to City of San Diego Resolution No. R-262633 (adopted on March 4, 1985) entitled, "Minority and Women Business Enterprise Program."

Bidders should be fully informed regarding the requirements of the City's "Minority and Business Enterprise Program." Particular attention is directed to the following matters:

1) "Minority Business Enterprise" means a business which is at least fifty-one percent (51%) owned and operated by one or more minorities. In the case of publicly-owned business, at least fifty-one percent (51%) of the stock must be owned and the business operated by minorities;

2) "Women-Owned Business Enterprise" means a business which is at least fifty-one percent (51%) owned and operated by women, or in the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned and the business operated by women;

3) An MBE or WBE qualifies as such by any of the following methods:

- a) Being listed by the City as a Minority or Women Business Enterprise;
- b) Being listed in the State of California (CALTRANS) directory of Minority and Women contractors;
- c) Filling out the Self Certification Forms B-5(1) and B-5(2) attached to this proposal and having been found to meet the criteria of the City's program.

4) An MBE or WBE may participate as a Subcontractor, Joint Venture Partner with a Prime or Subcontractor, or Vendor of Materials or Supplies.

5) An MBE or WBE Joint Venture Partner must be responsible for a clearly defined portion of the work to be performed, in addition to satisfying requirements for ownership and control.

EXHIBIT "D"

Page 1

6) An MBE or WBE must perform a commercially useful functions, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.

7) Credit for trucking by MBEs and WBEs will be the amount to be paid when the MBE or WBE trucker will perform the trucking with his/her trucks, tractors and employees or when an MBE or WBE trucking broker has signed agreements with MBE or WBE truckers assuring that the trucking will be performed by MBE and WBE truckers, respectively.

8) Prior to award of any contract, the Low Bidder's MBE or WBE submittal will be reviewed to determine if there has been a good-faith effort to solicit and engage Subcontractors and Vendors who are Minority and Women Business Enterprises. The Bidder does not have to submit any information regarding his efforts if the percentage in dollar value of subcontracts awarded to Minority Business Enterprises is fifteen percent (15%) of the total value of the bid, and the percentage in dollar value of subcontracts awarded to Women-Owned Business Enterprises is five percent (5%) of the total dollar value of the bid. If the low bidder is a qualified MBE or WBE, the low bidder does not have to list MBE or WBE Subcontractors as appropriate. WBEs and MBEs currently listed in the City's directory are established and qualified. If the MBE or WBE Subcontractor who is listed on Form B-5(1) is in the City's directory, a check in the appropriate column is sufficient. If the Subcontractor is listed in any other governmental publication as a WBE or MBE, that information must be indicated on Form B-5(1).

9) Bidders are encouraged to utilize services offered by banks owned and controlled by Minorities and/or Women.

C. MBE AND WBE GOALS FOR THIS PROJECT:

The City of San Diego has established the following goals for Minority Business Enterprises (MBE) participation and for women Business Enterprises (WBE) participation for this Project:

Minority Business Enterprises (MBE)	15%
Women Business Enterprises (WBE)	5%

It is the Bidder's responsibility to make a sufficient portion of the work available to Subcontractors and Suppliers and to select those portions of the work or material needs consistent with the available MBE and WBE Subcontractors and Suppliers, so as to assure meeting the goal for MBE and WBE participation. It is the Bidder's responsibility to meet the goal of MBE and WBE participation or to provide information to establish good-faith efforts to do so.

If the Bidder's bid does not list either MBE or WBE Subcontractors or Vendors in sufficient amounts to equal the goals established for

EXHIBIT "D"

the program, the Bidder may establish his or her good-faith efforts by submitting supplementary information. Such information should include the following:

- 1) The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for MBE and WBE participation of this Project was placed by the Bidder;
- 2) The names and dates of notices of all certified MBEs and WBEs solicited by direct mail for this Project;
- 3) The items of work for which the Bidder requested sub-bids or materials to be supplied by MBEs and WBEs;
- 4) The names of MBEs and WBEs who submitted bids for any of the work indicated in "3" above which were not accepted, the name of the Subcontractor or Supplier that was selected for that portion of work, and the reasons for the Bidder's choice. (If the reason was price, give the price bid by the rejected MBE or WBE and the price bid by the selected Subcontractor or Supplier);
- 5) Assistance that the Bidder has extended to MBEs and WBEs identified in "4" above to remedy the deficiency in their sub-bids;
- 6) Any additional data to support a demonstration of good faith effort, such as contacts with MBE and WBE assistance agencies.

D. SUBCONTRACTING.

The "Subletting and Subcontracting Fair Practices Act" (Government Code Section 4100-4113, inclusive) requires Subcontractors to be listed in the Prime Contractor's proposal; prohibits the substitution of Subcontractors, except as therein authorized; and provides for penalties for violations of the Act. Bidders are cautioned that:

- 1) No substitution of a listed MBE or WBE Subcontractor shall be made at any time without the written consent of the City of San Diego, and
- 2) If an MBE or WBE Subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good-faith efforts to replace the original MBE or WBE Subcontractor with another MBE or WBE Subcontractor, and
- 3) The Bidder must list and clearly describe the portion of the work which will be done by each such Subcontractor. Only one (1) Subcontractor shall be listed for each portion.

A sheet for listing the subcontractors, as required by this section and the Subletting and Subcontracting Fair Practices Act, is included in the proposal. [B-5(1) and B-5(2)].

EXHIBIT "D"

Page 3

E. PERFORMANCE OF MBE AND WBE SUBCONTRACTORS AND SUPPLIERS.

The MBEs and WBEs listed by the Contractor shall perform the work and supply the materials for which they are listed.

Authorization to utilize other forces may be requested for the following reasons:

1) The listed MBE or WBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans, and specifications for the Project, is presented by the Contractor.

2) The listed MBE or WBE becomes bankrupt or insolvent.

3) The listed MBE or WBE fails or refuses to perform his subcontract or furnish the listed materials.

4) The listed MBE or WBE Subcontractor fails or refuses to meet the bond requirements of the Contractor.

5) The work performed by the listed Subcontractor is substantially unsatisfactory and is not in substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the work.

6) It would be in the best interest of the City.

The Contractor shall not be entitled to any payment for such work or material unless it is performed by the listed MBE or WBE or by other forces (including those of the Contractor) pursuant to prior written authorization of the Engineer.

F. PERFORMANCE OF MBE AND WBE JOINT VENTURERS.

All MBE and WBE Joint Venturers shall perform the work for which they are responsible unless prior written authorization is received from the Engineer.

Authorization to use other forces may be requested for the reasons listed in Section "E" above. The Contractor/Joint Venturer shall not be entitled to any payment for work listed to be performed by the MBE or WBE Joint Venturers which is not so performed unless prior written permissions has been received from the Engineer.

G.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL
EMPLOYMENT OPPORTUNITY.

1) Goals:

- a) Your attention is called to the "Equal Opportunity Clause" (Resolution No. 765092, filed on December 4, 1978, in the Office of the City Clerk, San Diego, California) and incorporated in the "Standard Federal Employment Opportunity Construction Contract Specifications (Executive Order 11246 - Document No. 769023, filed September 11, 1984, in the Office of the City Clerk, San Diego, California) which is applicable to all non-exempt City construction contracts and subcontracts of \$10,000 or more.
- b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Minority Participation

<u>Time Period</u>	<u>Trades</u>	<u>Goal</u>
Until further notice	All	16.9%

Female Participation

<u>Time Period</u>	<u>Trades</u>	<u>Goal</u>
Until further notice	All	6.9%

These goals are applicable to all the Contractor's construction work (whether or not is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the Specifications (Document No. 769023), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority

EXHIBIT "D"

Page 5

or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations. Compliance with the goals will be measured against the total work hours performed.

- c) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the County of San Diego. The Contractor/Subcontractor must also comply with applicable federal and state laws relating to Equal Opportunity Employment, as well as any additional requirements imposed by the federal agency or agencies providing funds for this project.

H. SUBMITTALS.

The apparent low bidder on this project must submit the following to the City Engineering and Development Department's Contract Compliance Office, 1255 Caminito Centro, San Diego, California 92102 within five (5) working days after the bid opening:

- 1) Two copies of each of the following:
 - a) The crafts or trades which will perform work under the prime Contractor;
 - b) The names, addresses and telephone numbers of all Subcontractors, the dollar amount of each subcontract, and the crafts or trades which will perform work under each subcontract.
- 2) One (1) copy of the Affirmative Action Plan for the Contractor and each Subcontractor. The plan as set forth in Document No. 769023, Section B, Paragraphs 7a through 7p, is included in the proposal (Paragraph 3, EOP-8). If the plan is submitted in another format and is not acceptable, the Contractor and/or Subcontractor(s) shall have five (5) working days after notification to correct the plan as necessary to receive approval.

If the Contractor and/or any Subcontractor fails to comply with the time schedule set forth above or fails to receive approval of the final plan submitted, the apparent low bid may be declared non-responsive and the second low bidder contacted. Contractors and Subcontractors are encouraged to submit their Affirmative Action Plan during the bidding period (or any earlier time) and to obtain approval prior to the bid opening. Affirmative Action Plans, once submitted, should be kept current and in an approved status to expedite the contract award process.

EXHIBIT "D"

Page 6

I. REFERENCE SPECIFICATIONS.

Except as otherwise noted or specified, the work shall be done in accordance with the following Reference Specifications which are on file in the office of the City Clerk:

1. STANDARD SPECIFICATION

<u>Document No.</u>	<u>Filed</u>	<u>Description</u>
768688	05-05-83	Standard Specifications for Public Works Construction, 1982 Edition, including Regional Standard Special Provisions, 1982 Edition and City of San Diego Standard Special Provisions.
769159	04-16-85	California Department of Transportation, Manual of Traffic Controls for Construction and Maintenance Work Zones, dated 1985.

2. STANDARD DRAWINGS

As listed on the detailed plans and specifications.

<u>Document No.</u>	<u>Filed</u>	<u>Description</u>
768710	06-22-83	City of San Diego Standard Drawings including all Regional Standard Drawings.

3. EQUAL OPPORTUNITY PROGRAM REQUIREMENTS

<u>Document No.</u>	<u>Filed</u>	<u>Description</u>
769023	09-11-84	Standard Federal Equal Employment Opportunity Construction Contract Specifications and the Equal Opportunity Clause.

NOTE: The Standard Federal Equal Employment Opportunity Contract Specifications and The Equal Opportunity Clause (\$1.00), Regional Standard Special Provisions (\$1.50), City of San Diego Standard Special Provisions (\$1.50) and San Diego City Standard Drawings including San Diego Area Regional Standard Drawings (\$10.00) are available at the Engineering Records Center on the fourth floor of the City Operations Building, 1222 First Avenue, San Diego. The Manual of Traffic Controls for Construction and Maintenance Work Zones (\$1.59) is available at the local CALTRANS office, 2829 Juan Street, San Diego.

EXHIBIT "D"

Page 7

AFFIRMATIVE ACTION PLAN

CONTRACTOR: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____

IRS/ID: _____

1) The Contractor named above is committed to a policy of Affirmative Action to ensure Equal Employment Opportunity in response to Executive Order 11246 and relevant requirements adopted by the City of San Diego.

2) The official designated by the named Contractor to be Equal Employment Officer is: _____.

3) The named Contractor will document fully its affirmative actions which will be at least as extensive as the following:

a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two (2) or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of, and carry out, the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organizations' responses.

c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from the union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this

EXHIBIT "E"

Page 1

shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e)

f)

g)

h)

i)

j)

k)

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m) Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Equal Employment Opportunity policy and the Contractor's obligations under these Specifications are being carried out.

n) Ensure that all facilities and company activities are non-segregated except that separate and single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction Contractors and Suppliers, including circulation of solicitations to minority and female Contractor Associations and other business associations.

p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's Equal Employment Opportunity policy and Affirmative Action obligations.

EXHIBIT "E"

Page 2

4) Contractors and Subcontractors shall maintain all required records for a period of three years, or until audited, and permit access by City to all such records.

Signed: _____
Equal Employment Officer

Signed: _____
Authorized Officer/Title

Print: _____

Print: _____

Dated: _____

Dated: _____

EXHIBIT "F"

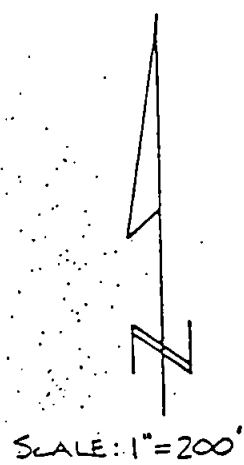
LEGAL DESCRIPTION

(HCA EXCEPTION)

ALL THOSE PORTIONS OF PUEBLO LOTS 1326 AND 1330 OF THE PUEBLO LANDS OF SAN DIEGO IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AS MISCELLANEOUS MAP 36, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PUEBLO LOT 1325 OF SAID PUEBLO LANDS WHICH POINT IS THE COMMON CORNER OF PUEBLO LOTS 1325, 1326, 1330 AND 1331; THENCE NORTH $80^{\circ} 31' 04''$ EAST 368.36 FEET TO POINT "A" AS DESCRIBED IN EXHIBIT "A" ATTACHED, SAID POINT "A" BEING A POINT IN THE WESTERLY RIGHT OF WAY LINE OF TORREY PINES ROAD, AS DEDICATED BY CITY OF SAN DIEGO ORDINANCE 7634 DATED MARCH 24, 1919 THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE SOUTH $9^{\circ} 28' 56''$ EAST 281.59 FEET TO THE NORTHEAST CORNER OF PARCEL 2 OF PARCEL MAP NO. 11723, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER; THENCE ALONG THE BOUNDARY LINE OF SAID PARCEL 2, NORTH $82^{\circ} 28' 46''$ WEST 207.13 TO AN ANGLE POINT IN SAID LINE; THENCE CONTINUING ALONG SAID BOUNDARY LINE SOUTH $7^{\circ} 15' 05''$ EAST 200.84 FEET TO AN ANGLE POINT; THENCE SOUTH $84^{\circ} 19' 48''$ WEST ALONG SAID BOUNDARY LINE TO

THE NORTHWEST CORNER THEREOF; THENCE LEAVING SAID BOUNDARY SOUTH 84° 19' 59" WEST 100.26 FEET TO A POINT IN THE EASTERLY LINE OF SAID PUEBLO LOT 1325 THAT BEARS SOUTH 0° 52' 34" WEST 488.90 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 0° 52' 34" EAST 488.90 FEET TO THE POINT OF BEGINNING.



SCALE: 1"=200'

PUEBLO
LANDS

Automatic
Center
Site

TORREY PINES INN
3929-CL

N82°32'25"E 523.51'

N82°32'25"E 42.90'

N62°26'50"W 134.23'

N07°31'23"W 399.47'

N02°48'32"W 286.07'

PL 1331

P.O.B.

N85°05'09"W 160.50.58'

N00°52'34"E 488.90'

S84°19'59"W 100.26'

HCA

EXHIBIT "F"

N82°28'40"W 207.13'

S71°15'05"E 200.84'

SCRIPPS
PM 11723

S84°19'48"W 137.75'

N09°28'58"W 842.58'

SCIENCE PARK ROAD

TORREY PINES ROAD

LEASE LINES

SHERATON HOTEL
TORREY PINES

APRIL 10, 1986

Prepared by:

James A. Hutchison & Assoc.
Civil Engineers

8724 Allison Ave., La Mesa, CA 92041

ADDENDUM TO LEASE

City and Lessee hereby agree as follows:

1. The provisions of this Addendum shall supersede and control any provisions to the contrary in the attached lease.

2. Lessee understands that City must provide for the termination of an existing lease with Wansa Enterprises, Inc. prior to being able to deliver possession of the leasehold premises to Lessee.

3. Lessee understands that City has negotiated an option with Wansa Enterprises, Inc. which allows City to purchase the leasehold interest of Wansa Enterprises, Inc. Lessee has agreed to provide \$500,000 to City so that City may utilize said \$500,000 as part of the option price of \$1.8 million for the remaining Wansa Enterprises, Inc. leasehold.

4. City has agreed to provide Lessee with a rent credit for said \$500,000. /

5. City and Lessee agree that it is neither necessary nor appropriate for Lessee to pay the \$500,000 to City unless and until Lessee has received all discretionary approvals for the proposed lease improvements and Lessee is in a position to obtain building permits for the first improvements required pursuant to the lease.

6. In order for Lessee to be able to apply for and receive a building permit for the first portion of construction required under the lease, it will be necessary for Lessee to have an approved and effective planned commercial development, conditional use permit, parcel map and coastal permit, and it

will be further necessary for City to have approved and certified the proposed environmental impact report and the City to approve the general development plan as referenced in the attached list.

7. Unless and until Lessee has received the above permits and obtained the above approvals and clearances and is in the position to obtain building permits for the first phase of construction, Lessee and City agree that it is not in the City's best interests to be required to pay the \$1.8 million option payment to Wansa Enterprises, Inc.

8. In view of the above provisions Lessee and City agree that the attached lease will not become effective until all the above approvals and permits are obtained by Lessee and that when the above approvals have been obtained and are legally final, Lessee shall execute lease and deliver three signed copies of the lease to the City together with a cashier's check payable to City in the amount of \$500,000.

9. City agrees that upon compliance by Lessee with the above provision City shall execute the three copies of the lease and provide one fully executed copy to Lessee for its records.

10. The parties agree that the terms of the lease shall commence as of the first day of the month following execution of the lease by City or upon delivery of possession of the site by the City to Lessee, whichever occurs last.

11. City agrees that upon payment of the above specified \$500,000 by Lessee to City it shall pay to Wansa Enterprises, Inc. any balance required to exercise an option to terminate the Wansa Enterprises, Inc. lease.

12. City agrees that if it is unable to deliver possession of the premises to Lessee within ninety (90) days after the payment of said \$500,000 and the signing of the lease by Lessee as provided for above, Lessee may, at its option, require payment of the said \$500,000 from the City and may, at Lessee's option, rescind its signing of the lease in which event Lessee shall have no further obligations pursuant to the lease or this addendum.

13. City and Lessee agree that the purpose of this Addendum is to provide for a fair and equitable process whereby Lessee may obtain all needed permits and approvals in order to proceed with development and City may be assured that development will, in fact, take place prior to paying the amount required to cause the termination of the existing Wansa Enterprises, Inc. lease so that possession of the leasehold premises may be delivered to lessee.

14. In the event Lessee has not received all permits and approvals necessary to commence construction of the first phase of the development on or before December 31, 1988, or in the event Lessee has not executed the lease and delivered the above specified \$500,000 to City by December 31, 1988, then the lease and this Addendum shall be of no further force or effect whatsoever.

IN WITNESS WHEREOF, this Addendum is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. R-_____, authorizing such execution, and by Lessee.

Dated this _____ day of _____, 1987.

THE CITY OF SAN DIEGO

By _____
City Manager

==LESSEE=NAME==

By _____
Lessee

I HEREBY APPROVE the form and legality of the foregoing
agreement this ===== day of ===== 1987.

JOHN W. WITT, City Attorney

By _____
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
06/08/87

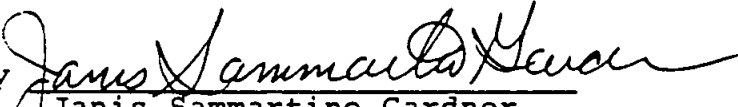
(R-87-2)

RESOLUTION NUMBER R- 266524

ADOPTED ON SEP 8 1986

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, an Exclusive Negotiation and Right of Entry Agreement with HOSPITAL CORPORATION OF AMERICA covering development and operation of an aerobic center and parking garage on City-owned land adjacent to the Torrey Pines Golf Course and the planned Sheraton Hotel, under the terms and conditions set forth in that negotiation and right of entry agreement on file in the office of the City Clerk as Document No. RR- 266524.

APPROVED: JOHN W. WITT, City Attorney

By 
Janis Sammartino Gardner
Deputy City Attorney

JSG:ps
7/1/86
Or.Dept:Prop.
R-87-2
Form=r.none

Passed and adopted by the Council of The City of San Diego on

SEP 8 1986

by the following vote:

YEAS: Wolfsheimer, McColl, Jones, Struiksma, Gotch, McCarty.

NAYS: None.

NOT PRESENT: Cleator, Martinez, O'Connor.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By JUNE A. BLACKNELL

Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 266524 passed and

adopted by the Council of The City of San Deigo, California, on

SEP 8 1986

CHARLES G. ABDELNOUR

City Clerk of The City of San Deigo, California

(SEAL)

By *June A. Blacknell*

Deputy

Page 1
DJ/E

(R-87-474)

RESOLUTION NUMBER R- 266635

ADOPTED ON SEP 22 1986

WHEREAS, the City has entered into exclusive negotiation and right of entry agreements with the Sheraton Corporation and the Hospital Corporation of America covering the planned development of a hotel and an aerobic center, respectively, which would occupy the existing Torrey Pines Golf Course driving range and the sites of other golf support facilities; and

WHEREAS, City Manager Report No.86-417 dated September 5, 1986, recommends a conceptual relocation plan for the driving range and other golf support facilities, which is supported by the City Planning Commission and the City Park and Recreation Board; and

WHEREAS, the aforementioned exclusive negotiation and right of entry agreements provide for the funding of relocations; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the conceptual relocation plan recommended by City Manager Report No. 86-417 is hereby approved.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Deputy City Attorney

HOV:ps

9/9/86

Or.Dept:Prop.

R-87-474

Form=r.none

RESOLUTION NUMBER R- 269078

ADOPTED ON AUG 10 1987

WHEREAS, the City Council on June 22, 1987, by Resolution R-268650, certified Environmental Impact Report 86-0679, as revised, and adopted the Findings and Statement of Overriding Considerations relating to said Environmental Impact Report; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that with regard to the 55-year lease agreement with Torrey Pines Hotel Associates, the City Council has reviewed and considered said Environmental Impact Report and Findings and Statement of Overriding Considerations as previously certified by the City Council.

APPROVED: JOHN W. WITT, City Attorney

By *[Signature]*
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
07/28/87
07/29/87 REV.1
Or.Dept:Prop.
Job:219116
R-88-245
Form=r.none

NOTICE OF DETERMINATION

#204
8/10/87

TO: X County Clerk
County of San Diego
220 W. Broadway
San Diego, CA 92101

FROM: City of San Diego
City Administration Building
202 "C" Street
San Diego, CA 92101

— Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

EQD Number: 86-0679

State Clearinghouse Number: 86102924
(If submitted to Clearinghouse)

Project Title: SHERATON TORREY PINES HOTEL

Project Location: West side of North Torrey Pines Road (Pueblo Lots 1326 and 1330 of the Pueblo Lands of San Diego).

Project Description: CITY LEASE, PLANNED COMMERCIAL DEVELOPMENT, REZONE, COMMUNITY PLAN AMENDMENT, and CONDITIONAL USE PERMIT AMENDMENT for the construction fo a 400-room hotel, ballroom, meeting rooms, and recreational facilities.

This is to advise that The City of San Diego City Council on August 10, 1987 approved the above described project and made the following (date) determinations:

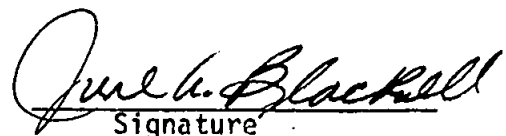
1. The project in its approved form X will, ___ will not, have a significant effect on the environment.
2. X An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA. Resolution R-269078.
___ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

Record of project approval may be examined at the address above.

3. Mitigation measures X were, ___ were not, made a condition of the approval of the project.
4. (EIR only) Findings X were, ___ were not, made pursuant to CEQA Guidelines Section 15091.
5. (EIR only) A Statement of Overriding Considerations X was, ___ was not, adopted for this project.

It is hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Environmental Quality Division, Fifth Floor, 202 "C" Street, San Diego, CA 92101.

Date Received for Filing: _____


Signature

Deputy City Clerk
Title

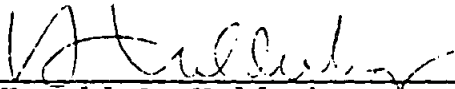
(R-88-68)

RESOLUTION NUMBER R- 268650

ADOPTED ON 6-22-87

BE IT RESOLVED, by the Council of The City of San Diego that it be, and it is hereby certified, that the Findings and Statement of Overriding Considerations dated June 22, 1987, and attached hereto as Exhibit B, have been adopted pursuant to California Public Resources Code, Section 21081, and the State CEQA Guidelines, Sections 15091 and 15093, in conjunction with the approval of the Sheraton Hotel at Torrey Pines which was evaluated in Environmental Impact Report No. 86-0679, as revised.

APPROVED: John W. Witt, City Attorney

By 
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
07/08/87
Or.Dept:Clerk
R-88-68
Form=r.eirfo

122:488EXH.A&B

JN: 488

4/14/86

EXHIBIT "A"

LEGAL DESCRIPTION

(SHERATON HOTEL)

ALL THOSE PORTIONS OF PUEBLO LOTS 1325, 1326, 1330, AND 1331 OF THE PUEBLO LANDS OF SAN DIEGO IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AS MISCELLANEOUS MAP 36, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PUEBLO LOT 1325 WHICH IS THE COMMON CORNER OF PUEBLO LOTS 1325, 1326, 1330 AND 1331; THENCE ALONG THE COMMON LINE OF PUEBLO LOTS 1325 AND 1331 NORTH $89^{\circ} 05' 90''$ WEST 255.74 FEET; THENCE LEAVING SAID COMMON LINE NORTH $2^{\circ} 48' 32''$ WEST 285.07 FEET THENCE NORTH $7^{\circ} 31' 23''$ WEST 399.47 FEET; THENCE NORTH $6^{\circ} 28' 50''$ WEST 134.23 FEET TO A POINT THAT BEARS SOUTH $82^{\circ} 32' 25''$ WEST 42.90 FEET FROM THE SOUTHWEST CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN LEASE AGREEMENT EXECUTED OCTOBER 2, 1961, FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SAN DIEGO AS DOCUMENT 629873, THE BOUNDARIES OF WHICH ARE SET OUT ON CITY ENGINEER'S DRAWING 13929-CL ON FILE IN THE OFFICE OF THE CITY ENGINEER OF THE CITY OF SAN DIEGO; THENCE NORTH $82^{\circ} 32' 25''$ EAST 42.90 FEET TO SAID SOUTHWEST CORNER; THENCE CONTINUING ALONG THE SOUTH LINE OF SAID PROPERTY DESCRIBED

IN SAID LEASE AGREEMENT NORTH 82° 32' 25" EAST TO THE SOUTHEAST CORNER OF LAST SAID PROPERTY; SAID POINT ALSO BEING A POINT IN THE WESTERLY RIGHT OF WAY LINE OF TORREY PINES ROAD, AS DEDICATED BY CITY OF SAN DIEGO ORDINANCE 7634 DATED MARCH 24, 1919, THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE SOUTH 9° 28' 56" EAST 842.58 TO POINT "A"; THENCE SOUTH 80° 31' 04" WEST 368.36 FEET TO THE POINT OF BEGINNING.

TORREY PINES INN
3929-CL

N 82° 32' 25" E 523.54'

N 82° 32' 25" E 42.90'

N 62° 26' 50" W 134.23'

N 07° 31' 23" W 399.47'

N 02° 48' 52" W 285.07'

N 69° 05' 09" W 258.74'

N 00° 52' 34" E 488.90'

S 84° 19' 59" W
160.26'S 84° 19' 48" W
137.75'

PL 1331

PL 1330

P.O.B.

N 80° 31' 04" E 368.95'

HCA

EXHIBIT "B"

N 82° 28' 4" W
207.13S 7° 15' 05" E
300.84'SCRIPPS
PM. 11723

N 09° 28' 58" W 842.58'

N 09° 28' 58" W 201.53'

SCIENCE PARK ROAD

TORREY PINES ROAD

SCALE: 1" = 200'

PUEBLO
LANDS

LEASE LINES

SHERATON HOTEL
TORREY PINES

APRIL 10, 1986

Prepared by:

James A. Hutchison & Assoc.

Civil Engineers

8324 Allison Ave., La Mesa, CA 92041

SHERATON

Exhibit "B"

DUPLICATE ORIGINAL

COPY

EXCLUSIVE NEGOTIATION AND RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City" and the SHERATON CORPORATION, a Delaware corporation, hereinafter called "Sheraton."

R E C I T A L S

A. City is the owner of a certain parcel of real property located in the City and County of San Diego, as more particularly described in Exhibit "A," which is attached hereto and by this reference incorporated herein, and which parcel is hereinafter referred to as the "Premises." A portion of the Premises are presently under lease to Wansa Enterprises ("Wansas") as a golf driving range and the availability of the Premises for hotel development is dependent upon the exercise of an option by City on or before September 30, 1987 to purchase the Wansa leasehold interest.

B. In response to a Request for Proposals ("RFP") issued by the City in January of 1982, Sheraton has proposed a 400-room resort hotel and other facilities ("Project") as described in the Proposal submitted by Sheraton dated May 17, 1982, consisting of 3 books as supplemented by the Addendum to the Proposal dated September 20, 1982 ("Proposal") and has been selected by the City as the potential developer and operator. Other facilities, as described in the Proposal, include a new driving range; and the facilities specifically defined hereinafter as the Golf Facility Improvements.

DOCUMENT NO. RR-265650

FILED MAY 6 1986
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

C. An Exclusive Negotiation Agreement and Right of Entry Agreement entered into by City and Sheraton on March 14, 1983 and amended on March 26, 1984, which expired on February 1, 1986, granted Sheraton the exclusive right to negotiate a lease and initiate pre-development activities on the premises.

D. City recognizes that it has not been feasible for Sheraton to accomplish the pre-development activities specified in the aforesaid March 14, 1983 agreement, as amended on March 26, 1984, because City was unable to arrange right of entry for Sheraton until September 30, 1985, when City entered into an Option and Right of Entry Agreement with Wansas.

E. Sheraton and City desire to enter into a new Exclusive Negotiation and Right of Entry Agreement under which hotel pre-development activities would continue and which describes Sheraton's responsibilities for development of a replacement driving range and the Golf Facility Improvements.

F. The term, "Premises", as used herein, differs from the term "Premises" as used in the March 14, 1983 agreement as amended on March 26, 1984, in that the southernmost approximately four acres of the Premises, as defined in the March 14, 1983/March 26, 1984 agreement, are not included. City, with concurrence of Sheraton, is proposing to enter into an Exclusive Negotiation and Right of Entry Agreement with the Hospital Corporation of America ("HCA") for potential development of a health and aerobic center and a parking facility on the property described in Exhibit "B."

G. Sheraton and City have examined several alternative locations for the replacement driving range and have selected two locations for further evaluation. These are (1) the area between North Torrey Pines Road and the eighteenth fairway (North Course) shown conceptually in the Proposal, and

(2) the area of the tenth fairway and eighteenth green (North Course) as presented to the Park and Recreation Board on March 20, 1986

NOW, THEREFORE, in consideration of the mutual covenants and recitals, the parties hereto agree as follows:

1. The term of this Agreement shall end on July 1, 1987, or on the date City and Sheraton enter into a lease agreement ("Lease") covering development and operation of the hotel, whichever date occurs first. This agreement shall commence when it is executed by the City. The City hereby agrees that during the term of this Agreement it shall not enter into any negotiations regarding the development, sale, or lease of the Premises with any party other than Sheraton.

2. The City hereby grants to Sheraton, through its representatives, contractors, agents, servants and employees, and subject to the Right of Entry Agreement with Wansas, the right to enter said Premises for the purposes of site evaluation, engineering studies, soil testing, planning and design. Such entry is not to interfere with ongoing golf operations, and all entry is to be arranged through the Economic Development Division of City. Copies of the engineering studies, soil reports, and plans and design shall be supplied to the City. The City, its agents, officers, and employees, shall not be liable for any personal injury or property damage to any goods or persons, whether caused by or resulting from any act or omission of Sheraton occurring on the Premises in connection with the performance of the foregoing activities. Sheraton agrees to indemnify and hold the City, its authorized agents, officers and employees harmless from and against any such liability, together with any costs or expenses incurred by the City in defending any such claims; provided, however, that

END DATE
ABN. AGOR.
7-1-87

this provision shall not apply to any personal injury or property damage, or death, caused by the City, its officers, employees, or authorized agents.

3. During the term of this Agreement, Sheraton shall be responsible for fulfilling the following requirements:

- a. Sheraton shall submit, on behalf of the City, an application for an environmental study (AEIS) with regard to the replacement driving range and Golf Facilities Improvements as described in paragraph 6 of this Agreement. Documentation in support of this AEIS will include that needed for study of the two alternative driving range locations identified in Section G above.
- b. Sheraton shall present the Project, and the replacement driving range and Golf Facilities Improvements as described in paragraph 6 of this Agreement, for review to (i) the Park and Recreation Board and its appropriate committees; (ii) the Planning Commission; (iii) the University Community Planning Committee, (iv) the City Council's Public Facilities and Recreation Committee, and (v) the City Council. The City will coordinate the scheduling of these presentations and supply administrative support.
- c. Sheraton shall prepare documentation as reasonably required by the City to receive environmental clearance for the Project. Mitigating measures, if any are required by the provisions of the California Environmental Quality Act, must be provided for in the final development plan by Sheraton in conjunction with other benefitted property owners, if any.

SHERATON'S
RESPONSIBILITY

RELOCATION
OF DRIVING
RANGE

ENVIRONMENTAL
STUDY

- PERMITS
- DEVELOPMENT PLAN
- LEASE TERMS
- EVIDENCE TO FINANCE PROJECT
- d. Sheraton shall submit applications for all permits as necessary including, but not limited to, the City's Land Development Permit and Conditional Use Permit and the State of California's Coastal Commission Permit.
 - e. Sheraton shall submit to City three (3) copies of a plan for development ("Development Plan"). Such Development Plan shall show the conceptual architectural design, materials of construction, elevations and colors of all structures, the plot plan of all structures and aboveground improvements, a complete landscaping plan with species and sizes, the uses of the facilities, the schedule of development, the estimated construction costs and financing plan but shall not include detailed working drawings.
 - f. Sheraton shall reach agreement with City regarding terms and conditions of the proposed Lease which will govern development and operation of the Project. Sheraton has received a draft of the proposed lease and furnished its comments thereon to the City. Such draft and comments shall be the basis of the negotiations.
 - g. Sheraton shall submit evidence, which is reasonably satisfactory to the City Manager, of ability to finance Project costs.

The City recognizes that it is in the City's best interest to expedite the processing of all required approvals for the Project and the City will use its best efforts to do so. The City will cooperate with Sheraton in making presentations referred to hereinabove and will make joint presentations with Sheraton when mutually determined desirable.

LEASE
PRESENTATION,
UPON APPROVAL
OF 5
ITEMS,
TO COUNCIL

After the City Manager and Sheraton have agreed upon the proposed provisions of the lease, the City Manager shall, upon request by Sheraton, present the proposed lease to the City Council for approval provided that Sheraton has satisfied item (a) above, has satisfied item (b) above with respect to the replacement driving range and golf facility improvements as described in paragraph 6 of this Agreement, has completed the environmental documents referred to in item (c) above, has submitted the final Development Plan referred to in item (e) above, and has satisfied item (g) above. The remainder of the above mentioned requirements may be satisfied after the execution of the lease by the parties. Upon execution of said lease by the City, this Agreement shall terminate.

4. Sheraton shall not cause any improvements or alterations to be made to the Premises without prior written approval from the City Manager.

SHERATON'S
PERFORMANCE
STANDARDS.

5. Sheraton agrees to diligently pursue satisfaction of the requirements of Paragraph 3 hereof in accordance with the terms of this Agreement; provided, however, that if the City reasonably determines that Sheraton has not diligently pursued satisfaction of such requirements, the City may furnish written notice of the City's contentions to Sheraton and Sheraton shall have thirty (30) days within which to respond to the City's claims, or if Sheraton disagrees with the City's contentions, Sheraton may supply satisfactory evidence to the City in such thirty (30) day period that it is proceeding diligently. Any notification from the City to Sheraton in accordance with this paragraph shall specifically reference this paragraph and shall indicate that unless Sheraton responds in accordance with the provisions of this paragraph, the City may elect to terminate Sheraton's rights under this Agreement. If Sheraton does not respond to such notice

by the City, the City may terminate this Agreement at the end of such thirty (30) period. In the event of dispute between the parties as to Sheraton's diligent performance hereunder, the dispute shall be submitted to binding arbitration in accordance with the Rules of the American Arbitration Association upon the written request of either party.

6. The City will, subsequent, or incident to, City Council approval of an appropriate environmental document, identify the location for the replacement driving range. After execution of this Agreement by the City and Sheraton, Sheraton will, after obtaining all discretionary approvals for the Project, and after Sheraton and the City have executed the Lease, proceed with design and construction of the replacement driving range and the following "Golf Facilities Improvements":

- a. A golf cart storage facility, with capacity for 150 carts, on a site mutually determined by City and Sheraton.
- b. Any golf course modifications required incident to construction of the replacement driving range. The scope of such modifications will not exceed the two new golf holes required in connection with alternative 2 described in Section G hereof.
- c. Modifications to the golf parking lot, as mutually agreed to by the Parties, to maintain or increase the number of spaces.
- d. Replacement practice putting greens, as necessary due to the relocation of other golf support facilities, not to exceed two putting greens in the vicinity of the new driving range tee area, resulting in a total of two.
- e. Design and construction of a practice chipping green and a practice sand trap.
- f. Design and construction of a pro shop and started facility.

LOCATION
OF
DRIVING
RANGE

GOLF
CART
STORAGE FAC.

RELOCATION
OF HOLES IN
CONTR. WITH
DRIVING RANGE
RELO.

PARKING LOT
MOD'S

PRACTICE PUTTING
GREENS

PRACTICE CHIPPING
GREENS

DESIGN +
CONST. OF
PRO SHOP
+ STARTED FAC.

Items 6 (e) and 6 (f) listed above were not specifically included in the Sheraton Proposal. City will reimburse Sheraton through rent credits due under the Lease for the costs (including interest computed at the Bank of America reference rate) of constructing these Golf Facility Improvements not specifically included in the Sheraton Proposal. However, the total costs which Sheraton will fund for items 6 (e) and 6 (f) shall not exceed Five Hundred Thousand Dollars (\$500,000) and any excess costs will be funded by the City. The Sheraton proposal also provided for the demolition of the existing golf equipment maintenance facility, and the construction of a replacement maintenance facility. Recognizing that the existing maintenance facility is on the site now planned for the health and aerobic center, the City has determined, and Sheraton agrees, that the maintenance facility demolition and construction should be accomplished under the provision of an exclusive negotiation agreement between the City and HCA.

7. Sheraton agrees to undertake the design and scheduling of the improvements listed in paragraph 6, items a. through f., above in close coordination with the City and to satisfy all requirements for construction and grading permits. The City agrees to expedite the approval process as much as possible.

8. The City agrees that, provided the Lease has been executed by Sheraton and approved by the City Council, the City Council will authorize the expenditure of funds for exercise of the option agreement with Wansas ("Option"), and will exercise the Option on the earlier of (a) thirty days from written request by Sheraton to exercise the Option, or (b) the last day for the exercise as provided in the option agreement. In order to

RENT
CREDIT
FOR YEARS
6 C. 4.

TOTAL
COST
NOT TO
EXCEED
\$500,000.
IF OVER
\$500,000
CITY TO
PARTICIPATE

WANT FOR
HCA'S RECORD

DESIGN &
SCHEDULING OF
ITEMS 6 A-F.

EXERCISING
WANSAS
OPTION

exercise the Option the City is required to pay additional option consideration in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000). Sheraton agrees to pay the City Five Hundred Thousand Dollars (\$500,000) as advance rental which will be paid by the City to Wansas when the Option is exercised, not later than September 30, 1987. Sheraton agrees to pay the \$500,000 advance when requested by the City, fifteen days prior to the date the option consideration is payable to Wansas.

Sheraton also agrees to make monthly consideration payments of Eighteen Thousand Three Hundred Thirty-three Dollars (\$18,333) to the City commencing the first of the month following the execution of the Lease by Sheraton and the City. The Lease will be executed by Sheraton and submitted to the City for approval within fifteen (15) days after the Coastal Development Permit approval for construction of the Project has been received and any applicable appeal period has expired.

HCA has tentatively agreed to pay One Hundred Thousand Dollars to the City as advanced rental payments under its lease. That payment and other payments received by the City from HCA will be paid by the City to Wansa when the Option is exercised. The City will apply any lump sum payments received from a new operator of the driving range to the Option payment, and the City will use its best efforts to obtain as high a lump sum payment as can reasonably be achieved. It is anticipated that the Wansa Option consideration will exceed the payments made by HCA, Sheraton and the new operator of the driving range. The City will pay any additionally required funds from the City's Capital Improvement Program Fund ("Fund"). After the Wansa Option consideration has been paid and after lease payments made by Sheraton and HCA to the City equal the amount paid Wansa from the Fund,

PAYMENT
FROM HCA
+ GOLF PRO
OPERATOR

Sheraton and HCA will be entitled to offset the rent next coming due under their respective leases against the advance rental payments which each has made to the City. After Sheraton has recouped an amount equal to its Five Hundred Thousand Dollar (\$500,000) rental advance, Sheraton will be entitled to recoup the amounts advanced by Sheraton to fund the "Golf Facility Improvements" described in Paragraph 6 (f) hereof.

9. In consideration of the release of the approximately four (4) acres to be leased to HCA, the City agrees to negotiate to lease the property described on Exhibit "B" to HCA for use only as a health and aerobic center and parking facility. Development plans for the Health and Aerobic Center, and parking facility, including, but not limited to, siting, massing, access, plans and specifications, the architectural design, (including sections, elevations and specifications) exterior finished materials and colors, landscaping curb cuts and traffic flows will be evaluated by the City in coordination with Sheraton. Such coordination with Sheraton is intended to ensure that Sheraton and HCA facilities are compatible. Any approval by the City of development plans for this Health and Aerobic Center, and the parking facility, will occur only after all due consideration of any Sheraton comments thereon. The City further agrees that if a lease is not executed between City and HCA for health and aerobic center and parking facility use, City will not, during the term of a lease with Sheraton, permit hotel or restaurant use on the property described in Exhibit "B."

RESTRICTIONS
ON HCA
LEASEHOLD

HOTEL OR
RESTAURANT

ASSIGNMENT
RIGHTS

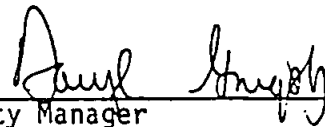
10. City agrees that Sheraton will have the right to assign its interest under the Exclusive Negotiation and Right of Entry Agreement, and its interest in the lease with the City to an ownership entity provided that

Sheraton will retain at least a 10% interest in such entity and that Sheraton will remain as the operator of the hotel.

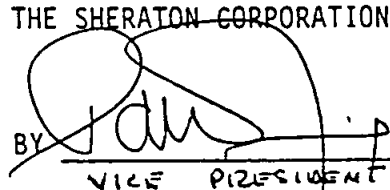
IN WITNESS WHEREOF, this Agreement is executed by City acting by and through its City Manager pursuant to Resolution No. R- 265650 authorizing such execution and by Sheraton.

Dated this _____ day of MAY 6 1986, 1986.

THE CITY OF SAN DIEGO

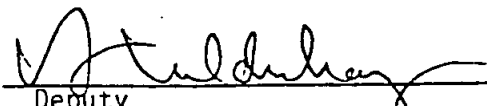
BY: 
ASSISTANT TO THE City Manager

THE SHERATON CORPORATION

BY: 
VICE PRESIDENT

I HEREBY APPROVE the form and legality of the foregoing agreement this 19 day of May, 1986.

JOHN W. WITT, City Attorney

By 
Deputy

R-265650

122:488EXH.A&B

JN: 488

4/14/86

EXHIBIT "A"

LEGAL DESCRIPTION

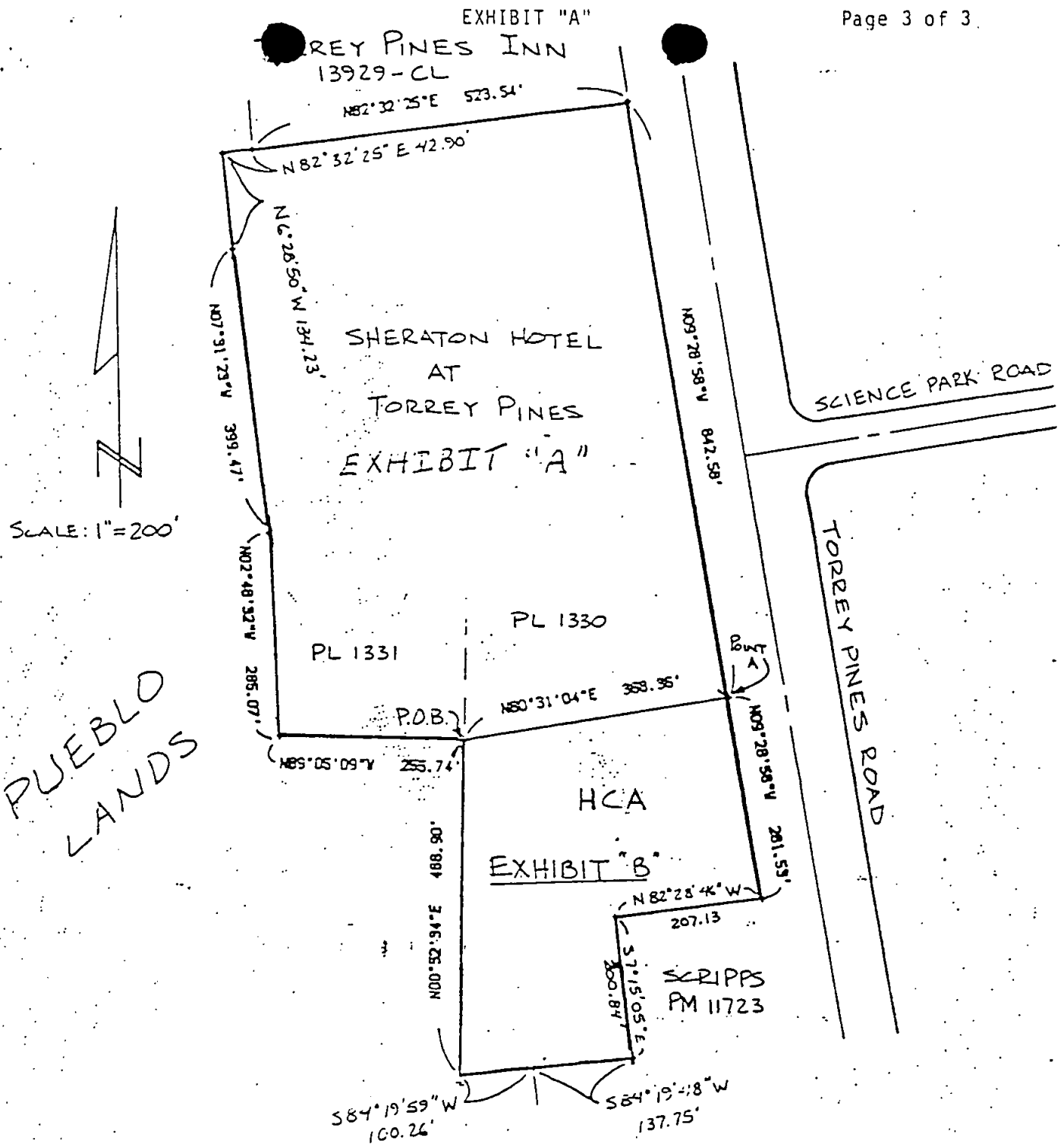
(SHERATON HOTEL)

ALL THOSE PORTIONS OF PUEBLO LOTS 1325, 1326, 1330, AND 1331 OF THE PUEBLO LANDS OF SAN DIEGO IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AS MISCELLANEOUS MAP 36, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PUEBLO LOT 1325 WHICH IS THE COMMON CORNER OF PUEBLO LOTS 1325, 1326, 1330 AND 1331; THENCE ALONG THE COMMON LINE OF PUEBLO LOTS 1325 AND 1331 NORTH 89° 05' 90" WEST 255.74 FEET; THENCE LEAVING SAID COMMON LINE NORTH 2° 48' 32" WEST 285.07 FEET THENCE NORTH 7° 31' 23" WEST 399.47 FEET; THENCE NORTH 6° 28' 50" WEST 134.23 FEET TO A POINT THAT BEARS SOUTH 82° 32' 25" WEST 42.90 FEET FROM THE SOUTHWEST CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN LEASE AGREEMENT EXECUTED OCTOBER 2, 1961, FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SAN DIEGO AS DOCUMENT 629873, THE BOUNDARIES OF WHICH ARE SET OUT ON CITY ENGINEER'S DRAWING 13929-CL ON FILE IN THE OFFICE OF THE CITY ENGINEER OF THE CITY OF SAN DIEGO; THENCE NORTH 82° 32' 25" EAST 42.90 FEET TO SAID SOUTHWEST CORNER; THENCE CONTINUING ALONG THE SOUTH LINE OF SAID PROPERTY DESCRIBED

EXHIBIT "A"

IN SAID LEASE AGREEMENT NORTH 82° 32' 25" EAST TO THE SOUTHEAST CORNER OF LAST SAID PROPERTY; SAID POINT ALSO BEING A POINT IN THE WESTERLY RIGHT OF WAY LINE OF TORREY PINES ROAD, AS DEDICATED BY CITY OF SAN DIEGO ORDINANCE 7634 DATED MARCH 24, 1919, THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE SOUTH 9° 28' 56" EAST 842.58 TO POINT "A"; THENCE SOUTH 80° 31' 04" WEST 368.36 FEET TO THE POINT OF BEGINNING.



LEASE LINES

SHERATON HOTEL
TORREY PINES

APRIL 10, 1986

Prepared by:

James A. Hutchison & Assoc.
Civil Engineers

8724 Allison Ave., La Mesa, CA 92041

122:488EXH.A&B

JN: 488

4/14/86

EXHIBIT "B"

LEGAL DESCRIPTION

(HCA EXCEPTION)

ALL THOSE PORTIONS OF PUEBLO LOTS 1326 AND 1330 OF THE PUEBLO LANDS OF SAN DIEGO IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AS MISCELLANEOUS MAP 36, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PUEBLO LOT 1325 OF SAID PUEBLO LANDS WHICH POINT IS THE COMMON CORNER OF PUEBLO LOTS 1325, 1326, 1330 AND 1331; THENCE NORTH $80^{\circ} 31' 04''$ EAST 363.36 FEET TO POINT "A" AS DESCRIBED IN EXHIBIT "A" ATTACHED, SAID POINT "A" BEING A POINT IN THE WESTERLY RIGHT OF WAY LINE OF TORREY PINES ROAD, AS DEDICATED BY CITY OF SAN DIEGO ORDINANCE 7634 DATED MARCH 24, 1919 THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY LINE SOUTH $9^{\circ} 28' 56''$ EAST 281.59 FEET TO THE NORTHEAST CORNER OF PARCEL 2 OF PARCEL MAP NO. 11723, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER; THENCE ALONG THE BOUNDARY LINE OF SAID PARCEL 2, NORTH $82^{\circ} 28' 46''$ WEST 207.13 TO AN ANGLE POINT IN SAID LINE; THENCE CONTINUING ALONG SAID BOUNDARY LINE SOUTH $7^{\circ} 15' 05''$ EAST 200.84 FEET TO AN ANGLE POINT; THENCE SOUTH $84^{\circ} 19' 48''$ WEST ALONG SAID BOUNDARY LINE TO

THE NORTHWEST CORNER THEREOF; THENCE LEAVING SAID BOUNDARY SOUTH 84° 19' 59" WEST 100.26 FEET TO A POINT IN THE EASTERLY LINE OF SAID PUEBLO LOT 1325 THAT BEARS SOUTH 0° 52' 34" WEST 488.90 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 0° 52' 34" EAST 488.90 FEET TO THE POINT OF BEGINNING.

RECORDING REQUESTED BY

Optionee

AND WHEN RECORDED MAIL TO:

C.M. Fitzpatrick
Assistant City Attorney
City of San Diego
202 C Street
San Diego, CA 92101

Space Above This Line
For Recorder's Use

**SECOND AMENDMENT TO OPTION AND RIGHT OF ENTRY AGREEMENT
BETWEEN WANSA ENTERPRISES, INC. AND THE CITY OF SAN DIEGO**

THIS AGREEMENT is entered into effective August 12, 1987, at San Diego, California, by and between WANSA ENTERPRISES, INC., a California corporation, hereinafter referred to as "Optionor," and THE CITY OF SAN DIEGO, a municipal corporation, hereinafter referred to as "Optionee."

R E C I T A L S

A. Optionor and Optionee entered into an Option and Right of Entry Agreement on October 1, 1985, which agreement was filed in the office of the City Clerk, San Diego, California, on September 30, 1985, as Document No. RR-264142.

B. The Option Agreement was amended effective July 14, 1986, a copy of which amendment is on file in the office of the City Clerk as Document No. RR-268050, and under letter agreement dated June 24, 1987, Wansa Enterprises, Inc. reduced the notice requirement in Article Two of said Option Agreement from ninety (90) calendar days to forty-five (45) calendar days prior to the date of exercise of the option.

C. The Optionor and Optionee now desire to amend the Option Agreement dated October 1, 1985, as amended July 14, 1986.

NOW, THEREFORE, in consideration of the Recitals and mutual conditions as herein expressed, the parties agree as follows:

1. The date of exercise of the Option Agreement under Article I of the Option Agreement shall be extended for a period of ninety (90) days from September 30, 1987, up to and including December 30, 1987.

2. The notice requirement in Article Two of the Option Agreement is hereby reduced to fifteen (15) days so that the notice period under Article Two of the Option Agreement shall be extended from August 16, 1987, up to and including December 15, 1987.

3. The payment of Forty-five Thousand Dollars (\$45,000) shall be additional consideration for an extension of the option and shall not be credited against or reduce in any way the purchase price due under the Option Agreement of One Million Eight Hundred Thousand Dollars (\$1,800,000).

4. The sum of Forty-five Thousand Dollars (\$45,000) shall be payable in installments of Fifteen Thousand Dollars (\$15,000) due October 1, 1987, November 1, 1987, and December 1, 1987.

5. In the event that the option is exercised at any time prior to December 30, 1987, the sum of Forty-five Thousand Dollars (\$45,000) shall be due regardless of the early exercise of the option.

6. In the event notice of intent to exercise the option is given on or before November 16, 1987, but Optionee does not actually exercise the option on or before December 30, 1987, by

paying the One Million Eight Hundred Thousand Dollars (\$1,800,000) the Option and Right of Entry Agreement shall terminate as of midnight December 30, 1987, and neither Optionee nor Optionor shall have any further rights or obligations whatsoever under the Option and Right of Entry Agreement, as amended.

7. Optionor and Optionee agree that Optionor shall have fifteen (15) days after payment of the One Million Eight Hundred Thousand Dollars (\$1,800,000) option price in which to remove all of its property from the leasehold area.

In all other respects, the Option Agreement, effective October 1, 1985, with the First Amendment effective July 14, 1986, and extension effective June 24, 1987, shall remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment to Option and Right of Entry Agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. R-_____, authorizing such execution, and by Optionor.

Dated this _____ day of _____, 1987.

OPTIONOR

WANSA ENTERPRISES, INC.

By _____

OPTIONEE

THE CITY OF SAN DIEGO

By _____
Deputy City Manger

I HEREBY APPROVE the form and legality of the foregoing
Second Amendment to Option and Right of Entry Agreement this
_____ day of _____ 1987.

JOHN W. WITT, City Attorney

By _____
Harold O. Valderhaug
Deputy City Attorney

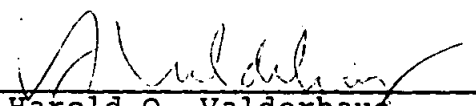
RESOLUTION NUMBER R- 269077

ADOPTED ON AUG 10 1987

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a 55-year lease agreement with TORREY PINES HOTEL ASSOCIATES, a California limited partnership, to construct, operate, and maintain a 400-room hotel development on the Torrey Pines Mesa, next to the Torrey Pines Golf Course, with minimum rents for the first three years of \$220,000, \$440,000 and \$880,000, respectively, against various percentages of gross, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 269077.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
07/28/87
08/05/87 REV.1
Or.Dept:Prop.
R-88-231
Form=r.none

Property
502

(R-86-2021)

RESOLUTION NUMBER R- 265650

ADOPTED ON MAY 6 1986

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute an Exclusive Negotiation and Right of Entry Agreement with the Sheraton Corporation for a period expiring July 1, 1987, or upon execution of a lease agreement, whichever occurs first, which Exclusive Negotiation and Right of Entry Agreement authorizes the City Manager to negotiate with Sheraton for a proposed long-term lease of City property adjacent to the Torrey Pines Golf Course for the development and operation of a 400-room resort hotel and related facilities, under the terms and conditions set forth in that agreement on file in the office of the City Clerk as Document No. RR- 265650.

APPROVED: JOHN W. WITT, City Attorney

By

Harold O. Valderhaug
Deputy City Attorney

RECEIVED

MAY 14 1986

ECO. DEV./PROP. DEPT.

HOV:ps
04/21/86
Or.Dept:Prop.
R-86-2021
Form=r.none

(R-86-571)

RESOLUTION NUMBER R- 264142

ADOPTED ON SEP 30 1985

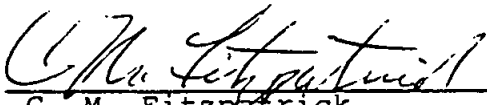
BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, an Option and Right of Entry Agreement with WANSA ENTERPRISES, INCORPORATED, for the purchase of the Wansa leasehold, under the terms and conditions set forth in the Option and Right of Entry Agreement on file in the office of the City Clerk as Document No. RR- 264142.

BE IT FURTHER RESOLVED, that the addition of CIP Project No. 39-102.0 (Torrey Pines Hotel) to the Fiscal Year 1986 Capital Improvements Program is hereby authorized.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to transfer an amount not to exceed \$200,000 from the General Fund Unallocated Reserve to CIP No. 39-102.0.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$200,000 from the General Fund (CIP No. 39-102.0) for payment to WANSA ENTERPRISES, INC. and Fred Leuenberger its Attorney as consideration for entering into the Option and Right of Entry Agreement, is hereby authorized.

APPROVED: John W. Witt, City Attorney

By 
C. M. Fitzpatrick
Assistant City Attorney

CMF:js:420.8
9/25/85
Aud.Cert:86307
Or.Dept:Prop.
R-86-571
Form=r.auagr

Passed and adopted by the Council of The City of San Dego on SEP 30 1985,
by the following vote:

YEAS: Mitchell, Cleator, McColl, Jones, Struiksma, Gotch,
Mayor Hedgecock.

NAYS: None.

NOT PRESENT: Martinez.

VACANT: District 7

AUTHENTICATED BY:

ROGER HEDGECK
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct
copy of RESOLUTION NO. R- 264142, passed and adopted by
the Council of The City of San Diego, California on SEP 30 1985.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Maydell L. Pontecorvo, Deputy

RESOLUTION NUMBER R- 260356

Adopted on MAR 20 1984

WHEREAS, on March 14, 1983, the City Council by Resolution R-258092 authorized the City Manager to execute an Exclusive Negotiation Agreement and Right of Entry with the SHERATON CORPORATION pursuant to which the City and Sheraton were to negotiate a proposed lease for the development of a 400-room resort hotel and related facilities adjacent to the Torrey Pines golf course; and

WHEREAS, the exclusive negotiation agreement was for a 12-month term ending March 31, 1984; and

WHEREAS, the negotiation agreement indicated the fact that a portion of the property proposed for hotel development is currently under lease to Wansa Enterprises and that "the availability of [that] portion for hotel development is subject to an acceptable arrangement for relocation of the [golf course] driving range to an alternate site . . .;" and

WHEREAS, the negotiation agreement specified that "if the issues relating to the relocation of the driving range . . . have not been finally resolved before Sheraton has expended Fifty Thousand Dollars (\$50,000)" for the preparation of environmental documents and applications for all necessary

permits for the development of the site, "Sheraton may suspend the expenditure of any further sums" and "the term [of the negotiation agreement] shall be automatically extended for a period of time" necessary to resolve the relocation issue but in no event to extend beyond March 31, 1987; and

WHEREAS, the City has to date been unsuccessful in its efforts to fairly resolve the relocation issue and has, therefore, been unable to give possession of a large portion of the proposed site to Sheraton; and

WHEREAS, because of such inability to deliver possession Sheraton has been unable to proceed with tests necessary for preparation of environmental documents and has requested that the City waive the requirement for the \$50,000 expenditure for environmental documents and project permits; and

WHEREAS, the City Manager has recommended the waiver of said expenditure requirement as a pre-condition to an extension of the negotiation agreement for the period necessary to resolve the relocation issue, and has further recommended that the extension be for a period beyond 1987 and until 120 days after the land subject to the Wansa lease becomes available for hotel development, or until 120 days after November 30, 1992, which is the expiration date of the Wansa lease, whichever date or event first occurs; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego,

that the City Manager is hereby authorized and empowered to execute a First Amendment to the Exclusive Negotiation Agreement and Right of Entry with THE SHERATON CORPORATION which First Amendment waives the requirement that Sheraton expend at least \$50,000 on required activities, and extends the term of the Exclusive Negotiation Agreement until the specified number of days after resolution of the Wansa relocation issue or until 120 days after November 30, 1992, whichever date or event first occurs, under the terms and conditions set forth in that First Amendment to Exclusive Negotiation Agreement and Right of Entry on file in the office of the City Clerk as Document No. RR-260356.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
3/5/84
Revised 3/22/84
Or.Dept:Prop.
Form=r.none

Passed and adopted by the Council of The City of San Diego
on March 26, 1984, by the following vote:

YEAS: Mitchell, Cleator, McColl, Jones, Struiksma, Gotch, Murphy,
Martinez, Hedgecock

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

ROGER HEDGECK
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By ELLEN BOVARD, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R-260356
passed and adopted by the Council of The City of San Diego,
California, on MAR 26 1984.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(SEAL)

By Ellen Bovard, Deputy.

RESOLUTION NUMBER R- 258092

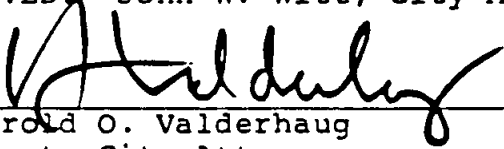
Adopted on MAR 14 1983

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, an Exclusive Negotiation Agreement and Right of Entry with THE SHERATON CORPORATION, a Delaware corporation, for the development and operation of a resort hotel on the Torrey Pines Mesa, under the terms and conditions set forth in that Exclusive Negotiation Agreement and Right of Entry on file in the office of the City Clerk as Document No. RR- 258092.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
2/28/83
Or.Dept:Prop.
Form=r.none

Passed and adopted by the Council of The City of San Diego
on MAR 14 1983, by the following vote:

YEAS: Mitchell, Cleator, Gotch, Murphy, Martinez

NAYS: None.

NOT PRESENT: Jones, Struiksma.

VACANT: District 3 and Mayor.

AUTHENTICATED BY:

BILL CLEATOR

Deputy Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(SEAL)

By MAYDELL L. PONTECORVO, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R- 258092
passed and adopted by the Council of The City of San Diego,
California, on MAR 14 1983.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(SEAL)

By Maydell L. Pontecorvo, Deputy.



THE CITY OF SAN DIEGO

November 19, 2002

Steve Gold
Hilton La Jolla Torrey Pines
10950 N. Torrey Pines Road
La Jolla, CA 92037

Reference: Torrey Pines Golf Courses – Supplemental Reserved Nonresident Tee Times for the Hilton La Jolla Torrey Pines

Dear Mr. Gold:

This is to confirm our agreement regarding supplemental tee times for the Hilton. This supplemental agreement is in addition to the previous tee time agreement for 20 players per day. Listed below are the proposed terms and conditions.

1. Tee Times Allotment:
 - a. Total of 16 players per day, provided in 4 foursomes, starting the first Saturday in April and ending the last Sunday in October.
 - b. The term of this agreement shall expire on October 31, 2005.
 - c. Times shall be distributed throughout the day at the reasonable discretion of City's Golf Operations Manager.
 - d. Monthly play will be distributed 50% on the south course (8 players per day) and 50% on the north course (8 players per day), with exact reasonable distribution at the discretion of City's Golf Operations Manager.
2. Schedule:
 - a. No credit will be given for loss of tee times for the following reasons:
 - i. Buick Invitational Tournament (approximately 10 to 12 days);
 - ii. City-Sponsored Amateur Tournament (approximately 6 days);
 - iii. Junior World Tournament (approximately 7 days);
 - iv. Any other PGA or USGA Tournament (variable days);
 - v. Inclement weather (but see Item 2.d. below); and
 - vi. Regular course maintenance causing the closing of either course (2 days).
 - b. When one-day tournaments displace Hilton's tee times but are less than full-course tournaments, such times will be replaced on the same day based on the mutual agreement of the parties. All play schedules showing



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

any such displacement will be provided by City to Hilton at least 90 days in advance.

- c. For one-day, full-course tournaments (other than those noted in Item 2.a above), City shall give 90 days advance notice to Hilton. For these tournaments, weekday times (Monday through Thursday) will be replaced on weekdays, and weekend times (Friday through Sunday) will be replaced on weekends over a reasonable period of time (but in no case more than 60 days) by mutual agreement of the parties.
- d. In the event of inclement weather, Hilton will be given the right of first refusal for nonreserved starter times on the next available playing day, up to the total number of tee times lost due to the most recent period of inclement weather.

3. Consideration:

a. Tee Time Pricing:

- i. Hilton will pay for each round guaranteed, regardless of whether such round is actually utilized. A round will be considered "guaranteed" if Hilton has not returned any daily allotted round to City as set forth in Item 3.a.ii. below.
- ii. Hilton will be allowed to return unreserved rounds no later than noon 8 calendar days prior to the tee time date.
- iii. Hilton will pay for each round at either (i) the then-current non-resident rate plus a reservation surcharge of \$25 per player for the north course, or (ii) the then-current nonresident rate plus a reservation surcharge of \$30 per player for the south course.
- iv. Fees will be payable to City monthly, based on actual tee times guaranteed. City will prepare an invoice for each calendar month that will be presented to Hilton by the 5th of the next month and payable in conjunction with Hilton's monthly rent payment due under its lease with City.

b. Rent:

- i. City will receive no percentage rent on the actual cost of tee times, cart rentals, and other similar services provided to Hilton guests.
- ii. City will receive percentage rent on the markup on tee times and cart rentals (i.e., the difference between the amount charged the guest and Hilton's actual cost) provided to Hilton guests at the then-current percentage rent for guest room rentals, if part of a room package.

- c. TOT: All gross revenues associated with golf course charges are subject ✓ to Transient Occupancy Tax at the then-current rate.
- d. These amounts are subject to confirmation by audit.

Page 3
Mr. Steve Gold
November 19, 2002

4. Amendment:

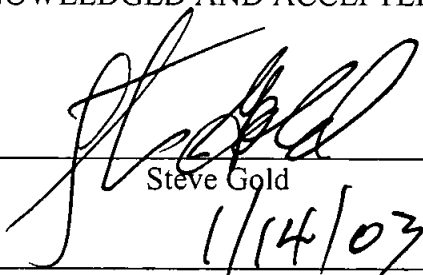
- a. The provisions contained above shall be subject to renegotiation 3 years from the date of execution of this agreement, provided both City and Hilton wish to extend the term.
- b. During the term of this agreement, the rates or surcharge shall not decrease unless an independent party confirms that the then-current rate plus surcharge paid by Hilton are equal to or greater than the market rate for nonresident tee times. In such case, City and Hilton agree to negotiate in good faith to agree on an equitable adjustment in rates and/or surcharge.

If acceptable, please sign and date where indicated on the enclosed copy of this letter and return it to Paul Crawford of this office.

Sincerely,


Tim C. Rothans
Deputy Director
Real Estate Assets Department

ACKNOWLEDGED AND ACCEPTED

By  _____
Steve Gold
Date 11/14/03

PTC/cj

Enclosure

cc: Ellen Oppenheim, Park & Recreation Director
Terri Williams, Park & Recreation Deputy Director
Jim Allen, Golf Operations Manager

File: Lease - Hilton Hotels Corporation

I:\WP0\2002\Crawford\VL-GOLD3.doc



THE CITY OF SAN DIEGO

March 6, 2002

Steve Gold
Hilton La Jolla Torrey Pines
10950 N. Torrey Pines Road
La Jolla, CA 92037

Reference: Torrey Pines Golf Courses - Reserved Nonresident Tee Times for the Hilton
La Jolla Torrey Pines

Dear Mr. Gold:

This is to confirm our agreement regarding the tee times for the Hilton. Listed below are the proposed terms and conditions.

1. **Tee Times Allotment:**

- a. Total of 20 players times per day, provided in 5 start times.
- b. Times are 7:35 a.m., 7:42 a.m., 11:49 a.m., 11:56 a.m., and 12:07 p.m. (1:07 p.m. during Daylight Savings Time).
- c. Play will be distributed 60% on the south course (12 players per day) and 40% on the north course (8 players per day), with exact distribution at the discretion of City's Golf Operations Manager.

2. **Schedule:**

- a. No credit will be given for loss of tee times for the following reasons:
 - i. Buick Invitational Tournament (approximately 10 to 12 days);
 - ii. City Amateur Tournament (approximately 6 days);
 - iii. Junior World Tournament (approximately 7 days);
 - iv. Any other PGA or USGA Tournament (variable days);
 - v. Inclement weather; and
 - vi. Regular course maintenance causing the closing of either course.
- b. When one-day tournaments displace Hilton's tee times but are less than full-course tournaments, such times will be replaced in the same day. All play schedules showing any such displacement will be provided by City to Hilton at least 90 days in advance.

3. **Consideration:**

- a. **Access Fee:** In consideration for the guaranteed access for 20 players per day, Hilton will, in lieu of paying an annual fee of \$75,000, provide the following "in kind" services valued at \$75,000 to City: 1) The purchase of, and laundry services for, golf course employee uniforms; and 2) Provide custodial services for Torrey Pines Golf Course Clubhouse and on-course rest rooms.



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

b. **Tee Time Pricing:**

- i. Hilton will pay for each round guaranteed, regardless of whether such round is actually utilized. A round will be considered "guaranteed" if:
 - (1) Hilton has not returned any daily allotted round to City by 5:00 p.m., 10 calendar days prior to the tee time date, or
 - (2) Hilton has otherwise guaranteed the rounds for a time when City has booked a full-course tournament.
- ii. Payment:
 - (1) Hilton will pay for each round at either (i) the then-current nonresident rate, plus a reservation surcharge of \$25 per player, for the north course, or (ii) the then-current nonresident rate, plus a reservation surcharge of \$30 per player, for the south course.
- iii. Fees will be payable to City monthly, based on actual tee times guaranteed.

c. **Rent:**

- i. City will receive no percentage rent on the actual cost of tee times, cart rentals, and other similar services provided to Hilton guests.
 - ii. City will receive percentage rent on the markup on tee times and cart rentals (i.e., the difference between the amount charged the guest and Hilton's actual cost) provided to Hilton guests at the then-current percentage rent for guestroom rentals, if part of a room package.
- d. **TOT:** All gross revenues associated with golf course charges are subject to Transient Occupancy Tax at the then-current rate.
- e. These amounts are subject to confirmation by audit.

4. **Amendment:**

- a. The provisions contained above, with the exception of Item 1.a. above, shall be renegotiated every 3 years from the date of execution of this agreement, consistent with the then-existing City Council policies and subject to City Council approval.
- b. During the term of this agreement, the rates or surcharges shall not decrease unless an independent party confirms that the then-current rate plus surcharge paid by the Hilton are equal to or greater than the market rate for nonresident tee times. In such case, City and Hilton agree to negotiate in good faith to agree on an equitable adjustment in rates and/or surcharges.
- c. Any amendment to this agreement may be enacted by the approval of the City Manager.

5. **Tournament Play:**

a. **Booking:**

- i. Hilton will also have the same right as any other party to book tournaments in addition to daily allotted times.
- ii. City's Golf Operations Manager will schedule up to 24 months in advance for tournaments of 144 players, 18 months in advance for tournaments of 72 to 80

Page 3
Steve Gold
March 6, 2002

- players, and 12 months in advance for tournaments of 20 to 70 players.
- b. Payment will be the then-current nonresident rate, plus a reservation surcharge of \$25 per player for the north course and \$30 per player for the south course, which shall include the rental of a golf cart for every 2 players.

Please sign and date where indicated on the enclosed copy of this letter and return it to my attention. Implementation of this agreement will require City Council approval of a lease amendment because Section 1.8 of the current lease does not permit the Hilton to have guaranteed tee times. The City charges a \$780 fee to cover processing of the lease amendment to the City Council. Please make the check payable to the City Treasurer and send it to Paul Crawford of this office.

Sincerely,

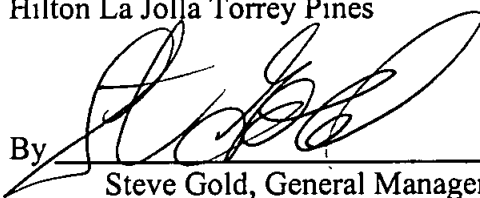


Tim C. Rothans
Deputy Director
619-236-5548

TCR/PTC/jmj

ACKNOWLEDGED AND ACCEPTED:

Hilton Hotels Corporation,
Hilton La Jolla Torrey Pines

By  3-8-02
Steve Gold, General Manager

Date _____

cc: Terri Williams, Deputy Director, Park and Recreation
Jim Allen, Golf Operations Manager

**TORREY PINES GOLF COURSE
AGREEMENT ON RESERVED NONRESIDENT
TEE TIMES**

THIS AGREEMENT is executed between THE CITY OF SAN DIEGO ("City") and HILTON HOTELS CORPORATION, HILTON LA JOLLA TORREY PINES ("Hilton"), pursuant to Section 1.8, Use of Torrey Pines Golf Course by Hotel Guests, of the lease between City and Hilton, as amended by the First Amendment to Lease Agreement, City Clerk Document No. RR-296517, filed May 21, 2002. City and Hilton agree that Hilton will be allowed nonresident tee times at Torrey Pines Golf Course upon the following terms and conditions:

1. Tee Times Allotment:

- a. Total of 20 players times per day, provided in 5 start times.
- b. Times are 7:35 a.m., 7:42 a.m., 11:49 a.m., 11:56 a.m., and 12:07 p.m. (1:07 p.m. during Daylight Savings Time).
- c. Play will be distributed 60% on the south course (12 players per day) and 40% on the north course (8 players per day), with exact distribution at the discretion of City's Golf Operations Manager.

2. Schedule:

- a. No credit will be given for loss of tee times for the following reasons:
 - i. Buick Invitational Tournament (approximately 10 to 12 days);
 - ii. City Amateur Tournament (approximately 6 days);
 - iii. Junior World Tournament (approximately 7 days);
 - iv. Any other PGA or USGA Tournament (variable days);
 - v. Inclement weather; and
 - vi. Regular course maintenance causing the closing of either course.
- b. When one-day tournaments displace Hilton's tee times but are less than full-course tournaments, such times will be replaced in the same day. All play schedules showing any such displacement will be provided by City to Hilton at least 90 days in advance.

3. Consideration:

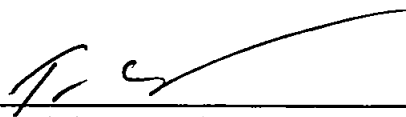
- a. **Access Fee:** In consideration for the guaranteed access for 20 players per day, Hilton will, in lieu of paying an annual fee of \$75,000, provide the following "in-kind" services valued at \$75,000 to City: 1) The purchase of, and laundry services for, golf course employee uniforms; and 2) Provide custodial services for Torrey Pines Golf Course Clubhouse and on-course rest rooms.
- b. **Tee Time Pricing:**
 - i. Hilton will pay for each round guaranteed, regardless of whether such round is actually utilized. A round will be considered "guaranteed" if:
 - (1) Hilton has not returned any daily allotted round to City by 5:00 p.m., 10 calendar days prior to the tee time date, or
 - (2) Hilton has otherwise guaranteed the rounds for a time when City has booked a full-course tournament.

- ii. **Payment:**
 - (1) Hilton will pay for each round at either (i) the then-current nonresident rate, plus a reservation surcharge of \$25 per player, for the north course, or (ii) the then-current nonresident rate, plus a reservation surcharge of \$30 per player, for the south course.
 - iii. Fees will be payable to City monthly, based on actual tee times guaranteed.
 - c. **Rent:**
 - i. City will receive no percentage rent on the actual cost of tee times, cart rentals, and other similar services provided to Hilton guests.
 - ii. City will receive percentage rent on the markup on tee times and cart rentals (i.e., the difference between the amount charged the guest and Hilton's actual cost) provided to Hilton guests at the then-current percentage rent for guest room rentals, if part of a room package.
 - d. **TOT:** All gross revenues associated with golf course charges are subject to Transient Occupancy Tax at the then-current rate.
 - e. These amounts are subject to confirmation by audit.
4. **Amendment:**
- a. The provisions contained above, with the exception of Item 1.a. above, shall be renegotiated every 3 years from the date of execution of this agreement, consistent with the then-existing City Council policies and subject to City Council approval.
 - b. During the term of this agreement, the rates or surcharges shall not decrease unless an independent party confirms that the then-current rate plus surcharge paid by the Hilton are equal to or greater than the market rate for nonresident tee times. In such case, City and Hilton agree to negotiate in good faith to agree on an equitable adjustment in rates and/or surcharges.
 - c. Any amendment to this agreement may be enacted by the approval of the City Manager.
5. **Tournament Play:**
- a. **Booking:**
 - i. Hilton will also have the same right as any other party to book tournaments in addition to daily allotted times.
 - ii. City's Golf Operations Manager will schedule up to 24 months in advance for tournaments of 144 players, 18 months in advance for tournaments of 72 to 80 players, and 12 months in advance for tournaments of 20 to 70 players.
 - b. Payment will be the then-current nonresident rate, plus a reservation surcharge of \$25 per player for the north course and \$30 per player for the south course, which shall include the rental of a golf cart for every 2 players.

IN WITNESS WHEREOF, this agreement is executed by City, acting by and through its City Manager pursuant to City Council Resolution R-296517, and by Hilton, acting by and through its lawfully authorized officer.

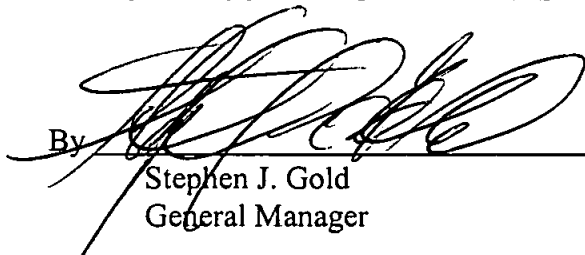
THE CITY OF SAN DIEGO

Date 6-19-02

By 
William T. Griffith
Real Estate Assets Director

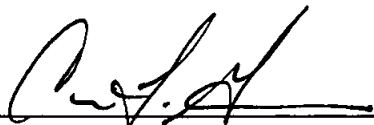
HILTON HOTELS CORPORATION,
HILTON LA JOLLA TORREY PINES

Date 6/10/02

By 
Stephen J. Gold
General Manager

APPROVED as to form and legality:

Date 9/27/02

By 
Deputy City Attorney

PC/cdj
05/30/02
I:\WPO\2002\Crawford\AGREEMENT HILTON TEE TIMES.wpd

CITY ATTORNEY

02 SEP 20 AM 10:16

CIVIL DIVISION

CONSENT AGREEMENT

THIS CONSENT AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), CHH TORREY PINES HOTEL PARTNERS LP, a Delaware limited partnership ("PARTNERS"), and VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company doing business as "Verizon Wireless" ("VERIZON WIRELESS"). This Consent shall be effective as of **June 26, 2001** (the "Effective Date") upon execution by the parties and approval by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the lessor under that certain CITY OF SAN DIEGO PERCENTAGE LEASE dated August 10, 1987, as amended by that certain FIRST AMENDMENT TO LEASE AGREEMENT filed in the Office of the San Diego City Clerk on May 21, 2002, as Document No. RR-296517, and as may be further amended from time to time (the "Hotel Lease," attached hereto as **Exhibit A: Hotel Lease**). TORREY PINES HOTEL ASSOCIATES, a California general partnership ("TPH Associates"), was the original lessee under the Hotel Lease.
- B. TPH Associates caused the real property that is the subject of the Hotel Lease (the "Hotel Property," defined as the "premises" or "leased premises" in the Hotel Lease) to be developed with certain buildings and other improvements comprising a hotel, restaurant, and related facilities commonly known as the "Hilton La Jolla Torrey Pines."
- C. HILTON HOTELS CORPORATION, a Delaware corporation doing business as "Hilton La Jolla Torrey Pines" ("HILTON"), succeeded TPH Associates as lessee under the Hotel Lease pursuant to that certain ASSIGNMENT AND ASSUMPTION OF PERCENTAGE LEASE AND DEED TO IMPROVEMENTS dated December 29, 1998, and recorded in the Office of the San Diego County (California) Recorder as Instrument No. 1998-0853813.
- D. PARTNERS succeeded HILTON as lessee under the Hotel Lease pursuant to that certain ASSIGNMENT AND ASSUMPTION OF PERCENTAGE LEASE AND DEED TO IMPROVEMENTS, dated December 17, 2003, and recorded December 18, 2003, in the Office of the San Diego County (California) Recorder as Instrument No. 2003-1487568.
- E. By succession, PARTNERS is currently the purported licensor under that certain WIRELESS COMMUNICATIONS LICENSE AGREEMENT (the "License," attached hereto as **Exhibit B: License**) dated June 26, 2001, by and between HILTON, as licensor, and VERIZON WIRELESS, as licensee. The License purports to grant VERIZON WIRELESS the license to use the Hotel Property for the purpose of installing, maintaining, and operating VERIZON WIRELESS' "Equipment," as that term is defined and limited in Exhibit A to the License (e.g., transceivers, antennas and cables) (the "License Use").
- F. The License Use is not an authorized use under Hotel Lease section 1.3 Uses; therefore, CITY'S consent to the License Use is required.

- G. Under the terms and conditions of this Consent, CITY will consent to and ratify the License and the License Use, effective as of the Effective Date.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Subordination. The License was, is and shall be subordinate to the Hotel Lease and this Consent. CITY shall not be bound by any term or condition in the License which in any way conflicts with CITY'S rights or increases CITY'S obligations under the Hotel Lease or this Consent. Any conflict between the Hotel Lease or this Consent and the License shall be construed or resolved in favor of the Hotel Lease or this Consent. PARTNERS shall deliver to VERIZON WIRELESS a complete copy of each amendment to the Hotel Lease. 
that affects the License
2. VERIZON WIRELESS' Acknowledgement. VERIZON WIRELESS acknowledges and agrees that its rights and obligations under the License shall be subject and subordinate to the terms and conditions of the Hotel Lease and this Consent. VERIZON WIRELESS shall keep and perform all covenants, conditions, and provisions of the Hotel Lease which are applicable to the rights acquired under the License and this Consent.
3. Term. This Consent shall be effective as of the Effective Date and expire upon the expiration or earlier termination of the License.
4. Additional Rent. As additional rent under the Hotel Lease, PARTNERS shall pay to CITY fifty percent (50%) of all revenues received pursuant to the License, retroactive to the Effective Date, payable upon execution of this Consent and as and when received. PARTNERS shall also pay to CITY, on or before the execution of this Consent, Forty-Three Thousand Four Hundred Eighty-Four Dollars (\$43,484) as a one-time, lump-sum payment as additional rent under the Hotel Lease.
5. Uses. This Consent applies solely to the License and the License Use; it shall not apply to any other use or user without CITY'S consent in each instance. VERIZON WIRELESS' use of the Hotel Property for any unauthorized, illegal or un-permitted purpose shall constitute a default of this Consent, upon which CITY may immediately terminate the License.
6. Competent Management. Throughout the term of the License, VERIZON WIRELESS shall provide competent management of the License Use to CITY'S satisfaction. "Competent management" shall mean demonstrated ability in the management and operation of a wireless communications facility and related activities in a fiscally responsible manner and in accordance with industry standards.
7. Improvements/Alterations. No additions, removals, or structural or architectural design alterations to the improvements, structures, or installations of the Hotel Property shall be made without CITY'S prior written approval.
8. Best Management Practices. When constructing improvements on the Hotel Property, VERIZON WIRELESS shall comply with San Diego Municipal Code Article 3, Division 3:

Stormwater Management and Discharge Control ("Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Prior to commencement of any improvement, VERIZON WIRELESS shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amounts of "Pollutants," as defined by the Code, and other sediments discharged from the Hotel Property. CITY may review the Prevention Plan periodically. Within ninety (90) days after written notice from CITY requesting an update of the Prevention Plan, VERIZON WIRELESS shall submit an updated Prevention Plan to CITY'S satisfaction. VERIZON WIRELESS shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. VERIZON WIRELESS shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith.

9. Superior Interests. The License is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, and rights of way pertaining to the Hotel Property existing on the date of approval of this Consent by the San Diego City Attorney, whether or not of record, and all rights reserved by CITY under Hotel Lease section 1.6 Easements and Reservations ("Superior Interests"). VERIZON WIRELESS shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably prudent to allow its use of the Hotel Property, relative to such Superior Interests. If VERIZON WIRELESS' use of the Hotel Property is or becomes inconsistent or incompatible with a Superior Interest, VERIZON WIRELESS shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the Superior Interest.
10. Approvals & Permits. VERIZON WIRELESS shall obtain any and all necessary authorizations, approvals, and permits required to conduct the License Use, including without limitation CITY'S interference protection requirements, attached hereto as **Exhibit C: Interference Protection Requirements**.
11. Compliance with Law. VERIZON WIRELESS shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Hotel Property and VERIZON WIRELESS' use of the Hotel Property.
12. Disabled Access Compliance. VERIZON WIRELESS shall at all times in its occupancy, use, development, and maintenance of the Hotel Property comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
13. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in the Hotel Lease shall be deemed to refer to "Mayor or his or her designee." This provision became effective January 1, 2006, and shall remain in effect for the duration CITY operates

under the mayor-council (commonly referred to as “strong mayor”) form of governance pursuant to Article XV of the San Diego City Charter.

14. Assignment. VERIZON WIRELESS may not assign the License without CITY’S prior written consent. An assignment by operation of law shall automatically terminate the License.
15. Indemnification. VERIZON WIRELESS shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PARTNERS’ and VERIZON WIRELESS’ officers, employees, invitees, agents, or contractors, which arise out of VERIZON WIRELESS’ acts or omissions in connection with this Consent or the License and VERIZON WIRELESS’ occupancy, use, development, or maintenance of the Hotel Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs. PARTNERS shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PARTNERS’ and VERIZON WIRELESS’ officers, employees, invitees, agents, or contractors, which arise out of PARTNERS’ acts or omissions in connection with this Consent or the License and PARTNERS’ occupancy, use, development, or maintenance of the Hotel Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs. Notwithstanding anything to the contrary contained herein, PARTNERS’ and VERIZON WIRELESS’ duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election and at its own cost and expense, conduct the defense or participate in the defense of any claim related in any way to this indemnification.
16. Insurance. VERIZON WIRELESS shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000).
 - 16.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or CG20 26 11 85], “The City of San Diego, its elected officials, officers, employees, representatives, and agents” shall be named as additional insureds in all policies.
 - 16.2 Primary & Non-Contributory. Insurance policies shall be primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the term of the License and any extended use. The certificate(s) of insurance shall be filed with CITY’S Real Estate Assets Department.

- 16.3 Qualified Insurer(s). All insurance required by the terms of this Consent must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 16.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy shall be the sole responsibility of VERIZON WIRELESS.
- 16.5 Continuity of Coverage. All policies shall be in effect on or before execution of this Consent, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. VERIZON WIRELESS shall maintain all insurance required by this Consent throughout the term of the License and any extended use, without lapse. When a new insurance policy is obtained, or when an insurance policy is renewed or extended, VERIZON WIRELESS shall, within ten (10) days thereafter, deliver to CITY a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Consent.
- 16.6 Modification. To assure protection from and against the kind and extent of risk existing on the Hotel Property, CITY, at its discretion, may require the reasonable revision of amounts and coverage at any time during the term of the License by giving VERIZON WIRELESS thirty (30) days prior written notice. VERIZON WIRELESS shall also obtain any additional insurance required by CITY for new improvements constructed by VERIZON WIRELESS, in order to meet the requirements of this Consent.
- 16.7 Accident Reports. VERIZON WIRELESS shall report to CITY any accident causing property damage or injury to persons on the Hotel Property, and related in any way to the License Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 16.8 Failure to Comply. If VERIZON WIRELESS fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. VERIZON WIRELESS shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify VERIZON WIRELESS of such payment of premiums stating the amount paid, the name(s) of the insurer(s), and the rate of interest. VERIZON WIRELESS shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. Notwithstanding any other provision of this Consent, if VERIZON WIRELESS fails or refuses to obtain or maintain insurance as required by this Consent, or fails to provide proof of insurance, CITY may terminate the License immediately upon such breach. Upon such termination, VERIZON WIRELESS shall

immediately cease its use of the Hotel Property and commence and diligently pursue the removal of its property from the Hotel Property.

16.9 All-Risk Property Insurance. VERIZON WIRELESS shall obtain and maintain, at its sole cost, All-Risk Property insurance on all of VERIZON WIRELESS' insurable property on the Hotel Property in an amount to cover one hundred percent (100%) of the replacement cost. VERIZON WIRELESS shall deliver to CITY a certificate of such insurance.

17. Notices. Notices shall be given as provided in the Hotel Lease. Notices shall be addressed as follows:

If to CITY:

THE CITY OF SAN DIEGO
Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
ATTN: James F. Barwick, Director

With a copy by First Class mail to: SAN DIEGO CITY ATTORNEY
ATTN: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

If to PARTNERS:

CHH TORREY PINES HOTEL PARTNERS LP
Hilton La Jolla Torrey Pines
10950 North Torrey Pines Road
La Jolla, CA 92037
ATTN: General Manager

If to VERIZON WIRELESS:

VERIZON WIRELESS (VAW) LLC
d/b/a "Verizon Wireless"
180 Washington Valley Road
Bedminster, NJ 07921
ATTN: Network Real Estate

18. Waiver. CITY'S failure to insist upon the strict performance of any of PARTNERS' or VERIZON WIRELESS' obligations under this Consent, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Hotel Property is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this

Consent or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach when discovered.

19. Written Agreement. This Consent contains the complete agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. No term or condition of this Consent may be changed in any respect except by written agreement between the parties.
20. Partial Invalidity. If any term, covenant, condition, or provision of this Consent is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
21. Governing Law. This Consent shall be governed, construed, and enforced in accordance with the laws of the State of California.
22. Survival. Any obligation which accrues under this Consent prior to its expiration or termination shall survive such expiration or termination.
23. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Consent, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs. The "prevailing party" shall be the party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
24. Authority. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the Mayor, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

25. CITY'S Consent. Subject to the terms and conditions of this Consent, CITY hereby consents to the License.

IN WITNESS WHEREOF, this Consent is executed to be effective as of the Effective Date.

Date: _____

CHH TORREY PINES HOTEL PARTNERS LP, a
Delaware limited partnership

BY: CHH TORREY PINES HOTEL GP, LLC, a
Delaware limited liability company, General
Partner

BY: Hilton Hotels Corporation, its Managing Agent

BY: _____

Name: John P. Magyoni

Title: Sr. VP West Operations & Hawaii

Date: 1/21/08 10/19/07

VERIZON WIRELESS (VAW) LLC, a Delaware
limited liability company doing business as "Verizon
Wireless"

BY: _____

Keith A. Surratt

West Area Vice President, Network

Date: 1/29/08

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____

Name: James F. Barwick, CCIM

Title: Director, Real Estate Assets

ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to
State CEQA Guidelines Section 15301: Existing facilities.

BY: _____

Name: Martha Blake

Title: Senior Planner

APPROVED AS TO FORM AND LEGALITY:

Date: 1/31/08
(required)

MICHAEL J. AGUIRRE, City Attorney

BY: _____

Name: Brock Ladewig

Title: Chief Deputy City Attorney

Exhibit A: Hotel Lease

GROUND LESSOR'S CONSENT AND ESTOPPEL CERTIFICATE

WHEREAS, THE CITY OF SAN DIEGO (hereinafter "Landlord"), is the lessor under that certain Percentage Lease between the Landlord and Torrey Pines Hotel Associates ("Original Tenant") dated August 10, 1987, a memorandum of which was recorded on January 10, 1989 as Instrument No. 89-031605 in the Official Records of San Diego County, California, as assigned by Original Tenant to Hilton Hotels Corporation ("Hilton") pursuant to that certain Assignment and Assumption of Percentage Lease and Deed to Improvements dated December 29, 1998 and recorded on December 29, 1998, as Instrument No 1998-0853813 in the Official Records of San Diego County, California and assigned by Hilton to CHH Torrey Pines Hotel Partners LP, ("Tenant") pursuant to that certain Assignment and Assumption of Percentage Lease and Deed to Improvements, dated December 17, 2003, and recorded December 18, 2003, as Instrument No.2003-1487568, in the Officials Records of San Diego, California, which Lease covered lands described on Exhibit A attached hereto (hereinafter the "Premises") (collectively, the "Lease") (all capitalized words and phrases not otherwise defined in this Certificate shall have the meanings given them in the Lease);

WHEREAS, Original Tenant has caused the Premises to be improved with certain buildings and other improvements (collectively, the "Improvements") comprising the hotel, restaurant, and related facilities commonly known as the Hilton La Jolla Torrey Pines (the Improvements and the Premises are collectively referred to herein as the "Property");

WHEREAS, Ashford Hospitality Limited Partnership ("Ashford") intends to acquire a 74.9% limited partner interest, and Ashford HHC III LLC (a wholly owned subsidiary of Ashford) ("Ashford GP") intends to acquire a 0.1% general partner interest, in CNL HHC Partners III LP, which is a joint venture that owns 100% of the direct and indirect interests in Tenant (collectively, the "Interest"); and

WHEREAS, Ashford is unwilling to purchase the Interest unless Landlord affirms the following for Ashford's benefit, and Landlord understands that Ashford has required this certificate from Landlord as an inducement for Ashford to purchase the Interest.

NOW, THEREFORE, Landlord hereby certifies to Ashford as follows:

1. Landlord approves and consents the acquisition of the Interest by Ashford and Ashford GP.

2. Landlord hereby certifies as follows:

- (a) To the best of Landlord's knowledge, the Lease is in full force and effect in accordance with its terms. Except as provided herein, Landlord has not assigned, supplemented, modified or otherwise amended the Lease. To Landlord's knowledge, Tenant has not assigned or otherwise transferred Tenant's interest in the Lease, except as security for a loan. Except as set forth in Exhibit B attached hereto, there does not exist any other agreements (including subordination, non-disturbance and attornments) concerning the Property, whether oral or written, between Landlord and Tenant.

(b) To the best of Landlord's knowledge, each of the obligations on Tenant's part to be performed to date under the Lease has been performed, including specifically as set forth below:

(i) The Tenant and the Property are in compliance with the General Development Plan.

(ii) Tenant has paid all costs and made all reimbursements, if any, required to be paid to date by the Tenant under the Lease and/or any other agreement with the Landlord relating to the development of the Property.

(c) To the best of Landlord's knowledge, there are no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease and neither party to the Lease is in default thereunder.

(d) Minimum rent and percentage rent due under the Lease have been paid in full through February 28, 2007, subject to future City audit as permitted in the Lease.

(e) The term commencement date of the Lease was July 1, 1988 and the initial term of the Lease shall expire on June 30, 2043.

(f) The lease with Wansa Enterprises, Inc. ("Wansa") referenced in Section 1.1(a) of the Lease has been terminated, any and all monies to be paid to Wansa in connection with the termination of said lease have been paid to Wansa and Wansa has no right, title or interest in and to the Property.

(g) During the term of the Lease, Hilton has provided "competent management" as the same is defined in Section 1.7 of the Lease.

3. Landlord hereby confirms that the leasehold estate in the Premises or any deed of trust or mortgage held by a Leasehold Beneficiary, which encumbers the leasehold estate under the Lease shall not be subject or subordinate to any mortgage encumbering the fee estate to the Premises.

[SIGNATURE PAGE FOLLOWS]

This Certificate and the representations made herein shall inure, to the benefit of Tenant, Ashford, Ashford GP and any Leasehold Beneficiary of Ashford, Ashford GP or Tenant and their respective lenders, successors and assigns, and shall be binding on the Landlord and its legal representatives, its successors and assigns.

Date 4/12/07

CITY OF SAN DIEGO

By David Sandoval

Name David A. Sandoval

Title Deputy Director, Real Estate Assets

APPROVED as to form and legality this 12th day of APRIL, 2007

Michael J. Aguirre CITY ATTORNEY

By [Signature]
Deputy City Attorney
BRECK LADENBY

DUPLICATE

CONSENT TO LICENSE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

CHH TORREY PINES HOTEL PARTNERS, LP

(LESSEE) and filed in the Office of the City Clerk as Document RR-269077, dated August 10, 1987, as amended, hereby consents to that certain Automated Teller Machine Agreement (License), dated November 11, 2004, attached hereto, between Hilton Hotels Corporation, as Managing Agent for CHH Torrey Pines Tenant Corp. (LICENSOR) and

NATIONWIDE AUTOMATED SYSTEMS, INC.

(LICENSEE). The License shall be subordinate to the Master Lease in all respects. CITY is merely approving LICENSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the License. CITY is not bound by any term or condition in the License which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

1. ASSIGNMENT AND SUBLEASING: LICENSEE shall not assign the License or sublicense the licensed area or any part of the licensed area without the prior written consent of CITY. An assignment by operation of law shall automatically terminate the License.
2. HOLD HARMLESS: LICENSEE shall assume the defense of, indemnify, and hold harmless CITY, its elected officials, officers, employees, agents, and representatives from all claims, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the licensed area, the condition of the licensed area, or from any act or omission of LICENSEE, its agents and invitees; provided, however, LICENSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, employees, agents, and representatives.
3. INSURANCE: LICENSEE shall be insured by an insurance carrier acceptable to CITY against loss from public liability arising from the use or condition of or operation conducted on the licensed area. Minimum coverage shall be two million dollars (\$2,000,000) combined single limit liability. A copy of the policy of insurance shall be filed with CITY and shall, by separate endorsement, name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds. The policy shall specify that the policy may not be terminated, altered, or canceled without

thirty (30) days prior written notice to CITY by the insurance company.

4. LEGAL PROCEEDINGS: Should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this consent, the Master Lease, or the License, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
5. ASSUMPTION: LICENSEE agrees to assume the rights and obligations of the Master Lease and to keep and perform all covenants, conditions, and provisions of the Master Lease which are applicable to the rights acquired.

THE CITY OF SAN DIEGO

Date 5/03/05

By 
Deputy Director, Real Estate Assets Department

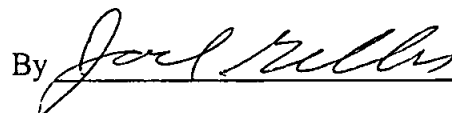
HILTON HOTELS CORPORATION, a Delaware corporation, as Managing Agent for CHH TORREY PINES TENANT CORP.

Date 4.20.05

By 
ERNEST T. WOODEN JR.

NATIONWIDE AUTOMATED SYSTEMS, INC., a California corporation

Date 4/13/05

By 

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date 5/13/05

By 
Deputy City Attorney

PTC/cb

03/29/05

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RECEIVED
CITY OF SAN DIEGO
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REAL ESTATE ASSETS DEPT.

COPY

**HILTON HOTELS CORPORATION
AUTOMATED TELLER MACHINE AGREEMENT
FOR
NATIONWIDE AUTOMATED SYSTEMS, INC.
AT THE HILTON HOTEL - LA JOLLA TORREY PINES**

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1 AUTOMATED TELLER MACHINE AGREEMENT
2

3 This Automated Teller Machine Agreement ("Agreement") is dated November 11, 2004,
4 by and between Hilton Hotels Corporation, a Delaware corporation, as Managing Agent for
5 CHH Torrey Pines Tenant Corp. ("Owner") and Nationwide Automated Systems, Inc., a
6 California corporation ("Contractor");
7

8 WHEREAS, pursuant to that certain Master Service License Agreement dated
9 August 2, 2001, by and between Hilton Hotels Corporation, a Delaware corporation
10 ("Hilton"), and Nationwide Automated Systems, Inc., a California Corporation
11 ("Contractor"), (the "Master Agreement") HILTON RECEIVES CONSIDERATION
12 FROM CONTRACTOR UNDER THE MASTER AGREEMENT BASED ON CHH
13 TORREY PINES TENANT CORP.'S EXECUTION OF THIS AGREEMENT.
14

15 WHEREAS, Contractor is in the business of providing Automated Teller Machines
16 (hereinafter "ATM") for public use and desires to provide an ATM for placement in and around
17 the Hilton Hotel - La Jolla Torrey Pines located at 10950 North Torrey Pines Road, La
18 Jolla, California 92037 ("Hotel"), for the convenience of employees and other parties desiring
19 to use the ATM; and
20

21 NOW THEREFORE, the parties agree as follows:

22 1. ATM
23

24 Contractor and Owner agree to arrange for the placement of the ATM at the Hotel at a
25 location specified by Owner (the "Licensed Area") on the terms and conditions set forth below.
26 Contractor will provide the necessary ATM, will install the machine and provide ATM support,
27 ATM supplies, computer and communication systems, communications links, clearing and
28 settlement services, cash for loading the ATM, periodic loading of cash, and all other support
29 functions necessary for the maintenance and operation of the ATM. The ATM will possess feature,
30 performance and quality standards that are equal to the prevailing industry standards for automated
31 teller machines designed to be primarily cash dispensers as further defined in the Master
32 Agreement.

33 2. NATURE OF LICENSE
34

35 The license granted hereby is a non-exclusive license as to ATM's (provided Owner may
36 enter the Licensed Area at any time) for Contractor to use the Licensed Area solely as required to
37 perform its obligations hereunder, revocable according to the terms hereof. In no event shall this
38 license be deemed or construed to run with the land or create or vest any easements or other
39 rights in Owner's property. Contractor agrees that no permanent or possessory interest shall
40 accrue to Contractor, or its Contractors in Owner's property at any time or by exercise of the
41 permission given hereunder, and that Contractor shall not claim any such interest in Owner's
42 property. **THIS AGREEMENT DOES NOT CREATE ANY RECORDABLE INTEREST**
43 **AND SHALL NOT BE RECORDED IN ANY OFFICIAL RECORDS.**

1 3. TERM

2
3 a. Initial Term. Unless earlier terminated as otherwise provided in this Agreement, the
4 term of the Agreement shall be for **Three (3) years**, commencing **December 1, 2004**, and ending
5 **November 30, 2007**.

6
7 b. Renewal Terms. Hotel may renew this Agreement for two additional, successive
8 periods of one (1) year each ("Renewal Terms") upon the provision of ten (10) days prior written
9 notice to Contractor. The Renewal Terms shall be on the same terms and conditions as set forth
10 in the Agreement.

11 4. CONSIDERATION

12
13 Contractor shall charge customers of the ATM a **\$2.50** fee per transaction. Such fee may
14 not be increased without Owner's approval and a corresponding increase in consideration. Payment
15 of consideration by Contractor to Owner, if any, is due within twenty (20) days after the end of each
16 month and shall be delivered to Owner together with the report required below in Paragraph 9.
17 Owner shall have the right to audit such reports and to request and receive reasonable
18 documentation to support the data contained in such reports.

19
20 For each fee charged transaction, Contractor shall pay to Owner monthly consideration in
21 the amount of **\$0.50** per transaction until 1,000 transactions per month, then **\$1.475** of all
22 transactions in excess of 1,000.

23
24 Transactions processed where no fee is charged shall be excluded from the calculations
25 above.

26 5. NETWORK SERVICES

27
28 Contractor will use its best efforts to arrange for access to the ATM by holders of
29 network cards through ATM networks mutually agreed to by both parties. It is the intention of
30 the parties that the ATM shall be available to accept a minimum of 90% of the transactions
31 attempted by customer, by reason of Network Access as more particularly defined below in
32 Paragraph 9.

33 6. SITE

34
35 The Hotel will provide approximately twelve (12) square feet of floor space or an
36 appropriate wall mounting location for the ATM, and will provide and maintain at its own cost,
37 electrical power and telephone line costs for operation of the ATM. Contractor and the Owner
38 will mutually agree to the location of the ATM.

39 7. ATM INSTALLATION AND OPERATION

1 a. Contractor shall install the ATM at the location agreed upon and connect the ATM to
2 electric and telephone conduits or wires and to such other facilities as are reasonably necessary to
3 install and operate the ATM. All work necessary for decor treatments and installation of the
4 ATM, together with connection to telecommunications lines shall be provided at Contractor's
5 expense. Owner reserves the right of approval as to design and decor of the ATM, as well as all
6 other plans and specifications necessary for the ATM. All work shall be done at such times as
7 are approved by Owner and so as to interfere as little as possible with normal building
8 operations.

9
10 b. Contractor will be responsible for the transportation of currency, bags or cartridge
11 containers to the ATM, and the replacement of currency dispensed by the ATM. Contractor will
12 provide all prepackaging of currency for placement in the ATM, and will perform all services for
13 the reconciliation of ATM-dispensed currencies.

14 8. ATM AVAILABILITY

15
16 Contractor will use its best efforts to assure that the ATM installed in the Hotel location is
17 fully functional not less than 90% of the time for cardholder service during those times which
18 customers have physical access to the ATM. In the event ATM is in need of repair, Contractor
19 response time shall be within three (3) hours of time the call for repair is made. Contractor shall
20 provide a toll free customer service telephone number to be displayed on the ATM at all times.

21 9. TRANSACTION ACCEPTANCE

22
23 Contractor agrees that it will use its best effort to ensure the Network Systems used by the
24 ATM shall accept 90% of all attempted transactions except by reason of customer insufficient
25 funds, or as provided below in Paragraph 22. Within twenty (20) days after the end of each
26 month, Contractor will provide Owner with a written report showing the total number of
27 transactions for the ATM during the previous month and the number of attempted and accepted
28 transactions.

29 10. CONTRACTOR'S RIGHT OF ENTRY

30
31 Contractor and its agents, employees and contractors will have the right to enter the Hotel
32 location only at reasonable times to perform its obligations hereunder, with respect to the ATM
33 including, but not limited to repairs, maintenance, supplies, bookkeeping and cash replenishment.

34 11. NON-AGENCY ADVERTISING NO USE OF NAMES

35
36 Contractor shall not at any time represent that it is employed by Owner, or that it is
37 authorized to make any contracts, agreements or obligations on behalf of Owner or any of its
38 affiliates, any Owner Hotel or owners thereof, and Contractor shall not take any actions on
39 behalf of Owner or in Owner's name. Contractor shall not display or distribute any advertising
40 signs or notices of any kind whatsoever upon the premises of Owner, except caution and work

1 in progress signs, without the prior written permission of Owner in each instance, any such
2 permission to be revocable at any time thereafter without prior notice at the sole discretion of
3 Owner. Contractor hereby covenants and agrees not to use the name of Owner, or any
4 variation thereof, or the name "Owner," or any logotypes now or hereafter used by Owner or
5 its affiliates, subsidiaries, hotels or their owners, in connection with any of Contractor's
6 business or operations without the prior written approval of Owner and, in the event of such
7 approval, only in the manner and at such times as shall be prescribed in such approval.

8 12. TERMINATION OR RELOCATION OF ATM
9

10 a. Termination. This Agreement shall terminate upon the occurrence of any of the
11 following events:
12

13 (1) If Contractor shall fail to pay the sums to Owner called for in Paragraph 4 of
14 this Agreement or fails to pay sums discovered to be owing to Owner as a result of an audit by
15 Owner and such failure continuing for three (3) days after written notice that the same is due;
16

17 (2) If Contractor shall violate or breach any of the terms, conditions or
18 covenants hereof and shall not remedy such violation or breach within ten (10) days after written
19 notice by Owner to Contractor of such violation or breach;
20

21 (3) If Contractor shall at any time conduct the business or services provided
22 for hereunder in a manner not conforming to any reasonable rules, standards or practices
23 established by Owner hereunder and shall fail to remedy any such noncompliance within ten (10)
24 days after written notice by Owner to Contractor of such noncompliance;
25

26 (4) If Contractor shall make an assignment for the benefit of creditors or file a
27 voluntary petition in bankruptcy or be adjudged insolvent or shall admit in writing its inability to
28 meet its obligations as they mature, or if a permanent receiver of all or any portion of
29 Contractor's property shall be appointed in any judicial proceeding, or there shall be entered
30 against it an order adjudicating it a bankrupt or insolvent, or an order appointing a liquidator,
31 receiver or trustee for it, or all, or substantially all of its assets or, approving as properly filed
32 against it a petition seeking reorganization, arrangement or other proceeding under any
33 bankruptcy or other law for the relief of debtors, which order shall continue unstayed and in
34 effect for, or which proceeding shall not be terminated and Contractor released from such
35 proceeding within thirty (30) days, or if Contractor shall attempt to assign or encumber this
36 Agreement or permit any other person, firm or corporation to conduct the business or Services
37 provided for hereunder;
38

39 (5) If any statute, ordinance, rule or regulation hereafter promulgated by any
40 legislative body or agency having jurisdiction over the Contractor shall prohibit the furnishing of
41 services or the transaction of business of the nature to be provided or transacted hereunder;
42

43 (6) Owner may terminate this Agreement by written notice of not less than

thirty (30) days if during any consecutive thirty (30) day period, Contractor fails on average over such period to maintain not less than 90% transaction acceptance for customers for reasons other than those set forth in Paragraph 9 or 22, or those for which the Owner is responsible. Transaction Acceptance shall be calculated as a percentage of those transactions attempted by customers, as compared to those accepted or approved by the Network Services;

(7) Upon the expiration of thirty (30) days following written notice by Owner to Contractor at any time and without cause;

(8) In the event that Contractor shall fail to provide the Requested Information within thirty (30) days of the date of its request, or if information with respect to Contractor or its affiliates, whether provided by Contractor or obtained through Owner's own investigation, discloses facts concerning Contractor or its affiliates including their respective officers, directors or shareholders which, in the reasonable opinion of Owner or its Compliance Committee, might adversely affect any gaming licenses and permits held by Owner or the current stature of Owner or its affiliates with any gaming commission, board, or similar governmental or regulatory agency, then Owner shall have the right to terminate the Agreement upon written notice to Contractor;

Notwithstanding any such termination of this Agreement, the rights acquired or obligations incurred by the parties hereto prior to such termination shall not be affected and Contractor shall remain liable for any and all damages, consequential and otherwise sustained by Owner, by reason of such termination or by reason of Contractor's default or breach and Owner shall have and retain unimpaired all pertinent rights and remedies, whether at law or in equity. Owner shall be entitled to recover its reasonable attorney's fees, costs and disbursements in any action brought to enforce or interpret this Agreement. The right of Owner to require strict performance and observation of any obligations hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing. Upon the expiration or termination hereof, Contractor shall deliver to Owner the Licensed Area in good and clean condition and repair with all electrical and mechanical systems in good working order.

b. Relocation. The parties each reserve the right to relocate the ATM as follows:

The party desiring the relocation of the ATM shall give written notice to the other party and in the event it becomes necessary to relocate the ATM within the Hotel the parties agree as follows:

(1) Within thirty (30) days following the receipt of the notice, the parties shall mutually agree on a new location for the ATM. Reasonable expense for such relocation shall be borne by the party requesting the relocation (except in the event of termination of this Agreement). Notwithstanding the foregoing, it is agreed that any costs owed by Owner to Contractor for such relocation shall be limited to \$500.00 per each occurrence;

(2) Should the parties fail to come to an agreement concerning any requested

1 relocation, then either party may exercise the right to terminate this Agreement, whereupon the
2 ATM shall be removed within ten (10) days of receipt of notice from the party exercising such
3 right at Contractor's sole cost and expense;
4

5 Contractor and Owner may, from time-to-time, establish rules and regulations relating to
6 standards to be met by Contractor as to the appearance or conduct of employees or agents of
7 Contractor employed in connection with the operation of the ATM. In any event, all agents,
8 employees or other persons employed in any manner by Contractor in connection with the
9 operation of the ATM shall appear and conduct themselves at all times while in or around the
10 Hotel, or otherwise engaged in the performance of their duties hereunder, if not in or around the
11 Hotel, in a manner which is as unobtrusive as possible and consistent with the character and
12 reputation of Owner and in such a way as not to annoy or interfere with any guests, patrons or
13 business of Owner or bring any discredit upon the names of any of the Indemnitees, as defined
14 below. Contractor shall be responsible at all times for the conduct of all such persons.
15 Contractor, promptly after demand by Owner, will cause to be removed from the Hotel any such
16 person(s) to whom Owner shall or may reasonably object and will undertake that any such
17 person(s) so removed shall not thereafter be employed by Contractor in connection with the
18 operation of the ATM.

19 13. INDEMNIFICATION

20

21 Contractor hereby indemnifies and holds harmless Owner, Hilton Hotels Corporation,
22 their respective hotels and each of their owners, partners, subsidiaries, affiliates, franchisees, and
23 each of such persons' or entities' officers, directors, agents, contractors, subcontractors, guests,
24 residents, visitors, licensees, invitees, permittees and employees (collectively referred to as the
25 "Indemnitees"), and each of them, against and from any and all allegations, demands, claims,
26 liabilities, damages, fines, penalties or costs of whatsoever nature (including reasonable
27 attorney's fees), and whether by reason of death of or injury to any person or loss of or damage
28 to any property or otherwise ("Claims"), arising out of or in any way connected with the ATM
29 (including without limitation the installation and servicing of the ATM, or any occurrence or
30 event in connection with the ATM), this Agreement, the Services provided by Contractor or any
31 subcontractors of Contractor hereunder or any related act or failure to act by Contractor or
32 Contractor Parties, and whether or not occurring during the term hereof or occasioned or
33 contributed to by the negligence of Owner or any agent or employee of the Indemnitees, or any
34 of them (except as and to the extent otherwise prohibited by applicable law), including without
35 limitation any Claims related to infringement by Contractor Parties of the rights of any person,
36 including without limitation, copyright, patent, trade secret, trade mark, artist rights, droit moral,
37 privacy, publicity or other intellectual property laws. In the event that any Claim is made or any
38 action or proceeding is brought against the Indemnitees, or any of them, arising out of or
39 connected with this Agreement, any such Indemnitee may, by notice to Contractor, require
40 Contractor, at Contractor's expense, to resist such Claim or take over the defense of any such
41 action or proceeding and employ counsel for such purpose, such counsel to be subject to the prior
42 approval of such Indemnitee, which approval shall be deemed to have been given hereby in the
43 case of counsel acting for the insurance underwriters of Contractor engaged in such resistance or

1 defense.

2 14. EXEMPTION OF INDEMNITEES FROM LIABILITY

3
4 The Indemnitees shall not be liable for injury or damage to the person or goods, wares,
5 merchandise or other property of Contractor, Contractor's employees, contractors,
6 Contractors, invitees, customers, or any other person on, in or about the Licensed Area,
7 whether such damage or injury is caused by or results from fire, steam, electricity, gas, water,
8 rain, or from the breakage, leakage, obstruction or other defects of pipes, fire, sprinklers,
9 wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause,
10 whether said injury or damage results from conditions arising upon the Licensed Area or upon
11 other portions of the building(s) of which the Licensed Area is a part, from other sources or
12 places, and regardless of whether the cause of such damage or injury or the means of repairing
13 the same is accessible or not. Should damage occur to the Licensed Area during the term of
14 the Agreement which is not related to Contractor's operations (for which such damage
15 Contractor shall be responsible), Owner shall, within one hundred eighty (180) days, elect
16 whether it shall restore the Licensed Area to substantially the same condition it was in prior to
17 the damage or terminate the License. Any insurance proceeds shall be paid to Owner, except
18 for proceeds from insurance that Contractor carries covering the ATMs. The Indemnitees
19 shall not be liable for any damages arising from any act or neglect of any other person or
20 entity, whether or not related, nor from the failure by Owner to enforce the provisions of any
21 other license or any lease in the building(s). Notwithstanding Owner's negligence or breach
22 of this Agreement, the Indemnitees shall under no circumstances be liable for injury to
23 Contractor's business operations or for any special, incidental, or consequential damages,
24 including without limitation loss of income or profit therefrom.

25 15. INSURANCE

26
27 Contractor shall procure and maintain at its expense during the term hereof policies of
28 insurance of the types and in amounts no less than the minimum coverages specified below,
29 with responsible insurance companies, and upon terms, satisfactory to Owner. Certificates of
30 the issuance of each and every such policy shall be delivered to Owner upon the execution of
31 this Agreement and extensions or replacement certificates shall be timely delivered (no less
32 than ten (10) days prior to expiration of current certification) to Owner during the term hereof.
33 Each such insurance policy (except Workers' Compensation and Employer's Liability) shall
34 name the Indemnitees, as defined herein and each of them, as additional insureds and shall by
35 specific endorsement acknowledge the insuring of the contractual liabilities assumed by
36 Contractor hereunder, in Paragraph 13 and shall not be cancelable, terminable or subject to
37 material change without thirty (30) days' prior written notice to Owner. Such insurance shall
38 be considered primary of any similar insurance carried by Indemnitees. Owner shall have no
39 obligation whatsoever to insure the Licensed Area or the ATMs (OR ANY PART THEREOF
40 OR ANY ACTIVITY THEREON) NOR SHALL IT BE LIABLE FOR ANY DAMAGE OR
41 INJURY TO PERSONS OR PROPERTY.
42

- 1 a. Commercial General Liability (including contractual and products liability):
2 \$1,000,000 per occurrence
3
4 b. Workers' Compensation and Employer's Liability (only for any employees
5 employed by Contractor):
6 (a) Workers' Compensation - Statutory Limits
7 (b) Employer's Liability - \$1,000,000 Each accident
8 \$1,000,000 Disease - policy limit
9 \$1,000,000 Disease - each employee
10
11 c. Automobile Liability (covering all owned and non-owned and hired vehicles):
12 \$1,000,000 per accident

13 16. LIENS
14

15 Contractor covenants and agrees to keep the equipment and property of Owner and the
16 Licensed Area of Owner free and clear from any and all liens for work performed or materials
17 furnished hereunder and Contractor agrees to indemnify the Indemnitees from and against any
18 and all costs, expenses, losses and all damage resulting from the filing of any such liens against
19 Owner or the Licensed Area of Owner and the Hotel. As a condition to payment hereunder,
20 Contractor shall from time-to-time, upon request by Owner, furnish waivers or releases of such
21 liens or receipts in full for all claims for such work or materials and an affidavit that all such
22 claims have been fully satisfied.

23 17. INDEPENDENT CONTRACTOR STATUS
24

25 During the term hereof and thereafter, Contractor and family members of Contractor and
26 any and all of its subcontractors, agents, servants licensees, invitees or employees, and any other
27 person claiming by, under or through Contractor to any extent ("Contractor Parties") shall not be
28 entitled to receive and shall not be eligible for any benefits of employment generally available to
29 Owner's employees or their family members, including without limitation, group health, life and
30 disability insurance benefits, annual vacation and sick pay benefits, pension plans, thrift savings
31 plans, or the like, as such benefits may be modified from time-to-time. All payments received
32 hereunder by Contractor shall be reported by Contractor on its federal and state tax returns as
33 consideration for Contractor's Services hereunder as an independent contractor. Contractor
34 acknowledges and agrees that Contractor is solely responsible and liable for the filing of all tax
35 returns and the payment of all taxes, contributions, and other payments relating to Contractor's
36 business and services. Owner will not deduct, withhold or pay (unless legally required to do so),
37 and Contractor shall be solely responsible for, U.S FICA, FUTA, Medicare or federal, state or
38 local income, employment, or wage taxes, workers' compensation insurance premiums, state
39 disability insurance, unemployment benefit insurance, or any other payments that are ordinarily
40 submitted or withheld by an employer or behalf of an employee (including without limitation any
41 penalties or fines which may be assessed at any time). Owner shall report payments to
42 Contractor hereunder to the IRS as payments to an independent contractor and Contractor shall

1 be solely responsible for all reporting and record keeping requirements applicable to independent
2 contractors. If Contractor desires any such insurance or benefits for itself or Contractor Parties,
3 Contractor must obtain such insurance or benefits itself at its own costs and expense.

4 18. PROPERTY STATUS OF ATM

5
6 The ATM for all purposes will be, and remain Contractor's personal property and shall
7 not become real property. Contractor will pay any sales, use, excise, privilege or personal
8 property taxes (or other taxes) or fees based on the installations and/or operation of the ATM.
9 Contractor further agrees to pay any excise, privilege sales or other tax levied at any time during
10 the term hereof against any ATM or its operation. Contractor shall provide at its expense all
11 equipment, materials and supplies required in performing its services hereunder. Any
12 equipment, materials, supplies or other personal property of Contractor used, held or stored
13 on the Licensed Area shall be at the sole risk of Contractor, and the Indemnitees shall not be
14 liable for any loss thereof or damage thereto for any reason whatsoever. Upon termination of
15 this Agreement for any reason, Contractor shall immediately remove all of its property from
16 the Licensed Area and the Hotel and any property not so removed may be removed by Owner
17 or the Hotel at Contractor's expense. In the event of loss, damage or destruction of
18 equipment, materials or supplies provided or paid for by Owner (except for the normal
19 consumption of consumable items by Contractor in performing its services), Contractor shall
20 reimburse Owner for the replacement thereof together with all incidental costs and expenses.
21 Contractor shall request Hotel's prior consent before performing any such services, which
22 shall be performed in a good and workmanlike manner and shall be fully licensed, certified
23 and bonded as customary or required by applicable law, from time to time, subject to and in
24 accordance with these terms and conditions.

25 19. FEES AND EXPENSES

26
27 Contractor acknowledges that Contractor is not eligible for and has not received any
28 express or implied assurances with respect to receipt of any bonus, contingent, incentive,
29 deferred or other compensation, or increase in fees. Contractor shall be solely responsible for
30 out-of-pocket expenses incurred in connection with its services hereunder, including travel
31 expenses, food, and lodging. Contractor will be solely responsible and liable for all other costs
32 of conducting and operating its business and providing its services hereunder, including expenses
33 directly related to services provided to Owner.

34 20. COMPLIANCE WITH LAWS, LICENSES AND REGULATIONS

35
36 Contractor shall comply with all applicable laws, codes, regulations, ordinances and rules
37 with respect to the work to be performed and the equipment or materials to be furnished
38 hereunder promulgated by Owner and any and all federal, state, municipal or other legislative
39 bodies, courts or agencies having jurisdiction over the business of Contractor, over services of
40 the nature of the services provided hereunder or over the procurement, storage or use of any of
41 the equipment, materials or supplies utilized by Contractor in connection therewith. Contractor

1 shall, at its expense, procure and maintain all permits or licenses which may be required at any
2 time in connection with the performance of the services, or the procurement, storage or use of
3 related equipment, materials or supplies, and shall furnish to Owner copies of each such permit
4 or license, and shall obtain and pay for all inspections and give all notices required in connection
5 herewith. Contractor agrees that it will conduct its activities in a lawful and non-tortious
6 manner and specifically will not engage in any illegal, unconscionable, unlicensed or unethical
7 acts, including without limitation any interference with existing or proposed contracts or
8 contractual relationships and the following transactions: (a) payments or offers of payment,
9 directly or indirectly, to any domestic or foreign government official or employee in order to
10 obtain business, retain business or direct business to another, or for the purpose of inducing
11 such government official or employee to fail to perform or to perform improperly its official
12 functions; (b) receipt, payment or offer of anything of value, directly or indirectly, from or to
13 any private party in the form of a commercial bribe, influence payment or kickback for any
14 such purpose; or (c) the use, directly or indirectly, of any funds or other assets of any
15 Indemnitee for any unlawful purpose including, without limitation, political contributions in
16 violation of applicable law.

17 21. OPERATION OF CONTRACTOR'S BUSINESS

18
19 Contractor agrees to operate, maintain and repair the ATM throughout the term hereof
20 and to ensure that there are at least **one (1)** approved, functional, highest quality, currently
21 fashionable ATMs located in the Licensed Area at all times. Contractor shall collect revenues
22 from the ATMs and remit the License Fee payable to Owner.

23 22. EXCUSAL FROM PERFORMANCE

24
25 Each party hereto shall be excused from the performance of any services hereunder for
26 any period and to the extent that it is prevented from performing such service, in whole or in
27 part, as a result of delays caused by the other party or an act of God, war, civil disturbance, court
28 order, labor dispute or other cause beyond its reasonable control, including failures or
29 fluctuations in electrical power or telecommunications equipment and such non-performance shall
30 not be a default hereunder or a ground for termination hereof.

31 23. NOTICES

32
33 All notices to be given hereunder shall be in writing and shall be deemed to be given
34 when mailed by certified or registered mail, to the addresses of Owner and Contractor specified
35 in this Agreement unless either party hereto shall specify to the other party a different address for
36 the giving of such notice.

37
38 **If to Contractor: Nationwide Automated Systems, Inc.**
39 **22048 Sherman Way, Suite 213**
40 **Canoga Park, CA 91303**
41 **Attention: President**

1 (818) 716-6790
2 (818) 673-1945 (facsimile)
3

4 If to Owner: Hilton Hotel – La Jolla Torrey Pines
5 10950 North Torrey Pines Road
6 La Jolla, CA 92037
7 Attention: General Manager
8

9 with a copy to: Hilton Hotels Corporation
10 9336 Civic Center Drive
11 Beverly Hills, CA 90210
12 Attention: Leasing Department

13 24. GOVERNING LAW
14

15 This Agreement shall be governed by the laws of the State in which the Hotel is situated
16 without reference to the choice-of-law provisions thereof. Any legal action or proceeding arising
17 out of or relating to this Agreement must be brought in the courts of the state in which the Hotel
18 is located.

19 25. ADDITIONAL DOCUMENTATION; COOPERATION WITH FURTHER
20 PROCEEDINGS
21

22 Each of the parties hereto hereby agrees to promptly execute such additional
23 documentation and to cooperate in such further proceedings as are necessary to effectuate the
24 terms of this Agreement without charge or other consideration. Further, without limiting the
25 foregoing, Contractor agrees to promptly execute and deliver to Owner, without charge or
26 other consideration, such additional documentation as Owner (or any of Owner's current or
27 future lenders or transferees) may require from time to time to clear title to Owner's property
28 and to evidence the subordinate, revocable, and non-possessory nature of this Agreement and
29 Contractor's rights hereunder.

30 26. ASSIGNMENT
31

32 Contractor shall not assign this Agreement without prior written consent of Owner which
33 consent shall not be unreasonably withheld.

34 27. MISCELLANEOUS
35

36 Neither party hereto shall be deemed to be the drafter of this Agreement and, if this
37 Agreement is construed in any court or arbitration proceeding, said court or arbitrator shall not
38 construe this Agreement or any provision hereof against either party as the drafter hereof.
39 Contractor is solely and directly responsible for prompt payment of any and all international,
40 national, federal, state and local excise, sales, use, value-added, duty, tariff and all other taxes or

1 charges imposed on any party related in any way to this Agreement or the Services, now known
2 or unknown and now imposed or hereafter imposed and hereby indemnifies and holds harmless
3 the Indemnitees from any such impositions. If any phrase, clause or provisions of this
4 Agreement is declared invalid or unenforceable by a court or arbitrator of competent jurisdiction,
5 such phrase, clause or provision shall be deemed severed from this Agreement, but will not affect
6 any other provision of this Agreement, which shall otherwise remain in full force and effect. If
7 any restriction or limitation in this Agreement is deemed to be unreasonable, onerous or unduly
8 restrictive by a court or arbitrator of competent jurisdiction, it shall not be stricken in its entirety
9 and held totally void and unenforceable, but shall remain effective to the maximum extent
10 permissible within reasonable bounds. Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 23
11 through 32 of this Agreement and any other provisions hereof which expressly provide that they
12 survive expiration or termination or which must survive expiration or termination in order to be
13 fully operative shall survive the expiration or termination of this Agreement.

14 28. ENTIRETY OF AGREEMENT AND MODIFICATION

15
16 This Agreement contains the full and complete understanding of the parties hereto as to
17 the subjects contained herein and supersedes any and all prior written or oral agreements or
18 understandings between the parties hereto. In the event of any conflict between the terms of this
19 Agreement and the terms of any attachments, proposals, specifications, invoices, purchase
20 orders, or any other documents or correspondence, the terms of this Agreement shall prevail.
21 This Agreement may not be modified except by a subsequent writing executed by duly-authorized
22 officers of both parties hereto which expressly states that it is a modification of this Agreement.

23 29. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

24
25 Contractor represents and warrants that there are no agreements or arrangements, whether
26 written or oral, that would be breached by Contractor upon execution of this Agreement or that
27 would impair or prevent Contractor from rendering the Services to Owner during the term
28 hereof, and Contractor further represents, warrants, covenants and agrees that it has and will
29 maintain throughout the term hereof all qualifications required to perform its Services hereunder,
30 and that it has not made and will not make any commitment or do any act in conflict with this
31 Agreement. Contractor shall promptly provide Owner with all information reasonably requested
32 by Owner or its Compliance Committee with respect to Contractor and its affiliates including
33 their respective officers, directors or shareholders. The information requested may include but
34 not necessarily be limited to financial condition, personal and family background, litigation,
35 indictment, criminal proceedings and the like in which any of the aforementioned may have been
36 involved (collectively, the "Requested Information"), in order for Owner to determine that the
37 Requested Information does not disclose any fact which might adversely affect, in any manner,
38 any gaming licenses or permits held by Owner or its affiliates or the current stature of Owner or
39 its affiliates with any gaming commission, board or similar regulatory agency.

40 30. SUCCESSORS

1 This Agreement shall be binding upon and inure to the benefit of the respective successors
2 or assigns of the parties to this Agreement, except as otherwise prohibited by this Agreement.

3 31. REMEDIES

4
5 Contractor acknowledges and agrees that Owner's remedy at law for breach of
6 Contractor's obligations hereunder would be inadequate, and agrees and consents that temporary
7 and permanent injunctive relief and/or specific performance may be granted in any proceeding
8 which may be brought to enforce this Agreement without the necessity of proof of actual damage,
9 in addition to all other remedies provided hereunder or available at law.

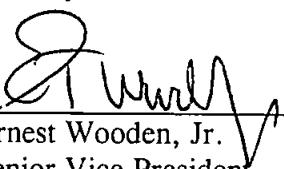
10 32. ATTORNEY'S FEES

11
12 In the event any party of this Agreement shall be required to expend any sums to initiate
13 legal proceedings (i) to interpret or to enforce performance of any term or condition of this
14 Agreement; (ii) to enjoin any action prohibited hereunder; or (iii) to gain any other form of relief
15 whatsoever, the prevailing party shall be entitled to recover such sums, in addition to any other
16 damages or compensation received, as well as reasonable attorneys' fees and court costs incurred
17 on account thereof notwithstanding the nature of the claim or cause of action asserted.

18
19 IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to
20 be executed as of the date and year first above written.

21
22 Hilton Hotels Corporation,
23 a Delaware corporation,
24 as Managing Agent for
25 CHH Torrey Pines Tenant Corp.

Nationwide Automated Systems, Inc.,
a California corporation

26
27
28 By: 
29 Ernest Wooden, Jr.
30 Its: Senior Vice President

By: 
Joel Gillis
Its: President

Prudential Financial

RECEIVED
CITY OF SAN DIEGO

05 JAN 27 AM 11:32

REAL ESTATE ASSETS DEPT.

January 24, 2005

Jack K. McDonald

Vice President & Corporate Counsel, Law Department
Prudential Asset Resources

The Prudential Insurance Company of America

2200 Ross Avenue, Suite 4900E, Dallas TX 75201

Tel 214 777-4589 Fax 214 721-6087

jack.mcdonald@prudential.com

City Manager
City Administration Building
202 "C" Street, M.S. 95
San Diego, California 92101-4155
Attention: Property Director

CERTIFIED MAIL #7003 3110 0000 8818 3810
RETURN RECEIPT REQUESTED

San Diego City Real Estate
1200 Third Avenue, Suite 1700
San Diego, California 92101
Attention: Mr. Paul Crawford

CERTIFIED MAIL #7003 3110 0000 8818 3827
RETURN RECEIPT REQUESTED

Re: Leasehold Deed of Trust delivered by CHH Torrey Pines Hotel Partners, LP
("Borrower") to Connecticut General Life Insurance Company ("CIGNA"), as
assigned to Prudential Retirement Insurance and Annuity Company ("PRIAC" or
"Lender"); CIGNA Loan Nos. 1400300-00 & 1400300-01

Ladies and Gentlemen:

Reference is made to that certain Percentage Lease dated August 10, 1987, between the City of San Diego ("Landlord") and Torrey Pines Hotel Associates (the predecessor-in-interest to Borrower), as tenant, a memorandum of which was recorded on January 10, 1989, as Instrument No. 89-013605 in the Official Records of San Diego County, California, as amended by First Amendment to Lease Agreement, filed on May 21, 2002, as City Clerk Document No. RR-296617 (the "Ground Lease").

Please be advised that pursuant to a certain Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of December 17, 2003 (the "Deed of Trust"), Borrower mortgaged its leasehold interest in the Ground Lease to CIGNA as partial security for a loan made by CIGNA to Borrower. A true, correct and complete copy of the Deed of Trust, as recorded in the Official Records of San Diego County, California, on December 18, 2003, under Document No. 2003-1487569, is attached hereto as Exhibit A.

CIGNA sent a notice letter to Landlord dated December 24, 2003, advising Landlord of the loan. A copy of CIGNA's notice letter to Landlord is attached hereto as Exhibit B. CIGNA also obtained Landlord's consent and estoppel to the loan. A copy of Landlord's consent and estoppel is attached hereto as Exhibit C. On or about April 1, 2004, CIGNA assigned the loan to PRIAC and PRIAC became the owner and holder of said loan. A copy of CIGNA's assignments to PRIAC are attached hereto as Exhibit D.

City Manager
San Diego City Real Estate
January 24, 2005
Page 2

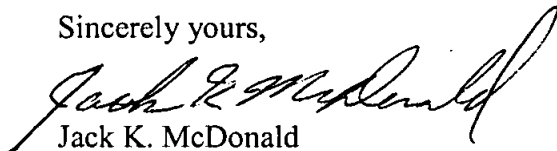
Pursuant to Section 4.4(b) of the Ground Lease, any notice required to be provided to Lender shall be sent to the following address:

Prudential Retirement Insurance and Annuity Company
c/o Prudential Asset Resources, Inc.
2200 Ross Avenue, Suite 4900E
Dallas, TX 75201
Attn: Sr. Asset Manager

with a copy to: Prudential Retirement Insurance and Annuity Company
c/o Prudential Asset Resources, Inc.
2200 Ross Avenue, Suite 4900E
Dallas, TX 75201
Attn: General Counsel

Please change your records accordingly and treat PRIAC as the current lender for all purposes under the various loan and lease documents, including, without limitation, providing any and all notices directly to PRIAC. Thank you.

Sincerely yours,



Jack K. McDonald

JKM:bld
Enclosures

cc: CHH Torrey Pines Hotel Partners, LP
c/o CNL Hospitality Corp.
CNL Center at City Commons
450 South Orange Avenue, 12th Floor
Orlando, Florida 32801
Attn: Executive Vice President

CERTIFIED MAIL #7003 3110 0000 8818 3834
RETURN RECEIPT REQUESTED

Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
215 N. Eola Drive
P.O. Box 2809
Orlando, Florida 32802
Attn: Richard Fildes, Esq.

CERTIFIED MAIL #7003 3110 0000 8818 3841
RETURN RECEIPT REQUESTED

cc: CHH Capital Hotel Partners, LP
c/o CNL Hospitality Corp.
CNL Center at City Commons
450 South Orange Avenue, 12th Floor
Orlando, Florida 32801
Attn: Executive Vice President

CERTIFIED MAIL #7003 3110 0000 8818 3858
RETURN RECEIPT REQUESTED

Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
215 N. Eola Drive
P.O. Box 2809
Orlando, Florida 32802
Attn: Richard Fildes, Esq.

CERTIFIED MAIL #7003 3110 0000 8818 3865
RETURN RECEIPT REQUESTED

CHH Capital Tenant Corp.
c/o CNL Hospitality Corp.
CNL Center at City Commons
450 South Orange Avenue
Orlando, Florida 32801-3336
Attn: Charles A. Muller

CERTIFIED MAIL #7003 3110 0000 8818 3872
RETURN RECEIPT REQUESTED

Lowndes Drosdick Doster
Kantor & Reed, P.A.
215 North Eola Drive
Orlando, Florida 32801
Attn: Richard Fildes, Esq.

CERTIFIED MAIL #7003 3110 0000 8818 3889
RETURN RECEIPT REQUESTED

Hilton Hotels Corporation
9336 Civic Center Drive
Beverly Hills, CA 90120
Attn: General Counsel

CERTIFIED MAIL #7003 3110 0000 8818 3896
RETURN RECEIPT REQUESTED

Gibson, Dunn & Crutcher, LLP
333 South Grand Avenue
Los Angeles, CA 90071
Attn: Jesse Sharf, Esq.

CERTIFIED MAIL #7003 3110 0000 8818 3902
RETURN RECEIPT REQUESTED

Cheryl Eskridge

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement is executed by and between THE CITY OF SAN DIEGO ("CITY") and HILTON HOTELS CORPORATION ("LESSEE").

WHEREAS, the parties entered into that certain lease agreement dated August 10, 1987, and filed as Document No. RR-269077-1 in the Office of the City Clerk.

WHEREAS, the parties wish to amend said lease agreement to permit a tee time agreement between the parties for Torrey Pines Golf Course.

NOW, THEREFORE, CITY and LESSEE hereby agree:

1. The first three sentences of Section 1.8, Use of Torrey Pines Golf Course by Hotel Guests, are deleted and the following is substituted therefor:

CITY and LESSEE recognize that the existence and continued maintenance of Torrey Pines Golf Course enhances the value of LESSEE'S leasehold and that the future availability of an adequate number of reserved tee times for guests on the premises would favorably affect LESSEE'S room rate, occupancy, and the overall success of the hotel improvements (and also enhance both lease revenues and transient occupancy tax to CITY) through LESSEE'S ability to create golf packages incident to the sale of rooms. Therefore, CITY agrees to make reserved nonresident tee times available to LESSEE on such terms and conditions as determined by the City Manager and which will be set forth in a separate agreement with LESSEE.

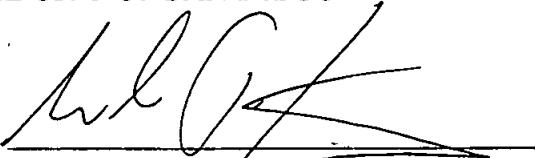
2. Nothing contained herein is intended to alter or amend any other covenant or condition of said lease agreement.
3. This amendment shall be effective upon the date of execution hereof by CITY and LESSEE.

THE CITY OF SAN DIEGO

Date

5/28/02

By



William T. Griffith

Real Estate Assets Department Director

DUPLICATE

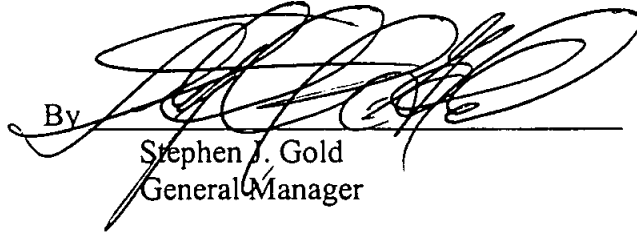
R- 296517

RR-296517
FILED MAY 21 2002
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LESSEE:

HILTON HOTELS CORPORATION, a Delaware
corporation

Date 25 April 02

By 
Stephen J. Gold
General Manager

Approved as to form and legality:

CASEY GWINN, City Attorney

Date May 29, 2002

By 
Deputy City Attorney

PTC/jmj
04/12/02

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R- 286517

Paul Crawford
51A

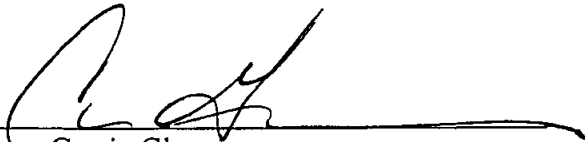
RESOLUTION NUMBER R- 296517

ADOPTED ON MAY 21 2002

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a first amendment to the lease agreement between the City of San Diego and the Hilton Hotels Corporation dated August 10, 1987 and filed in the office of the City Clerk as Document No. RR-269077-1 to permit a tee time agreement between the parties for reserved non-resident tee times at Torrey Pines Golf Course, as set forth in the First Amendment to Lease Agreement on file in the office of the City Clerk as Document No. RR- 296517.

APPROVED: CASEY GWINN, City Attorney

By


Carrie Gleeson
Deputy City Attorney

CLG:mm
05/07/02
Or.Dept:REA
R-2002-1562
Form=leaser.frm

Passed and adopted by the Council of the City of San Diego on May 21, 2002 by the following vote:

YEAS: PETERS, ATKINS, STEVENS, MAIENSCHIN, MADAFFER, INZUNZA,
MAYOR MURPHY.

NAYS: FRYE.

NOT PRESENT: WEAR.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

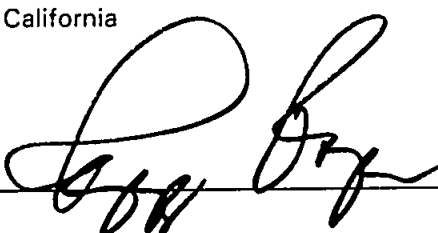
By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION No. R- 296517 passed and adopted by the Council of The City of San
Diego, California on May 21, 2002.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

CHH TORREY PINES HOTEL PARTNERS, LP, as Grantor

to FIRST AMERICAN TITLE INSURANCE COMPANY, as Trustee

in favor of

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, as Beneficiary

Upon recording, return to:

Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Robert D. Bickford Jr., Esq.

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[CNL/Hilton – Torrey Pines]

PREPARED BY AND RETURN TO:

KELLEY DRYE & WARREN LLP
101 PARK AVENUE
NEW YORK, NEW YORK 10178
ATTN: JAMES J. KIRK, ESQ.

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND
LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made
as of the 17th day of December, 2003, by CHH TORREY PINES HOTEL PARTNERS, LP, a
Delaware limited partnership (herein referred to as "Grantor"), whose sole general partner is
CHH Torrey Pines Hotel GP, LLC, a Delaware limited liability company, having its principal
place of business at c/o CNL Hospitality Corp., CNL Center at City Commons, 450 South
Orange Avenue, 12th Floor, Orlando, Florida 32801 to First American Title Insurance Company,
as trustee, having an office at 411 Ivy Street, San Diego, California 92101 subject to substitution
as provided in Section 48 (herein referred to as "Trustee") in favor of CONNECTICUT
GENERAL LIFE INSURANCE COMPANY, a Connecticut corporation having its principal
place of business at do CIGNA Retirement & Investment Services, 280 Trumbull Street,
Hartford, Connecticut 06103, Attn: Debt Asset Management, Routing H-11G (hereinafter
referred to as "Beneficiary").

WITNESSETH:

THAT, to secure (i) payment to Beneficiary of the principal indebtedness of
Seventy-Seven Million Two Hundred Fifty Thousand and 00/100 Dollars (\$77,250,000.00),

which amount represents 75% of the appraised value of the Security, as hereinafter defined (provided, however, that upon receipt of the Consent (as defined in Section 61(c) hereof) from Ground Lessor, such secured amount shall be automatically increased to One Hundred Twenty-Seven Million Two Hundred Thousand Dollars (\$127,200,000.00), without the need for any additional written instrument or agreement), in either case together with interest thereon, and together with applicable late charges, prepayment fees, default prepayment fees and all other applicable fees, costs and charges, if any, as evidenced by (x) that certain Promissory Note dated as of the date hereof, from Grantor in favor of Beneficiary, as "Payee", in the original principal amount of Sixty-Three Million Nine Hundred Thousand and NO/100 Dollars (\$63,900,000.00) and (y) that certain Promissory Note dated as of the date hereof, from CHH Capital Hotel Partners, LP (referred to herein as the "Co-Grantor") in favor of Beneficiary, as "Payee", in the original principal amount of Sixty-Three Million Three Hundred Thousand and NO/100 Dollars (\$63,300,000.00), and any renewals, replacements, extensions or modifications of either of them, and any substitutions therefor (collectively, the "Note"), with the final payment being due and payable on January 1, 2009, in and by which Note Grantor and Co-Grantor promise to pay the said principal indebtedness and interest at the rate and in installments as provided in the Note, (ii) the performance of the covenants herein contained and the payment of any monies expended by Beneficiary in connection therewith, (iii) the payment of all obligations and the performance of all covenants of Grantor and Co-Grantor under the Loan Documents (as hereinafter defined) as well as any other loan documents, agreements or instruments between Grantor, Co-Grantor and Beneficiary now or hereafter given in connection with or related to the Loan (as hereinafter defined), and (iv) any and all additional advances made by Beneficiary to protect or preserve the Security (as hereinafter defined) or the security interest created hereby in or on the Security, or

for taxes, assessments, or insurance premiums as hereinafter provided or for performance of any of Grantor's obligations hereunder or for any other purpose provided herein (whether or not the original Grantor remains the owner of the Security at the time of such advances) (all of the aforesaid indebtedness and obligations of Grantor being hereinafter, collectively, referred to as the "Indebtedness"), and all of the documents, agreements and instruments between Grantor, Co-Grantor and/or others and/or for the benefit of Beneficiary, now or hereafter evidencing or securing the repayment of, or otherwise pertaining to, the Indebtedness, including, but not limited to the Note and the Environmental Indemnity Agreement (hereinafter defined) (as all of the foregoing may be modified, supplemented and/or replaced from time to time and subject to the terms thereof, being hereinafter, collectively, referred to as the "Loan Documents" and the loan evidenced and/or secured by the Loan Documents is hereinafter referred to as the "Loan"), Grantor does hereby irrevocably mortgage, grant, bargain, sell, assign, pledge, transfer, and convey unto Trustee and to Trustee's successors and assigns, in trust, with power of sale and right of entry and possession, all of Grantor's right, title and interest in and to the following described land, improvements, real and personal property and, subject to the rights of Beneficiary under Section 21 hereof, rents and leases and all of Grantor's estate, right, title and interest therein (hereinafter collectively referred to as the "Security");

That certain Percentage Lease between the City of San Diego, as landlord, and Torrey Pines Hotel Associates, as tenant, dated August 10, 1987, a memorandum of which was recorded on January 10, 1989 as Instrument No. 89-013605 in the Office Records of San Diego County, California, as amended by First Amendment to Lease Agreement, filed on May 21, 2002 as City Clerk Document No. RR-296617, as supplemented by (x) Agreement on Percentage Rental Rate for Mandatory Banquet Service Charges, filed in the Office of the City Clerk on

December 1, 1993 as Document C-05187 and (y) Torrey Pines Golf Course Agreement on Reserved Nonresident Tee Times last executed on September 27, 2002 (as the same has been assigned to and assumed by Hilton Hotels Corporation and subsequently assigned to and assumed by Grantor, collectively, the "Ground Lease"), together with all credits, deposits, options, privileges and rights of Grantor under the Ground Lease.

Grantor's leasehold estate in the land as more particularly described in Exhibit A attached hereto and made a part hereof (the "Land");

All buildings and other improvements now or hereafter located on the Land or any part thereof, including, but not limited to, all extensions, betterments, renewals, renovations, substitutes and replacements of, and all additions and appurtenances to the Security (collectively, the "Improvements");

All of the right, title and interest of Grantor in and to the land lying in the bed of any street, road, highway or avenue in front of or adjoining the Land to the center lines or to any other rightful further extension thereof;

All easements and agreements now or hereafter located on or appurtenant to the Land and/or the Improvements or under or above the same or any part thereof, appurtenances, rights of way, licenses, permits, approvals, and privileges, belonging or in any way appertaining to the Land and/or Improvements including without limitation (i) those for any drainage ponds or other like drainage areas not located on the Land which may be required for water run off, (ii) any easements necessary to obtain access from the Land to such drainage areas, or to any other location to which Grantor has a right to drain water or sewage (iii) any land required to be maintained as undeveloped land by the zoning rules and regulations applicable to the Land, (iv) any easements and agreements which are or may be established to allow satisfactory ingress to,

egress from and operation of the Land and/or the Improvements, including, by way of example and not in limitation, those for pedestrian access, vehicular access and parking (whether on site or off site), reimbursement for parking, and (v) any other reciprocal easement arrangement or reciprocal covenants as to land use;

Any and all awards (subject to the terms of the Ground Lease, with respect to the application and distribution thereof) heretofore made and hereafter to be made by any governmental, municipal or state authorities to the present and all subsequent owners of the Security for the taking of all or any portion of the Security by power of eminent domain, including, without limitation, awards for damage to the remainder of the Security and any awards for any change or changes of grade of streets affecting the Security, which said awards are hereby assigned to Beneficiary, and Beneficiary, at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the Indebtedness, notwithstanding the fact that such amount may not then be due and payable; and Grantor hereby covenants and agrees to and with Beneficiary, upon request by Beneficiary, to make, execute and deliver, at Grantor's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid awards to Beneficiary, free, clear and discharged of any and all encumbrances of any kind or nature whatsoever (all of the foregoing Land, Improvements, rights, easements, rights of way, licenses, privileges, and awards, collectively, the "Real Property");

All proceeds, insurance or otherwise, paid for the damage done to any of the Security (subject to the terms of the Ground Lease, with respect to the application and

distribution thereof) and all proceeds of the conversion, voluntarily or involuntarily, of any of the Security into cash or liquidated claims;

All fixtures, machinery, equipment, goods, and every other article of personal property, tangible or intangible, now or hereafter attached to or used in connection with the Real Property, or placed on any part thereof and whether or not attached thereto, appertaining or adapted to the use, management, operation or improvement of the Real Property (other than stocks of food and other supplies held for consumption in the normal operation of the Hotel (as hereinafter defined)), insofar as the same and any reversionary right thereto may now or hereafter be owned or acquired by Grantor, including, but without limitation: all office furnishings and equipment, guest room furnishings, specialized equipment for kitchens, laundries, bars, restaurants, public rooms, health and recreational facilities and equipment, linens and dishware; vacuum cleaning systems; call or beeper systems; security systems; reservations system computers and related equipment; partitions; screens; awnings; shades; blinds; artwork; floor coverings; hall and lobby equipment; heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevator, escalator, air conditioning and communication plants or systems with appurtenant fixtures; vacuum cleaning systems; sprinkler systems and other fire prevention and extinguishing apparatus and materials; all equipment, manual, mechanical and motorized, for the construction, maintenance, repair and cleaning of, and removal of snow from, parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; all equipment, manual, mechanical and motorized, for the transportation of customers, employees or others to and from the stores or other facilities on the Real Property; all telephone, computers and other electronic equipment and appurtenances thereto, including software; and all other machinery, pipes, poles, appliances, equipment, wiring, fittings, panels and fixtures; and

any proceeds therefrom, any replacements thereof or additions or accessions thereto; and all building materials, supplies and other property delivered to the Real Property for incorporation into the Improvements thereon, all of which are declared to be a part of the realty and covered by the lien hereof, but said lien shall not cover any fixture, machinery, equipment or article of personal property which is owned by a Lessee (as hereinafter defined) and not required for the operation or maintenance of the Real Property, provided said fixture, machinery, equipment or article of personal property is not permanently affixed to the realty and may be removed without material damage thereto and is not a replacement of any item which shall have been subject to the lien hereof, but said lien shall include any other fixture, machinery, equipment or article of personal property so incorporated into the Improvements so as to constitute realty under applicable law, whether or not owned by Grantor;

All water and water rights and water rights application, pumps and pumping plants, pipes, flumes and ditches thereunto appertaining, all rights to the use of water as well as all rights in ditches for the irrigation of the Real Property, and all shares of stock evidencing such rights or any of them;

All contracts for sale and leases, including without limitation, those in the nature of sales and contracts for sale of the Real Property, or any portion thereof, now and hereafter entered into and all right, title and interest of Grantor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees or contract purchasers; all income, proceeds, rents, parking revenue, issues, profits, fees, charges, concessions, lease termination fees, option payment reimbursement charges, deposits, security deposits, royalties, interest, bonuses, revenues and prepaid revenues and any other amounts now or hereafter arising from or out of the Real Property or any part thereof of every kind and

description received or receivable resulting or arising from the use, ownership, occupancy or operations of any of the hotels and all of its facilities on the Land (collectively, the "Hotel"), including, without limitation, all room revenues, termination payments, food and beverage operations revenues, all meeting room, conference room and ballroom revenues, health club and spa revenues, account receivables including all credit card, charge card and debit card receivables with respect to any credit card, charge card or debit card organizations and/or entities, including, but not limited to American Express, Carte Blanche, Diner's Club, VISA, Mastercard, DiscoverCard and Optima; all monies held by the manager under the Management Agreement (as hereinafter defined) in all accounts established thereunder; all vending machine income and all fees, charges and income received from tenants, transient guests, lessees, licensees, concessionaires, customers, guests as well as any other person occupying space at the Hotel and/or rendering services to guests and/or customers of the Hotel, whether paid in advance or at any other interval; all proceeds payable under any policy of insurance covering business interruption due to destruction or damage of the Real Property; all proceeds, credits or rebates arising from or out of any Real Estate Tax (as hereinafter defined) appeal, similar proceeding, or any settlement thereof; all licenses, permits, franchises, governmental approvals and all sanitary sewer, drainage, water and utility service agreements benefiting the Real Property or any part thereof, together with all inventory accounts, hotel operation accounts, payroll accounts, reserve accounts, checking accounts, depository accounts, management accounts, accounts receivable, cash receipts, credit card receipts, deposit accounts, contract rights, escrow and reserve accounts required to be established as security for the Loan (including, but not limited to, all bank accounts of Grantor used for holding security deposits under Leases if any (as hereinafter defined), general intangibles, documents, instruments, chattel paper (tangible and electronic),

letters of credit, letter of credit rights, supporting obligations and investment property and proceeds of any of the foregoing arising from or in connection with the Real Property, or the business operations conducted by Grantor therein, including all books and records in connection therewith; and all rights of Grantor under any leases, covenants, agreements, easements, restrictions or declarations with respect to, or as an appurtenance to, the Real Property (whether recorded or not), or any part thereof, and all amounts, including interest and proceeds on the escrow account under any tax escrow agreement as may be required hereunder (all of the tangible and intangible personal property described in this and the previous two paragraphs, collectively, the "Personal Property");

All of Grantor's right, title and interest in, to and under that certain operating lease, by and between Grantor, as lessor and CHH Torrey Pines Tenant Corp., as lessee, dated as of the date hereof (the "Operating Lease");

All of Grantor's right, title and interest in, to and under that certain management agreement, by and between CHH Torrey Pines Tenant Corp., as owner and Hilton Hotels Corporation, as manager, dated as of the date hereof (the "Management Agreement");

All of Grantor's right, title and interest in and to the FF&E Reserve (as hereinafter defined);

All of Grantor's books of accounts and records relating to the Security, including all computers and software relating thereto;

All of the right, title and interest of Grantor in and to all and singular the tenements, hereditaments and appurtenances, including water rights, belonging to or in any way pertaining to the Security; all the estate, right, title and claim whatsoever of Grantor, either in law or in equity, in and to the Security; and any and all other, further or additional title, estate,

interest or right which may at any time be acquired by Grantor in or to the Security (inclusive of any replacements or substitutions therefor at any time acquired by Grantor), and if Grantor shall at any time acquire any further estate or interest in or to Security, the lien of this Deed of Trust shall attach, extend to, cover and be a lien upon such further estate or interest automatically without further instrument or instruments, and Grantor, upon request of Beneficiary, shall execute such instrument or instruments as shall be requested by Beneficiary to confirm such lien, and Grantor hereby irrevocably appoints Beneficiary as Grantor's attorney in fact (which appointment is coupled with an interest) to execute all such instruments if Grantor shall fail to do so within ten (10) days after written demand;

Subject to the rights of Beneficiary under Section 21 hereof, all of the rents, issues and profits of the Security under present and future Leases, or otherwise, which are hereby specifically assigned, transferred and set over to Beneficiary, including, but not limited to, all cash or securities deposited under such Leases to secure performance by the Lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such Leases or applied to one or more of the installments of rent coming due thereunder.

TO HAVE AND TO HOLD the Security, and each and every part thereof, unto Trustee and its successors and assigns in trust, for the purposes and uses herein set forth.

AND, Grantor hereby further covenants, agrees and warrants as follows:

1. Payment of Indebtedness. Grantor will pay the principal indebtedness of the Note and interest thereon in accordance with the provisions of the Note and all prepayment charges, late charges and all other fees and costs required thereunder, and all extensions, renewals, modifications, amendments and replacements thereof, and will keep and perform all the covenants, promises and agreements and pay all sums provided

in, (i) each of the promissory notes comprising the Note or any other promissory note or notes at any time hereafter issued to evidence the Indebtedness, (ii) this Deed of Trust and (iii) any and all other Loan Documents, all in the manner herein or therein set forth. Each of the persons and/or entities constituting Grantor hereunder shall be fully liable for such payment and performance, and such liability shall be joint and several. Grantor hereby unconditionally and irrevocable guarantees the payment and performance by Co-Grantor under the Sixty-Three Million Three Hundred Thousand and NO/100 Dollars (\$63,300,000.00) promissory note executed and delivered by Co-Grantor in connection with the Loan (the "Guaranteed Obligations"), which Guaranteed Obligations are secured by this Deed of Trust; provided, however, that unless and until the Consent (as defined in Section 61 hereof) is obtained, the amount secured hereby shall be limited to Seventy-Seven Million Two Hundred Fifty Thousand and 00/100 Dollars (\$77,250,000.00) together with interest thereon, applicable late charges, prepayment fees, default prepayment fees and all other applicable fees, costs and charges, if any.

2. Covenants of Title. Grantor has good and indefeasible title to the Ground Lease, has absolute unencumbered title to the Personal Property, and has good right and full power to sell, mortgage and convey the same; the Security is free and clear of easements, covenants, restrictions, liens, leases and encumbrances, except those easements, covenants, restrictions, liens, leases and encumbrances listed on Schedule B of the policy or policies of title insurance delivered to Beneficiary as of the recordation of this Deed of Trust (the "Permitted Encumbrances"), to which this Deed of Trust is expressly subject, or which may hereafter be created in accordance with the terms hereof; and Grantor will warrant and defend title to the Security against all claims and demands

whatsoever, except the Permitted Encumbrances. Beneficiary shall have the right, at its option and at such time or times as it, in its sole discretion, shall deem necessary, to take whatever action it may deem necessary to defend or uphold the lien of this Deed of Trust or otherwise enforce any of the rights of Beneficiary hereunder or any obligation secured hereby, including without limitation, the right to institute appropriate legal proceedings for such purposes.

3. Usury. It is hereby expressly agreed that if from any circumstances whatsoever fulfillment of any provision of the Note, this Deed of Trust, or any other Loan Documents at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under the Loan Documents that is in excess of the limit of such validity. In no event shall Grantor be bound to pay for the use, forbearance or detention of the money loaned pursuant to the Loan Documents, interest of more than the current legal limit; the right to demand any such excess being hereby expressly waived by Beneficiary.

4. Impositions. Grantor will pay all Impositions (hereinafter defined) prior to the date upon which same shall become delinquent, all real estate taxes, sewer rents, water charges and all other municipal and governmental assessments, rates, charges, impositions and liens (hereinafter referred to as "Impositions") which now or hereafter are imposed by law upon the Security. If any Imposition is not paid within the time hereinabove specified, Beneficiary shall have the right to pay the same, together with any

penalty and interest thereon, and the amount or amounts so paid or advanced shall forthwith be payable by Grantor to Beneficiary and shall be secured by the lien of this Deed of Trust; but Grantor may in good faith contest, at Grantor's own cost and expense, by proper legal proceedings, the validity or amount of any Imposition, on the condition that Grantor shall either (i) provide a bond or other security as may be required by law pending the resolution of such proceeding, (ii) deposit with a court, having jurisdiction over such proceeding, the amount of the Imposition being disputed, or (iii) deposit with Beneficiary, as security for the payment of such contested item, an amount equal to the contested item plus all penalties and interest which would be payable if Grantor is ultimately required to pay such contested item, and on the further condition that no amount so contested may remain unpaid for such length of time as shall permit the Security, or the lien thereon created by the item being contested, to be sold for the nonpayment thereof, or as shall permit an action, either of foreclosure or otherwise, to be commenced by the holder of any such lien. Grantor will not claim any credit on, or make any deduction from the Indebtedness by reason of the payment of any Imposition.

Subject to the Management Agreement if the same is then in effect, Grantor hereby assigns to Beneficiary all rights of Grantor now or hereafter arising in and to the refund of any Imposition and any interest thereon. If following receipt of any such refund by Beneficiary, there exists no Event of Default (as hereinafter defined) hereunder, or circumstances which, but for notice, passage of time, or both, might constitute an Event of Default hereunder, then Beneficiary shall pay over the same to Grantor promptly after demand; if there exists an Event of Default, or circumstances which, but for notice, passage of time, or both, might

constitute an Event of Default hereunder, Beneficiary may apply said refund in reduction of the Indebtedness in whatever order Beneficiary may elect.

5. Tax Deposits. Real Estate Taxes (as hereinafter defined) shall be paid in accordance with the Management Agreement for so long as the Management Agreement shall remain in full force and effect and an event of default shall not exist thereunder. Thereafter, the provisions of this Section 5 shall govern the payment of Real Estate Taxes.

Grantor shall deposit with Beneficiary or with an escrow agent selected by Beneficiary, on the first day of the calendar month immediately following the date of this Deed of Trust and on the first day of each calendar month thereafter (each of which dates is hereinafter called the "monthly tax deposit date") until the payment in full of the Indebtedness, a sum equal to one twelfth of the Impositions to be levied, charged, assessed or imposed upon or for the Security within one year after said monthly tax deposit date. If on any monthly tax deposit date the amount of Impositions to be levied, charged, assessed or imposed within the ensuing one year period shall not be fixed, such amount for the purpose of computing the deposit to be made by Grantor hereunder, shall be estimated by Beneficiary, with appropriate adjustment when the amount of such Impositions is fixed on the Security (the "Real Estate Taxes").

The sums deposited by Grantor under this Section shall be held in an interest bearing account with interest being retained by Beneficiary and free of trust except to the extent, if any, that applicable law shall otherwise require and applied in payment of such Real Estate Taxes when due.

Notwithstanding the foregoing provision and so long as Grantor holds title to and controls the Security, the Real Estate Taxes are paid in full when due and there has been no

Event of Default, or any state of facts which, with the passage of time or giving of notice, or both, would constitute an Event of Default under the Loan Documents, the interest earned by such escrows, less reasonable escrow costs, will be paid to Grantor on each real estate tax payment date.

If for any reason the sums on deposit with Beneficiary or escrow agent under this Section shall not be sufficient to pay a Real Estate Tax installment within the time specified in Section 4 hereof, then Grantor shall, within ten (10) days after written demand by Beneficiary, deposit sufficient sums so that Beneficiary may pay such Real Estate Tax installment in full, together with any penalty and interest thereon. Beneficiary may change its estimate of Real Estate Taxes for any period, on the basis of a change in an assessment or tax rate or equalization factor or on the basis of a prior miscalculation or for any other reason, in which event Grantor shall deposit with Beneficiary or escrow agent within ten (10) days after written demand the amount of any excess of the deposits which would theretofore have been payable under the revised estimate over the sums actually deposited.

If any Imposition shall be levied, charged, assessed or imposed upon or for the Security, or any portion thereof, and if such Imposition shall also be a levy, charge, assessment or imposition upon or for any other premises not covered by the lien of this Deed of Trust, then the computation of the amounts to be deposited under this Section shall be based upon the entire amount of such Imposition and Grantor shall not have the right to apportion any deposit with respect to such Imposition.

Upon an assignment of this Deed of Trust, Beneficiary shall have the right to arrange to transfer all amounts deposited and still in its possession to the assignee and Beneficiary shall thereupon be completely released from all liability with respect to such deposit

and Grantor or owner of the Security shall look solely to the assignee or transferee in reference thereto.

Upon the payment in full by Grantor of the entire Indebtedness, any sums then held by Beneficiary under this Section shall be refunded to Grantor.

All amounts deposited shall be held by Beneficiary as additional security for the sums secured by this Deed of Trust, and Grantor hereby grants to Beneficiary a security interest in such sums, and upon the occurrence of an Event of Default Beneficiary may, in its sole and absolute discretion, apply said amounts to the payment of the Indebtedness in whatever order Beneficiary may elect.

Promptly upon receipt of such by Grantor, Grantor shall deliver to Beneficiary copies of all notices, demands, claims, bills, and receipts in relation to the Real Estate Taxes.

Notwithstanding the foregoing provisions, Beneficiary will waive the requirement for deposits as to that portion of Impositions payable directly to the governmental or other authority by tenants under the terms of leases approved by Beneficiary, provided satisfactory proof of payment is promptly furnished to Beneficiary.

6. Change in Taxes. In the event any tax or fee shall be due or become due and payable to the United States of America, the State of California or any political subdivision thereof with respect to the execution and delivery or recordation of this Deed of Trust or any other Loan Document or the interest of Beneficiary in the Security, Grantor shall pay such tax at the time and in the manner required by applicable law and Grantor shall hold Beneficiary harmless and shall indemnify Beneficiary against any liability of any nature whatsoever as a result of the imposition of any such tax. In the event of the enactment, after the date of this instrument, of any law changing in any way

the present law as to the taxation of notes or debts secured by mortgages, for, federal, state, or local purposes, or the manner of collection of any Impositions, so as to affect this Deed of Trust or the Note secured hereby, then Grantor shall upon demand make such payments to Beneficiary and take such other steps, as may be necessary in Beneficiary's reasonable judgment, to place Beneficiary in the same financial position as it was prior to any such enactment, failing which, or if Grantor is not permitted by law to make such payments, the Indebtedness shall, at the option of Beneficiary, immediately become due and payable.

7. Insurance. Grantor shall at all times until the Indebtedness shall be paid in full, keep the Security insured against loss or damage for its full replacement cost (which cost shall be reset once a year at Beneficiary's option) under policies of Special Form Replacement Cost Insurance with Agreed Amount Endorsement (including nuclear explosion, if available). Grantor shall provide, or shall cause to be provided such insurance coverage for the Security in accordance with the Management Agreement for so long as the Management Agreement shall remain in full force and effect and an event of default shall not exist thereunder. Thereafter, Grantor shall provide insurance coverage upon the terms and conditions hereinafter set forth. Notwithstanding anything herein to the contrary, if at any time the insurance coverage required to be maintained under the Management Agreement is less than that that would otherwise be required hereunder, then the terms and conditions hereinafter set forth shall prevail.

(a) Grantor shall further provide the following insurance in such amounts as shall be approved by Beneficiary: flood insurance (if the Security is situated in an area which is considered a flood risk area by the federal government or any agency thereof); boiler and

machinery insurance; earthquake insurance; business interruption insurance or rent loss insurance in an amount sufficient to cover the total of all income (including rents and expenses payable by tenants, if any) accruing from the Security for a one year period; comprehensive general liability insurance in a minimum amount of \$1,000,000, and excess or umbrella liability of at least \$100,000,000; insurance against employee dishonesty in a minimum amount of \$5,000,000.00; motor vehicle insurance in a minimum amount of \$1,000,000.00 per occurrence; and such other appropriate insurance as Beneficiary may require from time to time.

(b) Such insurance shall contain no exclusion for acts of terrorism and shall include coverages, limits, deductibles and amounts relating to acts of terrorism reasonably acceptable to an Institutional Investor with due regard for the size, mass, construction, type, location, and use of the Security, provided that a policy meeting the foregoing requirements can be obtained at a commercially reasonable cost. For purposes of this subparagraph, (i) "Institutional Investor" means any bank, savings and loan association, trust company, insurance company, pension fund, investment advisor, credit union, real estate investment trust or charitable foundation actively engaged in owning, acquiring or financing major commercial real estate properties, and (ii) "commercially reasonable cost" means the amount that a reasonable and prudent investor would be willing to pay for the required coverage. Such insurance may be included under the "special form" policy or purchased on a stand-alone basis.

(c) During any period of restoration, Grantor shall provide a policy or policies of builder's "special form" insurance in an amount not less than the full insurable value of the Security.

(d) Grantor will assign and deliver to Beneficiary the original policy or policies of all insurance required to be provided hereunder. Each policy of insurance provided by

Grantor shall (i) be issued by a company or companies approved by Beneficiary, and at least seventy five percent (75%) of such companies shall be rated not less than A-:IX, (ii) name Beneficiary as an additional insured, (iii) provide that all proceeds shall be payable to Beneficiary, (iv) provide that it may not be cancelled or modified except upon thirty (30) days prior written notice to Beneficiary, (v) provide that no act or thing done by Grantor shall invalidate the policy as against Beneficiary, (vi) be endorsed with standard noncontributory mortgagee clauses in favor of and in form acceptable to Beneficiary, and (vii) otherwise be in such form as shall be reasonably acceptable to Beneficiary, so that at all times until the payment in full of the Indebtedness, Beneficiary shall have and hold the said policy and policies as further collateral for the payment of all Indebtedness.

(e) If Grantor shall fail to obtain any such policy or policies required by Beneficiary, or shall fail to assign and deliver the same to Beneficiary, then Beneficiary may obtain such insurance and pay the premium or premiums therefor, in which event Grantor shall, on demand of Beneficiary, repay such premium or premiums to Beneficiary and such repayment shall be secured by the lien of this Deed of Trust. If Grantor fails to maintain the level of insurance required under this Deed of Trust, then Grantor shall indemnify Beneficiary to the extent that a casualty occurs and insurance proceeds would have been available had such insurance been maintained.

(f) Grantor shall promptly provide to Beneficiary copies of any and all notices (including notice of non renewal), claims, and demands which Grantor receives from insurers of the Security.

(g) Effective from and after any Event of Default, Grantor hereby assigns to Beneficiary all rights of Grantor in and to any unearned premiums on any insurance policy required to be furnished by Grantor, as it relates to the Security.

8. Insurance/Condemnation Proceeds. Grantor hereby assigns to Beneficiary all proceeds of any insurance or condemnation awards which Grantor may be entitled to receive for loss or damage or taking of to the Security; provided, however, that such assignment shall be subject to the requirements set forth in the Ground Lease, with respect to the application and distribution of such proceeds. In the event of loss or damage to, or a taking of, the Security, the proceeds of said insurance or condemnation award shall be payable to Beneficiary alone (subject to the proviso of the preceding sentence) and Grantor hereby authorizes and directs any affected insurance company or government agency to make payment of the insurance proceeds or condemnation awards directly to Beneficiary. In the event that any such insurance proceeds or condemnation awards are paid directly to Grantor, Grantor shall make such proceeds or awards available to Beneficiary within five (5) days of Grantor's receipt thereof. No such loss or damage shall itself reduce the Indebtedness. Prior to an Event of Default, Grantor and Beneficiary shall jointly and reasonably agree on the prompt adjustment and compromise of such loss, to collect and receive such proceeds or awards and to endorse any check in payment thereof. Furthermore, subject to Section 10 hereof, Beneficiary agrees that insurance proceeds shall be made available directly to the Grantor provided that no Event of Default is then in existence and so long as Grantor promptly commences and diligently pursues to completion any required restoration Work utilizing such insurance proceeds. During an Event of Default, Beneficiary is authorized to adjust and compromise such loss

without the consent of Grantor, to collect and receive such proceeds or awards in the name of Beneficiary and Grantor and to endorse Grantor's name upon any check in payment thereof. Subject to the provisions of Sections 9, 10, and 11 hereof, such proceeds or awards shall be applied first toward reimbursement of all costs and expenses of Beneficiary in collecting said proceeds or awards, then toward payment of the Indebtedness or any portion thereof, whether or not then due and payable, in whatever order Beneficiary may elect, or Beneficiary may, at its option, apply said insurance proceeds or condemnation awards in whole or in part toward restoration of the Security for which such insurance proceeds or condemnation awards shall have been paid.

In the event of foreclosure of this Deed of Trust or other transfer of title to the Security and extinguishment, in whole or in part, of the Indebtedness, all right, title, and interest of Grantor in and to any insurance policy, or premiums or payments in satisfaction of claims or any other rights thereunder then in force, shall pass to the purchaser or grantee notwithstanding the amount of any bid at such foreclosure sale. Nothing contained herein shall prevent the accrual of interest as provided in the Note on any portion of the principal balance due under the Note until such time as the insurance proceeds or condemnation awards are actually received and applied to reduce the principal balance outstanding.

9. Restoration Following Fire and Other Casualty or Condemnation. Subject to Section 10 hereof, in the event of damage to the Security by reason of fire or other hazard or casualty, Grantor shall give prompt written notice thereof to Beneficiary and shall proceed with reasonable diligence to perform repair, replacement and/or rebuilding work (hereinafter referred to as the "Work") to restore the Security to substantially the size, design and utility as existed immediately prior to the casualty and in full compliance

with all legal requirements. In the event of a taking by power of eminent domain or conveyance in lieu thereof ("condemnation"), if restoration is feasible as reasonably determined by Beneficiary, then Grantor shall proceed with reasonable diligence to perform such restoration (also referred to as the "Work"). Before commencing the Work, Grantor shall comply with the following requirements:

(a) Grantor shall furnish to Beneficiary complete plans and specifications for the Work, for Beneficiary's approval, which approval shall not be unreasonably withheld or delayed. Said plans and specifications shall bear the signed approval thereof by an architect satisfactory to Beneficiary and shall be accompanied by the architect's signed estimate, bearing the architect's seal, of the entire cost of completing the Work and shall provide that upon completion of the Work, the Security shall be substantially the size, design and utility as existed immediately prior to the damage or destruction or condemnation.

(b) Grantor shall furnish to Beneficiary certified copies of all permits and approvals required by law in connection with the commencement and conduct of the Work.

(c) Grantor shall furnish to Beneficiary, prior to the commencement of the Work, a surety bond for or guaranty of completion of and payment for the Work, which bond or guaranty shall be in form satisfactory to Beneficiary and shall be signed by a surety or sureties, or guarantor or guarantors, as the case may be, who are reasonably acceptable to Beneficiary, and in an amount not less than the architect's estimate of the entire cost of completing the Work, less the amount of insurance proceeds or condemnation award, if any, then held by Beneficiary and which Beneficiary shall have elected to apply toward restoration of the Security as provided in Section 10 hereof.

Grantor shall not commence any of the Work, until Grantor shall have complied with the above requirements, and thereafter Grantor shall perform the Work diligently and in good faith in accordance with the plans and specifications referred to in subsection (a) above.

If, as provided in Section 10 hereof, Beneficiary shall have elected or is required to apply any insurance proceeds or condemnation awards toward restoration of the Security, then so long as the Work is being diligently performed by Grantor in accordance with the provisions of this Deed of Trust, Beneficiary shall disburse such insurance proceeds or condemnation awards to Grantor from time to time during the course of the Work in accordance with the following provisions:

(i) The Work shall be in the charge of an experienced construction manager reasonably satisfactory to Beneficiary with the consultation of an architect or engineer;

(ii) Each request for payment shall not be made more often than at thirty (30) day intervals on ten (10) Business Days (as hereinafter defined) prior notice to Beneficiary, and shall be accompanied by a certificate, satisfactory to Beneficiary, of the architect or engineer, dated not more than ten (10) days prior to the application for withdrawal of funds, stating:

(1) that all of the Work for which payment is being requested is in place and has been completed in substantial compliance with the approved plans and specifications and all applicable legal requirements;

(2) that the sum then requested to be withdrawn has been paid by Grantor and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work and giving a brief description of such services and

materials and the principal subdivisions or categories thereof and the respective amounts so paid or due to each of said persons in respect thereof and stating the progress of the Work up to the date of said certificate;

(3) that the sum then requested to be withdrawn, plus all sums previously withdrawn, does not exceed the cost of the Work insofar as actually accomplished up to the date of such certificate;

(4) that the remainder of the monies held by Beneficiary will be sufficient to pay in full for the completion of the Work;

(5) that no part of the cost of the services and materials described in the foregoing paragraph 2 of this Clause (ii) has been or is being made the basis of the withdrawal of any funds in any previous or then pending application; and

(6) that, except for the amounts, if any, specified in the foregoing paragraph 2 of this Clause (ii) to be due for services or materials, there is no outstanding indebtedness known, after due inquiry, which is then due and payable for work, labor, services or materials in connection with the Work which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's statutory or other similar lien upon the Security or any part thereof.

(iii) Grantor shall deliver to Beneficiary satisfactory evidence that the Security and every part thereof, and all materials and all property described in the certificate furnished pursuant to the foregoing Clause (ii), are free and clear of all mortgages, liens, charges or encumbrances, except (a) encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate furnished pursuant to the foregoing Clause (ii), which encumbrances will be

discharged upon disbursement of the funds then being requested, and (b) this Deed of Trust. Beneficiary shall accept as satisfactory evidence under this Clause (iii) a certificate of a title insurance company acceptable to Beneficiary or an endorsement to Beneficiary's existing loan title policy insuring the lien of this Deed of Trust, with affirmative mechanic's lien coverage, dated as of the date of the making of the disbursement, confirming the foregoing.

(iv) Grantor shall deliver to Beneficiary a survey of the Security dated as of a date within ten (10) days prior to the making of the final disbursement to be made in connection with the completion of the Work (or revised to a date within ten days prior to the advance) showing no encroachments other than those, if any, acceptable to Beneficiary.

(v) There shall be no Event of Default by Grantor under the Note or under any other of the Loan Documents, or any state of facts existing which, with the passage of time or the giving of notice, or both, would constitute an Event of Default. Beneficiary at its option may waive any of the foregoing requirements.

Upon compliance by Grantor with the foregoing Clauses (i),(ii), (iii), (iv) and (v) (except for such requirements, if any, as Beneficiary at its option may have waived), Beneficiary shall, to the extent of the insurance proceeds or condemnation award, if any, which Beneficiary shall have elected to apply to restoration of the Security, pay or cause to be paid to the persons named in the certificate furnished pursuant to the foregoing paragraph 2 of Clause (ii), the respective amounts stated in said certificate to be due them, less ten percent (10%) retainage ("Retainage"), and shall pay to Grantor the amounts stated in said certificate to have been paid by Grantor, less Retainage.

If upon completion of the Work there shall be insurance proceeds or condemnation awards held by Beneficiary over and above the amounts withdrawn pursuant to

the foregoing provisions, plus Retainage, then, so long as an Event of Default does not then exist, Beneficiary shall pay over such proceeds to Grantor. If an Event of Default does then exist, Beneficiary, at Beneficiary's option, may either retain such proceeds or awards and apply the same in reduction of the Indebtedness, in whatever order Beneficiary may elect, or Beneficiary may pay over such proceeds to Grantor.

Upon completion of Work, in addition to the requirements of the foregoing Clauses (i), (ii), (iii), (iv) and (v) Grantor shall promptly deliver to Beneficiary:

(1) A written certificate of the architect or engineer that the Work has been fully completed in a good and workmanlike manner in accordance with the approved plans and specifications;

(2) A endorsement to Beneficiary's existing title insurance policy acceptable to Beneficiary insuring the Security against mechanics' and materialmen's liens;

(3) A certificate by Grantor in form and substance satisfactory to Beneficiary, listing all costs and expenses in connection with the completion of the Work and the amount paid by Grantor with respect to the Work;

(4) A temporary certificate of occupancy (or equivalent) and all other applicable certificates, licenses, consents and approvals issued by governmental agencies or authorities with respect to the Security and by the appropriate Board of Fire Underwriters or other similar bodies acting in and for the locality in which the Security is situated, provided that within thirty (30) days after completion of the Work, Grantor shall obtain and deliver to Beneficiary a permanent certificate of occupancy for the Security.

Upon receipt of the foregoing items, Beneficiary shall pay any Retainage held by Beneficiary for the benefit of Grantor.

10. Disposition of Condemnation or Insurance Proceeds. To the fullest extent permitted by the terms of the Ground Lease, during an Event of Default, Beneficiary, in its absolute discretion, may decide whether and to what extent, if any, proceeds of insurance or condemnation will be made available to Grantor for repair or restoration of the Security, but Grantor shall effect such repair or restoration as provided above whether or not Beneficiary makes any of such proceeds available for that purpose.

Notwithstanding anything herein to the contrary, Beneficiary agrees that insurance proceeds shall be made available directly to the Grantor provided that there does not then exist an Event of Default, or any state of facts which, with the passage of time or the giving of notice, or both, would constitute an Event of Default and subject further to the following:

(a) Grantor can demonstrate to Beneficiary's satisfaction that Grantor has the financial ability to make all scheduled payments when due under the Loan Documents during repair or restoration from the proceeds of business interruption insurance and/or Grantor's own funds;

(b) Such damage or destruction can be repaired prior to the last Loan Year (as defined in the Note);

(c) The Work will return the Improvements to substantially the size, design, and utility as existed immediately before the casualty;

(d) Grantor can demonstrate to Beneficiary's satisfaction that Grantor has the financial ability to complete the repair or restoration, whether from the proceeds of business interruption insurance and/or Grantor's own funds;

(e) In the event that more than forty percent (40%) of the Security is damaged, Grantor shall prepare, or shall cause to be prepared, a feasibility study acceptable to Beneficiary, which feasibility study shall demonstrate that the proposed restoration and repair shall cause the value of the Security to be restored to substantially the size, design and utility as existed prior to such casualty within eighteen (18) months following the completion of such restoration and repair; and

(f) The proceeds are released under escrow/construction funding arrangements specified in Section 9 hereof.

If Beneficiary is not obligated hereunder, or otherwise has the right to, and elects not to make the proceeds available for the Work, then such proceeds shall be applied to reduce the Indebtedness in whatever order Beneficiary may elect. Any application of such proceeds to the principal indebtedness evidenced by the Note shall be at par and shall cause a pro rata reduction in payments of interest and, if applicable, principal, under the Note; provided, however, that if there exists an Event of Default, the Prepayment Fee or Default Prepayment Fee (as defined in the Note) shall also be due.

11. Fire and Other Casualty; Self Help. If (a) after the occurrence of any damage to the Security in excess of \$500,000 or the condemnation of any portion of the Security, Grantor shall not have commenced within sixty (60) days the preparation of plans and specifications for the Work, which shall be submitted to Beneficiary for approval, and thereafter shall not have obtained approval of such plans and specifications

from all governmental authorities whose approval is required within two hundred ten (210) days after the occurrence of such damage or condemnation, or if, after such plans and specifications are approved by Beneficiary and all such governmental authorities, Grantor shall fail to promptly commence the Work, or if thereafter Grantor fails to perform the Work diligently or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with the Work, or (b) in the case of any loss or damage not in excess of \$500,000.00, if Grantor shall fail to complete the Work promptly, then, in addition to all other rights herein set forth, and after giving Grantor twenty (20) days written notice of the nonfulfillment of one or more of the foregoing conditions, Beneficiary, or any lawfully appointed receiver of the Security may at its respective option, perform or cause the Work to be performed, and may take such other steps as it deems advisable to perform the Work, and may enter upon the Security for any of the foregoing purposes, and in connection with the performance of such Work, Grantor hereby waives, for Grantor and all others holding under Grantor, any claim against Beneficiary or such receiver arising out of Beneficiary's or such receiver's actions pursuant to this Section (except to the extent caused by Beneficiary's gross negligence or willful misconduct), and Beneficiary may apply insurance proceeds (without the need to fulfill the requirements of Section 9 hereof) to reimburse Beneficiary, and/or such receiver for all amounts expended or incurred by them, respectively, in connection with the performance of the Work, and any excess costs shall be paid by Grantor to Beneficiary upon demand, with interest at the Default Rate (hereinafter defined), and such payment shall be secured by the lien of this Deed of Trust.

12. Business Interruption Insurance Proceeds. Subject to Section 10 hereof, if Grantor shall promptly commence and diligently perform the Work, and there shall be no Event of Default under the Loan Documents, then Beneficiary shall each month pay to Grantor out of the business interruption proceeds held by Beneficiary a sum equal to that amount, if any, by which the business interruption insurance proceeds paid by the insurer exceeds the amounts payable to Beneficiary under the Loan Documents for the preceding month. Beneficiary at its option may waive any of the foregoing conditions to the payment of rent insurance proceeds. If Grantor does not fulfill the foregoing conditions entitling Grantor to monthly disbursements of rent insurance proceeds, then such rent insurance proceeds may be applied by Beneficiary, at Beneficiary's option, to the payment of the Indebtedness in whatever order Beneficiary may elect. The provisions of this Section 12 are subject to the Management Agreement, which, so long as the Management Agreement shall remain in effect, shall control the disposition of business interruption insurance.

13. Intentionally Omitted.

14. Repair; Alterations; Waste. Grantor shall keep all of the Security in good and substantial repair, and expressly agrees that it will neither permit nor commit any waste upon the Security nor do any other act or suffer or permit any act to be done, whereby the Security will become less valuable or the lien hereof may be impaired and shall comply with all zoning laws, building codes, subdivision laws, environmental laws, and other laws, ordinances, rules and regulations made or promulgated by any government or municipality, or by any agency thereof or by any other lawful authority, which are now or may hereafter become applicable to the Security. Grantor shall repair or

restore any building now or hereafter under construction on the Security and complete the same within a reasonable period of time. Grantor agrees not to initiate or acquiesce in any zoning variance or reclassification which would have a material or adverse effect on the Security, without Beneficiary's prior written consent. Grantor shall not construct any additional building or buildings or make any other material improvements on the Land nor remove, demolish or materially alter any building or other Improvements on the Land, without the prior written consent of Beneficiary.

Grantor hereby covenants that it shall at all times carry-out and comply with its responsibilities under The Americans With Disabilities Act of 1990, as amended from time to time (collectively, with related regulations, the "ADA"), including fulfilling its own obligations and enforcing the obligations of the Lessees under the Leases.

If Grantor fails to observe any of the provisions of this Section, or suffers or permits any Event of Default to exist under this Section, Beneficiary or a lawfully appointed receiver of the Security at its option, from time to time, may perform, or cause to be performed, any and all repairs and such other work as it deems reasonably necessary to bring the Security into compliance with the provisions of this Section and may enter upon the Security for any of the foregoing purposes, and Grantor hereby waives any claim against Beneficiary and/or such receiver, arising out of such entry or out of any other act carried out pursuant to this Section. Grantor shall upon demand repay to Beneficiary and such receiver, with interest at the Default Rate, all amounts expended or incurred by them, respectively, in connection with any action taken pursuant to this Section, and such repayment shall be secured by the lien of this Deed of Trust.

Grantor covenants, represents and warrants that there are and at all times will be as part of the Security, and at all times throughout the term of the Loan, sufficient parking spaces in quantity, size, location, appearance and handicap designation(s), to comply with all applicable governmental laws and regulations.

15. Environmental Indemnification. The Environmental Indemnification Agreement, and all terms, provisions, representations, warranties, covenants, indemnification and other writings set forth therein, are incorporated into this Deed of Trust by this reference in their entirety as though fully set forth herein.

16. Independence of Security. Grantor shall not (except as may be provided by any instrument of title) by act or omission permit any building or other improvement on any premises not subject to the lien of this Deed of Trust to rely on the Security or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Grantor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Security or any interest therein to be so used. Similarly, no part of the Security shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Grantor shall not by act or omission change or impair existing zoning of the Security or the integrity of the Security as a single zoning lot, and as one or more complete tax parcels, separate and apart from all other premises. Any act or omission by Grantor which would result in a violation of any of the provisions of this Section shall be void. Grantor represents that Grantor has obtained a separation of the Real Property from all other adjacent lands, and that such separation is evidenced in the appropriate public records.

17. No Other Liens. Grantor shall not consent, agree to, or permit any mortgage, lien, or security interest upon or affecting the Security or any part thereof except as granted or permitted in this Deed of Trust and any other lien or security interest granted to Beneficiary.

Grantor will promptly and timely pay and discharge any and all amounts which are now or hereafter become liens against the Security whether or not superior to the lien hereof or to any assignment of rents and leases given to Beneficiary.

The covenants of this Section shall survive any foreclosure and sale of the Security and any conveyance thereof by deed in lieu of foreclosure with respect to any such liens in existence as of the date of transfer of title.

18. Operating Lease. Grantor shall, at Grantor's cost and expense, promptly and fully perform each and every covenant, condition, promise and obligation of the owner of the Security under the Operating Lease, and shall make all payments therein and thereby required to be made by the owner of the Security. Grantor shall not cancel, materially modify or assign the Operating Lease, without the prior written consent of Beneficiary and Grantor shall not consent to the cancellation, transfer, material modification, or assignment of the Operating Lease by any other party thereto, without the prior written consent of Beneficiary. The Operating Lease by its terms shall be subordinate to the lien of this Deed of Trust and upon foreclosure or delivery of a deed in lieu of foreclosure, the Operating Lease shall be terminable upon thirty (30) days' prior written notice, and may not be modified or amended in any material manner without Beneficiary's prior written approval. As used in this Section 18, a "material modification" shall be deemed to include modifications or changes to the term, any

amounts required to be paid by the lessee thereunder (including rent) and any modification to the insurance provisions.

Grantor shall furnish to Beneficiary, within three (3) days after receipt thereof, or after the mailing or service thereof by Grantor, as the case may be, a copy of each notice of default which Grantor shall give to, or receive from any person, based upon the occurrence, or alleged occurrence, of any default or defaults in the performance of any covenant, condition, promise or obligation under the Operating Lease.

Whenever and as often as Grantor shall fail to perform, promptly and fully, at Grantor's cost and expense, any covenant, condition, promise or obligation on the part of the owner of the Security under and pursuant to the Operating Lease, Beneficiary, or a lawfully appointed receiver of the Security may, at their respective options, enter upon the Security and perform, or cause to be performed, such work, labor, services, acts or things, and take such other steps and do such other acts as they may deem advisable, to cure such defaulted covenant, condition, promise or obligation, and Grantor shall reimburse Beneficiary upon demand for all costs and expenses incurred by Beneficiary and any such receiver in taking any action pursuant to this Section, which reimbursement shall be secured by the lien of this Deed of Trust.

19. Fixtures, Furnishings and Equipment Reserve. The provisions of this Section 19 shall not be effective unless and until (i) the Management Agreement shall terminate or expire (unless replaced by a similar agreement in form and with a manager acceptable to Beneficiary in its sole discretion provided, however that the Beneficiary shall not unreasonably withhold its consent to the replacement manager, provided that either (a) the terms of the replacement Management Agreement are substantially similar to the terms of the Management Agreement with Manager or (b) the replacement manger

manages twenty (20) or more hotels that are affiliated with a national hotel flag (such as, by way of example, a "Hilton" or "Marriott"), or (ii) Grantor shall have received a notice of default from Manager that deposits are not being made into a repair and equipment reserve account as and to the extent required under the Management Agreement (or a similar escrow established under any such replacement agreement), whichever is earlier, and Beneficiary shall notify Grantor thereof. Thereafter, until further notice from Beneficiary to Grantor, the provisions of this Section 19 shall be effective.

Grantor shall deposit with Beneficiary or with an escrow agent selected by Beneficiary, on the fifth (5th) day of each calendar month (each of which dates is hereinafter called the "FF&E deposit date") until the payment in full of the Indebtedness a sum equal to five percent (5%) of gross revenues generated during and/or attributable to the immediately preceding calendar month along with financial statements and a reasonably detailed description of the calculation of gross revenues for such month (the "FF&E Reserve").

The funds deposited under this Section 19 into the FF&E Reserve shall be made available by Beneficiary from time to time for the purposes of making or procuring the following: (1) replacements and renewals to the Improvements and to the fixtures, furniture, furnishings and equipment therein, and (2) certain routine repairs and maintenance to the Improvements which are normally capitalized under generally acceptable accounting principles such as exterior and interior repainting, resurfacing building walls, floors, roofs and parking areas, and replacing folding walls and the like, but which are not major repairs, alterations, improvements, renewals or replacements to the Improvements structure or to the mechanical, electrical, heating, ventilating, air conditioning, plumbing or vertical transportation systems thereof (collectively the "FF&E").

The sums deposited by Grantor under this Section 19 into the FF&E Reserve shall be held in an interest-bearing account with interest being retained by Beneficiary as part of the reserve, and applied, subject to the approval of Beneficiary, upon satisfaction of the following conditions:

(a) funds shall be released to Grantor to pay for amounts of money actually owed by Grantor for FF&E;

(b) funds shall be released in minimum increments of at least \$2,500, with such releases not to be made more often than once each calendar month;

(c) at the time of any release, there shall exist no Event of Default; and

(d) Beneficiary shall have received the following:

(i) along with each request for release of such funds, a certificate, in form and substance reasonably satisfactory to Beneficiary, requesting payment and certifying that the portion of the FF&E for which payment is being sought has been fully completed or delivered and payment therefore is due and owing, and funds shall be applied only to the payment thereof; and

(ii) if applicable, lien waivers and releases from each contractor, subcontractor, material supplier or vendor with respect to all work performed or services provided by such parties with respect to the FF&E for which funds were previously released.

In the event that at any time there exists an omission, discrepancy and/or mistake in the calculation of gross revenues, or a modification and/or correction is subsequently necessary due to a change or correction in facts, circumstances and/or assumptions made in order to calculate gross revenues, Grantor shall, within ten (10) days of its first becoming aware of facts that would indicate the need for a change in the calculation of gross revenues, deliver

written notice to Beneficiary describing in reasonable detail the necessary change and an appropriate increase or decrease shall be made to the next succeeding monthly payment.

Upon an assignment of this Deed of Trust, Beneficiary shall have the right to arrange to transfer all amounts deposited and still in its possession to the assignee and, upon such transfer to and assumption by such assignee, Beneficiary shall be completely released from all liability with respect to such deposit and Grantor or owner of the Security shall look solely to the assignee or transferee in reference thereto.

Upon the payment in full by Grantor of the entire Indebtedness, any sums then held by Beneficiary under this Section 19 (including interest thereon) shall be refunded to Grantor. All amounts deposited shall be held by Beneficiary as additional security for the sums secured by this Deed of Trust, and Grantor hereby grants to Beneficiary a security interest in such sums, and upon the occurrence and during the continuance of an Event of Default hereunder Beneficiary may, in its sole and absolute discretion, apply said amounts to the payment of the Indebtedness in whatever order Beneficiary may elect.

20. Sidewalks, Municipal Charges. Grantor will promptly pay and discharge any and all license fees and similar charges, with penalties and interest thereon, which may be imposed by the municipality in which the Security is situated, for the use of vaults, chutes, areas and other space beyond the lot line and under or abutting the public sidewalks in front of or adjoining the Security, and Grantor will promptly cure any violation of law and comply with any order of such municipality respecting the repair, replacement or condition of the sidewalk or curb in front of or adjoining the Security, and in default thereof Beneficiary may, upon five (5) days written notice to Grantor, pay any and all such license fees or similar charges, with penalties and interest thereon, and the

charges of the municipality for such repair or replacement, and any amount so paid or advanced by Beneficiary and all costs and expenses incurred in connection therewith (including, without limitation, attorneys' fees), with interest thereon at the default rate specified in the Note, shall be a demand obligation of Grantor to Beneficiary, and, to the extent permitted by law, shall be added to the Indebtedness and shall be secured by the lien of this Deed of Trust.

21. Assignment of Rents, Revenues, Leases and Security Deposits.

(a) As further security for the timely payment of the Indebtedness and the performance by Grantor of its obligations under the Loan Documents, Grantor hereby presently, irrevocably, absolutely and unconditionally transfers, assigns and sets over unto Beneficiary all of Grantor's right, title, and interest in and to (i) the Operating Lease; (ii) all present and future leases, sub-leases, license agreements, concession agreements, lease termination agreements and other occupancy agreements of any nature, oral or written, regarding all or any part of the Real Property together with all modifications, supplements, extensions, renewals and replacements thereof, now existing or hereafter made of the obligations of the lessees, licensees, concessionaires and occupants thereunder (collectively, the "Lessees"), and together with all guarantees of the obligations of the Lessees thereunder (collectively, the "Leases") and the rights of Grantor to receive, hold and apply all bonds and security in all of the Leases provided to be furnished to the lessor thereunder, and also together with the rights of Grantor to enforce any and all of the agreements, terms, covenants and conditions in all of the Leases provided and to give notices thereunder; and (iii) all of Grantor's right, title and interest in, to and under all present and future rents (including but not limited to prepaid rents and additional rents), income, profits, royalties, refunds, rebates, issues, fees (including but not limited to license fees, concession fees,

lease termination fees, and lease modification and extension fees), damages payable upon default by the lessee or other sums in any of the Leases provided to be paid to the lessor thereunder, charges, profits, income, issues, license fees, concession fees, lease termination fees, deposits, and all other income and revenue of every kind and nature due by virtue of the Leases, including all proceeds and proceeds of proceeds thereof (collectively, the "Rents and Revenues") to be applied by Beneficiary in payment of the Indebtedness. Beneficiary may receive and collect the Rents and Revenues personally or through a receiver upon the occurrence of an Event of Default for so long as any such Event of Default shall exist, and during the pendency of any foreclosure proceeding and during any redemption period. Grantor agrees to consent to a receiver if this is believed necessary or desirable by Beneficiary to enforce its rights under this Section.

(b) Assignment of Security Deposits. If any of the Leases provide for a security deposit paid by any Lessee to Grantor (collectively, the "Security Deposits"), Grantor hereby assigns its right, title and interest in and to the Security Deposits to Beneficiary. Grantor, however, shall have the right to retain such Security Deposits so long as there has been no Event of Default hereunder, provided Beneficiary shall not be obligated to any Lessee for any of the Security Deposits until Beneficiary obtains possession or control of the Security Deposits after an Event of Default.

(c) Assignment Absolute. The Assignment set forth herein shall be a present, irrevocable, absolute and unconditional assignment, and shall, immediately upon execution, give Beneficiary the right to sue for, collect and receive all of the Rents and Revenues and the Security Deposits and to deal with the Leases as the landlord.

Notwithstanding anything to the contrary contained herein, Grantor shall have a revocable license (the "Revocable License") to hold and administer the Security Deposits and to

collect, use and distribute the Rents and Revenues as they respectively become due, to enforce the Leases, and to exercise the rights of the landlord thereunder, so long as there is no Event of Default by Grantor hereunder. Grantor hereby irrevocably authorizes and directs each of the Lessees under the Leases, upon receipt of a written notice from Beneficiary so demanding, to pay all the Rents and Revenues and the Security Deposits then due, or which thereafter become due, to Beneficiary. Beneficiary may receive and collect the Rents and Revenues personally or through a receiver upon the occurrence of an Event of Default for so long as any such Event of Default shall exist, and during the pendency of any foreclosure proceeding and during any redemption period.

Grantor shall not otherwise assign or pledge, or contract, expressly or by implication, to assign or pledge, any Lease of the Land or space in the Improvements or the rights to sue for, collect and receive any Rents and Revenues, or the rights to receive, hold and apply any bonds and security in any of said Leases provided to be furnished to the Lessor thereunder, or the rights to enforce any of the agreements, terms, covenants or conditions of said Leases or to give notices thereunder, unless in each instance the written consent thereto of Beneficiary be first obtained.

Nothing in this Deed of Trust shall be construed to obligate Beneficiary, expressly or by implication, to perform any of the covenants of Grantor as lessor under any of the Leases hereinabove assigned or to pay any sum of money or damages therein provided to be paid by the lessor.

If Beneficiary shall from time to time suffer or permit Grantor to sue for, collect or receive any Rents and Revenues, or to receive, hold or apply any bonds or security under the Leases, or to enforce any of the agreements, terms, covenants or conditions thereunder or to give

notices thereunder, neither such sufferance nor permission shall constitute a waiver or relinquishment by Beneficiary of the rights hereunder and hereby assigned to Beneficiary with respect to any subsequent Rents and Revenues or with respect to any subsequent receipt, holding or application of bonds or security or any subsequent enforcement of such agreements, terms, covenants or conditions or any subsequent notices.

22. Future Leases. Grantor will not hereafter make any Lease to any Lessee, or materially amend, materially modify, terminate, renew or extend any Lease (other than a renewal to which a Lessee is entitled under the terms of an existing Lease or contained in a Lease that is subsequently approved by Beneficiary), affecting the Security unless Beneficiary shall first consent in writing to the terms of the Lease and the form of the Lease, which consent shall not be unreasonably withheld.

All Leases must be subordinate to the lien of this Deed of Trust unless Beneficiary otherwise specifies in writing. Each Lease must contain a provision that, upon notice to Lessee by Beneficiary, the Lease shall become superior, in whole or in part, to the lien of this Deed of Trust. Without limiting the foregoing, Beneficiary hereby reserves the right to (a) subordinate this Deed of Trust to any Lease subsequently made by recording with the official county recording office in which this Deed of Trust is recorded a declaration to that effect, executed by Beneficiary, which declaration once so recorded shall be binding upon the Lessee under such Lease and such Lessee's successors and assigns, or (b) as Beneficiary may decide, directing a trustee to make a foreclosure sale subject to any such Lease(s) in Beneficiary's sole discretion.

Grantor will furnish to Beneficiary a true and complete copy of each Lease, amendment, modification, extension, termination, guaranty, or renewal of lease, hereafter made

by Grantor, or made for the benefit of Grantor, with respect to space in the Security within ten (10) days after delivery of each such Lease, amendment, modification, extension, termination, guaranty, or renewal by the parties thereto. Grantor shall also furnish to Beneficiary an original mortgagee subordination, non-disturbance and attornment agreement executed by each Lessee and an original estoppel, addressed to Beneficiary, from each Lessee in the form of subordination, non-disturbance and attornment agreements and estoppels previously approved by Beneficiary.

Grantor will from time to time upon written demand of Beneficiary, confirm in writing the assignment to Beneficiary of any or all Leases of the Land and space in the Improvements, and such written confirmation shall be in such form as Beneficiary shall require and as shall be necessary to make the same recordable.

23. Grantor's Obligations as Lessor.

(a) Grantor shall, at Grantor's cost and expense, promptly and fully perform each and every covenant, condition, promise and obligation on the part of the lessor to be performed pursuant to the terms of each and every lease or letting, written or oral, now or hereafter made with respect to the Security or any part or parts thereof, and shall not suffer or permit there to exist any default in such performance on the part of such lessor or permit any event to occur which would give the Lessee under any such Lease the right to terminate the same or to offset rent.

(b) Grantor shall give Beneficiary prompt notice of any default under any Lease or of the receipt by Grantor of any notice of default from the lessee or its successors or assigns under a Lease, and Grantor shall furnish to Beneficiary immediately any and all information which Beneficiary may request concerning the performance and observance of all

covenants, agreements and conditions contained in the Leases by the lessor thereunder to be kept, observed and performed and concerning the compliance with all terms and conditions of the Leases. Grantor hereby authorizes Beneficiary or its representatives to make investigations and examinations concerning such performance, observance and compliance, and Grantor, upon request, shall promptly deposit with Beneficiary any and all documentary evidence relating to such performance, observance and compliance and copies of any and all notices, communications, plans, specifications or other instruments or documents received or given by Grantor in any way relating to or affecting the leases which may concern or affect the estate of the Lessor or the Lessee in or under the leases or in the leased premises thereby demised.

(c) In the event of any failure by Grantor to keep, observe or perform any covenant, agreement or condition contained in the Leases or to comply with the terms and conditions of the Leases, any performance, observance or compliance by Beneficiary pursuant to this Deed of Trust on behalf of Grantor shall not remove or waive, as between Grantor and Beneficiary the corresponding Event of Default under the terms of this Deed of Trust.

Reference is hereby made to the Assignment of Rents and Leases, the terms of which are incorporated herein by this reference. In the event of any direct conflict between the terms and provisions of the Assignment of Rents and Leases contained herein and the separate Assignment of Rents and Leases, the terms and provisions of the Assignment of Rents and Leases shall govern and control.

24. Leases; Foreclosure. Any proceedings or other steps taken by Beneficiary to foreclose this Deed of Trust, or otherwise to protect the interests of Beneficiary hereunder, shall not operate to terminate the rights of any present or future Lessee of space in the Improvements, notwithstanding that said rights may be subject and

subordinate to the lien of this Deed of Trust, unless Beneficiary specifically elects otherwise in the case of any particular Lessee. The failure to make any such Lessee a defendant in any such foreclosure proceeding and to foreclose such tenant's rights will not be asserted by Grantor or any other defendant in such foreclosure proceeding as a defense to any proceeding instituted by Beneficiary to foreclose this Deed of Trust or otherwise protect the interests of Beneficiary hereunder.

25. Management Agreement. Grantor shall, at Grantor's cost and expense, promptly and fully perform (or shall cause such performance of) each and every covenant, condition, promise and obligation of the owner of the Security under the Management Agreement, and shall make all payments (or shall cause such payments to be made) therein and thereby required to be made by the owner of the Security. Grantor shall not cancel, materially modify or assign (or shall not permit the cancellation, material modification or assignment) of the Management Agreement), including without limitation increasing any management fee due thereunder, without the prior written consent of Beneficiary and Grantor shall not consent to the cancellation, transfer, material modification or assignment of the Management Agreement by any other party thereto, without the prior written consent of Beneficiary, and the manager under the Management Agreement shall not be terminated, nor shall any successor or substitute management agreement be entered into without the prior written consent of Beneficiary. In the event the Management Agreement is terminated by Grantor without Beneficiary's prior written consent, same shall constitute an Event of Default hereunder and Beneficiary shall have the right to declare the entire unpaid amount of the Indebtedness immediately due and payable in accordance with Section 27(a) hereof. The Management Agreement by its

terms must be subordinate to the lien of this Deed of Trust. As used in this Section 25, a "material modification" shall be deemed to include modifications or changes in the payment of Real Estate Taxes, calculation of the FF&E Reserve, insurance requirements, term, management fees or hotel affiliation.

Grantor shall furnish to Beneficiary, within five (5) Business Days after receipt thereof, or after the mailing or service thereof by Grantor, as the case may be, a copy of each notice of default which Grantor shall give to, or receive from any person, based upon the occurrence, or alleged occurrence, of any default or defaults in the performance of any covenant, condition, promise or obligation under the Management Agreement.

Whenever and as often as Grantor shall fail to perform, promptly and fully (or shall fail to cause the performance promptly and fully), at Grantor's cost and expense, any covenant, condition, promise or obligation on the part of the owner of the Security under and pursuant to the Management Agreement, Beneficiary, or a lawfully appointed receiver of the Security may, at their respective options, enter upon the Security and perform, or cause to be performed, such work, labor, services, acts or things, and take such other steps and do such other acts as they may deem advisable, to cure such defaulted covenant, condition, promise or obligation, and Grantor shall reimburse Beneficiary upon demand for all costs and expenses incurred by Beneficiary and any such receiver in taking any action pursuant to this Section, which reimbursement shall be secured by the lien of this Deed of Trust.

26. Events of Default. Each of the following shall constitute an "Event of Default" hereunder and shall entitle Beneficiary to exercise its remedies hereunder and under any of the other Loan Documents or as otherwise provided by law:

(a) Any payment of any installment of principal or interest due under the Note, or payment of any other sum due under the Note, or under any of the other Loan Documents is not received by Beneficiary by 5:00 P.M. Eastern Time on the fifth (5th) Business Day following the date when such payment was due, or any other payment of money or indebtedness as required by this Deed of Trust or any other Loan Document is not made when due and payable;

(b) Failure of Grantor (i) in the payment of any other sum of money (not covered by the immediately preceding clause (a) due under the Note (including, but not limited to, repayment of the entire outstanding Indebtedness on the Maturity Date), or (ii) in the observance or performance of any covenant, promise or agreement provided in this Deed of Trust or in any other Loan Document other than relating to the payment of indebtedness or money ("failure to perform") for thirty (30) days after written notice by Beneficiary to Grantor specifying the nature of the failure to perform; provided, however, that if the nature of such failure to perform is such that the same cannot be cured within such thirty (30) day period, such failure to perform shall not be deemed an Event of Default if Grantor shall within such period commence to cure that failure to perform and thereafter diligently prosecute the cure to completion, but in no event more than one hundred twenty (120) days in the aggregate. Notwithstanding anything contained herein to the contrary, the notice and cure period provided under this clause(b) shall not be applicable to and shall not be in addition to any specific notice and cure or performance period provided under any other provision of this Deed of Trust, and the specific notice and cure or performance period provided for in such provision shall control, and a failure by Grantor to cure a default under such provision within the applicable cure period shall be an Event of Default under this Deed of Trust;

(c) Any representation, warranty, or statement of Grantor or the managing general partner of Grantor, or of any guarantor or indemnitor with respect to the Loan, contained herein or in any of the Loan Documents, or in any writing delivered to Beneficiary on or before the execution and delivery of the Loan Documents, including without limitation, the Environmental Indemnification Agreement, the Grantor's Certificate dated as of the date hereof, and the Assignment of Rents and Leases, proves to be untrue in any material respect as of the date when made;

(d) Grantor or the managing general partner of Grantor shall (i) have an order for relief entered in a proceeding under Title 11, United States Code, whether such order shall result from a voluntary or involuntary petition, (ii) seek or consent to the appointment of a receiver or trustee for itself or for any of the Security, (iii) file a petition or initiate a proceeding under the bankruptcy, insolvency, receivership, or similar laws of the United States, any state or any jurisdiction, foreign or otherwise, (iv) make a general assignment for the benefit of creditors, or (v) be unable to pay its debts as they mature;

(e) A court shall enter an order, judgment or decree without the consent of Grantor or the managing general partner of Grantor, appointing, without the consent of Grantor or the managing general partner of Grantor, a receiver or trustee for it or for any of the Security or approving a petition filed against Grantor which seeks relief either in a proceeding under Title 11, United States Code, or other similar laws of the United States, any state or any jurisdiction, and such order, judgment or decree shall remain in force, undischarged or unstayed, sixty (60) days after it is entered;

(f) A default beyond any applicable notice and cure period by either Grantor or Lessee (as defined in the Operating Lease) occurs under the Operating Lease;

(g) A default beyond any applicable notice and cure period by either Grantor or Owner (as defined in the Management Agreement) occurs under the Management Agreement;

(h) A default by Grantor beyond any applicable notice and cure period under the Ground Lease;

(i) A default by CHH Capital Hotel Partners, LP under the deed of trust or any other loan document delivered by CHH Capital Hotel Partners, LP in connection with the Note which is not cured within any applicable grace period afforded therein, if any; or

(j) Without the prior written consent of Beneficiary, which consent shall be within Beneficiary's sole discretion (i) the Security or any portion thereof, or interest therein, shall be mortgaged, encumbered, sold, assigned, transferred by contract of sale or otherwise transferred by Grantor or by operation of law (ii) if Grantor is a partnership, limited liability company, joint venture, syndicate or other group, all or any portion of the interest of any partner or member thereof is sold, pledged, assigned or otherwise transferred or (iii) if Grantor is a corporation, the controlling interest in Grantor or Grantor is liquidated or dissolved or its charter expires or is revoked; or (iv) if Grantor is a trust or trustee(s), there is any change in the identity of any of the trustee(s), there is any sale or other transfer of all or any portion of the beneficial interest under the trust, or if any beneficiary of the trust is an entity described in clause (ii) or clause (iii) of this subparagraph (f), there is any event with respect to such entity that is prohibited by said clauses (ii) and (iii), as applicable.

Notwithstanding the foregoing, Grantor shall have the right on only one occasion (a "One-Time Transfer") to sell, transfer or assign, in whole or in part, its interest in the Security to any party of equal qualification and credit-worthiness so long as in each case:

(i) there is no default under the Loan Documents at the time Grantor notifies Beneficiary of its intent to transfer all or a portion of the Security or at the time of transfer;

(ii) a property inspection by Beneficiary or Beneficiary's designee shows that all reasonably necessary maintenance on or damage or destruction to the Security has been completed or repaired;

(iii) the proposed transferee shall be a Qualified Real Estate Investor (hereinafter defined);

(iv) the Debt Service Coverage on the Loan and any permitted applicable secondary financing exceeds 2.00 times;

(v) Intentionally omitted;

(vi) Intentionally omitted;

(vii) At least thirty (30) days prior to such a transfer Grantor must provide Beneficiary with all of the material provisions of such transfer including without limitation the proposed date of transfer, and the name, net worth, background and address of the proposed transferee and the purchase price;

(viii) Grantor shall provide Beneficiary with such evidence as Beneficiary may require that the proposed transferee shall fulfill each and every obligation of Grantor under the loan documents and such transfer shall not affect or impair Beneficiary's security and rights under the loan documents, or other guaranty or undertaking relating to the indebtedness, including, without limitation, the Environmental Indemnification Agreement;

(ix) such transfer may occur only after the Closed Period;

(x) such notice received under (vii) above shall be accompanied by the payment of Beneficiary of a non-refundable fee in the amount of one percent (1%) of the loan balance in cash or certified check to be retained by Beneficiary in order to induce Beneficiary to allow the proposed transferee to assume the obligations of Grantor under the Loan Documents, and such fee shall be returned to Grantor if Beneficiary disapproves of such transfer;

(xi) the loan-to-value ratio based on a then current appraisal obtained at Grantor's expense and acceptable to Beneficiary must not exceed fifty-five percent (55%);

(xii) Grantor shall provide Beneficiary with such evidence as Beneficiary may require that such transfer shall not affect or impair Beneficiary's security and rights under the Loan Documents; and

(xiii) Grantor shall pay for all of Beneficiary's costs and expenses associated with the transfer, including without limitation, Attorney's Fees charged by Beneficiary's staff counsel or special counsel.

"Qualified Real Estate Investor" is defined as any reputable corporation, partnership, joint venture, joint-stock company, trust or individual with a minimum net worth of Three Hundred Million and 00/100 Dollars (\$300,000,000.00) and a minimum current cash position of Twenty Five Million and 00/100 Dollars (\$25,000,000.00), based in the United States and free from any bankruptcy, reorganization or insolvency proceedings or any criminal charges or proceedings and shall not have been, at the time of transfer or in the past, a litigant, plaintiff or defendant in any suit brought against or by Beneficiary. Beneficiary agrees to be reasonable in the review of such qualifications.

"Debt Service Coverage" is defined as the ratio, as determined by Beneficiary, of
(a) Net Operating Income from the Real Property for the applicable period of time to (b) Total

Annual Debt Service. "Net Operating Income" shall mean the amount by which Gross Operating Revenues exceed Operating Expenses. "Gross Operating Revenues" shall mean the total of gross receipts derived from the operation of the improvements situated on the Security, including all receipts, revenues, income and proceeds of retail, food and beverage and room sales of every kind and other miscellaneous operating receipts, but excluding any award or payment made by any entity in connection with the exercise of any power of eminent domain, any proceeds from the sale, exchange, condemnation, financing or refinancing of the Security, and any proceeds paid under insurance policies (other than rental loss insurance proceeds) on account of losses insured thereby.

"Operating Expenses" shall mean the sum of (i) cash operating expenses of the Security including management fee, maintenance costs, insurance premiums or reserves or impounds for insurance premiums, utility charges, advertising and marketing expenses, salaries, wages and fringe benefits paid to employees, accounting and reporting expenses and any and all other costs actually paid which are associated with the operation of the Security, (ii) real estate taxes, personal property taxes, sales taxes and any other taxes paid or reserved, and (iii) the amount required to be reserved for the FF&E Reserve and costs associated with capital lease payments. Operating Expenses will exclude all non cash items such as depreciation, amortization, and capital expenditures.

Gross income shall not be anticipated for any greater time period than that approved by generally accepted accounting principles nor shall ordinary operating expenses be prepaid. Documentation of Net Operating Income shall be certified by an officer of Grantor with detail satisfactory to Beneficiary and shall be subject to the approval of Beneficiary. "Total Annual Debt Service" shall mean the sum of (i) the aggregate debt service payments (including

principal and interest) on the loan for the applicable time period, plus (ii) the aggregate debt service payments (including principal and interest) on all other indebtedness secured by a lien on all or part of the Real Property for the applicable time period.

Additionally, at any time, and from time to time, any one or more of the following transfers (separately or in combination) are permitted ("Other Permitted Transfers"):

(i) Conversion of Grantor into a limited liability company, provided that as a result thereof (A) a Hilton Affiliate (hereinafter defined) or a CNL Affiliate (hereinafter defined) owns at least a 25% membership interest in and is the managing member of Grantor and (B) a Hilton Affiliate and a CNL Affiliate, or either of them, in the aggregate, owns a minimum 50% of the membership interests in Grantor.

(ii) Any transfer of an ownership interest in Grantor, and any transfer of an entity that directly owns Grantor, provided that (A) while Grantor is a general partnership (I) a Hilton Affiliate or a CNL Affiliate owns at least a 25% general partnership interest in and is the managing general partner of Grantor and (II) a Hilton Affiliate and a CNL Affiliate, or either of them, in the aggregate, owns a minimum 50% general partnership interest in Grantor; (B) if Grantor becomes a limited partnership, a Hilton Affiliate or a CNL Affiliate is the sole general partner with a minimum 50% general partnership interest, and (C) if Grantor becomes a limited liability company, a Hilton Affiliate or a CNL Affiliate is the managing member with a minimum 50% ownership interest.

(iii) Any transfer of ownership interests in Grantor to a Hilton Affiliate, or a CNL Affiliate; any transfer of ownership interests in a CNL Affiliate to another CNL Affiliate; any transfer of ownership interests in a Hilton Affiliate to another Hilton Affiliate; and any transfers of stock in any entity that is a publicly traded entity.

(iv) The leasing of all or substantially all of the Real Property and Personal Property to a Permitted Person (hereinafter defined). Grantor shall, and shall cause the lessee under the lease to, enter into such agreements and other documents in connection with the lease and this Loan as the Beneficiary may reasonably request. Any such lease may be amended, restated, replaced, renewed, extended, modified and/or terminated from time to time, and Grantor may exercise one or more rights under any such lease from time to time, at Grantor's discretion, all without notice to or consent of the Beneficiary. For purposes of this subsection (iv), "Permitted Person" means any person which is majority owned and controlled, directly or indirectly, by a Hilton Affiliate and a CNL Affiliate, or either of them.

(v) The reasonable sale of FF&E in the ordinary course of business, which FF&E is replaced by FF&E of substantially equal or greater value, unless such replacement is not required in the operation of the Real Property.

(vi) The leasing of space in the Improvements in the ordinary course of business; provided, however, that any lease or sublease of the existing interior restaurant and sports bar premises is subject to Beneficiary's approval, which approval shall not be unreasonably withheld, conditioned or delayed by Beneficiary.

(vii) No purchaser, assignee or transferee from the original Grantor or any general partner of Grantor (except as provided in the next sentence) shall have the right to further sell, transfer or assign the Security. Any subsequent transfers by a permitted transferee shall be subject to the restrictions of this Section.

As used herein, the term "Hilton Affiliate" shall mean Hilton Hotels Corporation; any entity that controls, is controlled by, or is under common control with Hilton Hotels

Corporation; and any successor or assign by merger, reorganization, acquisition or otherwise of all or substantially all of the assets of Hilton Hotels Corporation.

As used herein, the term "CNL Affiliate" shall mean CNL Hospitality Properties Inc.; any entity that controls, is controlled by, or is under common control with CNL Hospitality Properties Inc.; and any successor or assign by merger, reorganization, acquisition or otherwise of all or substantially all of the assets of CNL Hospitality Properties Inc.

As used herein, the phrases "control", "controls," "is controlled by" or "is under common control with" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract, or otherwise.

27. Remedies Upon Default. Immediately upon the occurrence of any Event of Default, the Trustee and Beneficiary shall have the option, in addition to and not in lieu of or substitution for all other rights and remedies provided in this Deed of Trust or any other Loan Document or provided by law or in equity, and is hereby authorized and empowered by Grantor, to do any or all of the following:

(a) Declare without notice the entire unpaid amount of the Indebtedness immediately due and payable, by commencing an action to foreclose this Deed of Trust as a mortgage, and/or by delivery to Trustee of a written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Security, which notice Trustee shall cause to be duly filed for record in case of foreclosure by exercise of the power of sale herein, Should Beneficiary elect to foreclose by exercise of the power of sale herein, Beneficiary shall also deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require, and notice of sale

having been given as then required by law and after lapse of such time as may then be required by law after recordation of such notice of default, Trustee, without demand on Grantor, shall sell the Security at the time and place of sale fixed by it in such notice of sale as Beneficiary may direct, either as a whole or in separate parcels, as Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Beneficiary shall have the right to direct the order in which separate parcels shall be sold and Grantor shall have no right to direct the order in which separate parcels are sold. Trustee may postpone sale of all or any portion of the Security by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Security, or any portion thereof, so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Grantor, Trustee or Beneficiary, may purchase at such sale.

(b) Proceed, at Grantor's expense, against the Personal Property in accordance with Beneficiary's rights and remedies with respect to the Personal Property, including the right to sell the Personal Property together with the Real Property, separately and without regard to the remainder of the Security in accordance with Beneficiary's rights and remedies provided by the California Uniform Commercial Code as well as other rights and remedies available at law or in equity.

(c) Cause, at Grantor's expense, to be brought down to date a title examination and tax histories of the Security, procure title insurance or title reports or, if necessary, procure new abstracts and tax histories.

(d) Procure an updated or entirely new environmental audit of the Security including building, soil, ground water and subsurface investigations; have the Improvements inspected by an engineer or other qualified inspector and procure a building inspection report; procure an MAI or other appraisal of the Security or any portion thereof; enter upon the Security at any time and from time to time to accomplish the foregoing and to show the Security to potential purchasers and potential bidders at foreclosure sale; make available to potential purchasers and potential bidders all information obtained pursuant to the foregoing and any other information in the possession of Beneficiary regarding the Security.

(e) Either by itself or by its agent to be appointed by it for that purpose or by a receiver appointed by a court of competent jurisdiction, as a matter of strict right, without notice and without regard to the adequacy or value of any security for the Indebtedness or the solvency of any party bound for its payment, to take possession of and to operate the Security, Grantor hereby waiving any right Grantor might have to object to or oppose any such possession and, whether or not Beneficiary has taken possession of the Security, to collect and apply the Rents, including those past due and unpaid, in such order and manner as Beneficiary or such receiver in its sole discretion shall consider advisable, to or upon the following, in such order and amounts as Beneficiary shall elect: the expenses of receivership, if any; the proper costs of upkeep, maintenance, repair and/or operation of the Security; the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Deed of Trust; the interest then due or next to become due upon the Indebtedness; the taxes and assessments upon the Security then due or next to become due; and/or the unpaid principal of such Indebtedness. The collection and/or receipt of Rents and Revenues from the Security by Beneficiary, its agent or receiver, after declaration of default and election to cause the Security to be sold under and pursuant to the terms of this Deed

of Trust, shall not affect or impair such default or declaration of default or election to cause the Security to be sold or any sale proceedings predicated thereon, but such proceedings may be conducted and sale effected notwithstanding the receipt and/or collection of any such Rents and Revenues. Any such Rents and Revenues in the possession of Beneficiary, its agent or receiver, at the time of sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the sale. Beneficiary's rights hereunder include its rights under the Civil Procedure Code Section 564, as such Section may be amended from time to time. Except for damage caused by Beneficiary's willful misconduct, Grantor hereby waives any claim Grantor may have against Beneficiary for mismanagement of the Security during Beneficiary's operation of the Security under this subparagraph or as mortgagee in actual possession under applicable statutes.

(f) Beneficiary may, at its option, without waiving any Event of Default, pay, perform or observe such Event of Default, and all payments made or costs or expenses incurred by Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Grantor to Beneficiary with interest thereon at the default rate provided in the Note. Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Beneficiary is hereby empowered to enter and to authorize others to enter upon the Security or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without hereby becoming liable to Grantor or any person in possession holding under Grantor.

(g) Apply against the Indebtedness in such order as Beneficiary shall determine any funds held for the benefit of Grantor in escrow by Beneficiary or by any third-

party escrow agent under any of the Loan Documents, including without limitation any funds held under the escrow established by Section 5 of this Deed of Trust and the FF&E Reserve.

(h) In the event of any sale of the Security pursuant to Section 27(a) the proceeds of any such sale which are applied in accordance with this Deed of Trust shall be applied in the order following to: (i) all expenses incurred for the collection of the Indebtedness and the foreclosure of this Deed of Trust, including reasonable compensation to Trustee and Beneficiary, their agents and attorneys; (ii) all sums expended or incurred by Beneficiary and Trustee directly or indirectly in carrying out the terms, covenants and agreements of the Note or notes evidencing the Indebtedness, of this Deed of Trust and any other Loan Documents, together with interest thereon as therein provided; (iii) all late payment charges, prepayment fees, advances and other amounts due under any of the Loan Documents; (iv) all accrued and unpaid interest upon the Indebtedness; (v) the unpaid principal amount of the Indebtedness; and (vi) the surplus, if any, to the person or persons legally entitled thereto.

In the event of any acceleration of the Indebtedness pursuant to the first paragraph of this Section, Grantor shall pay to Beneficiary together with the principal indebtedness and interest thereon an amount equal to the prepayment fee provided for in the Note and such fee shall be included as part of the Indebtedness.

(i) Beneficiary may, to the extent permitted under the Civil Procedure Code Section 726.5, as such Section may be amended from time to time, waive the security of this Deed of Trust as to any parcel of real property which is "environmentally impaired" or is an "affected parcel" (as such terms are defined in Civil Procedure Code Section 726.5) and as to any Personal Property attached to such parcel, and thereafter exercise against Grantor, to the extent permitted under Civil Procedure Code Section 726.5, the rights and remedies of an

unsecured creditor, including without limitation, reduction of Beneficiary's claim to judgment, and any other rights remedies permitted by law.

In the event Beneficiary elects, in accordance with this Section 24(g), to waive all or part of the Security of this Deed of Trust pursuant to Civil Procedure Code Section 726.5 and proceed against Grantor on an unsecured basis, the valuation of the Real Property, the determination of the environmentally impaired status of such security and any cause of action for a money judgment shall, at the request of Beneficiary, be referred to a referee in accordance with the Civil Procedure Code Sections 638 et seq. Such referee shall be an M.A.I. appraiser selected by Beneficiary and approved by Grantor, which approval shall not be unreasonably withheld or delayed. The decision of such referee shall be binding upon both Grantor and Beneficiary, and judgment upon the award rendered by such referee shall be entered in the court in which such proceeding was commenced in accordance with the Civil Procedure Code Sections 644 and 645.

(j) Beneficiary may, in accordance with the Civil Procedure Code Section 736, as such section may be amended from time to time, bring an action against Grantor for breach of any "environmental provision" (as such term is defined in the Civil Procedure Code Section 736) made by Grantor herein or in any other Loan Document, for the recovery of damages and/or the enforcement of any such "environmental provision".

Neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts referred to in this Section and any of the actions referred to in this Section may be taken by Beneficiary irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness evidenced by the Note.

Failure to exercise any option to accelerate in the event of a default or other circumstance permitting the exercise of such option, or to exercise any other right, power or remedy hereunder shall not constitute a waiver of the default or of the right to exercise such option at a later time, or a waiver of the right to exercise such option, right, power or remedy in the event of any other default or circumstance specified above.

28. Acceleration Interest. In addition to any late payment charge which may be due under the Note, Grantor shall pay interest on all sums due hereunder at a rate equal to the lesser of (i) the interest rate set forth in the Note plus four percent (4%) per annum, or (ii) the maximum rate permitted by law (the "Default Rate"), from and after the first to occur of the following events: if Beneficiary elects to cause the acceleration of the Indebtedness; if a petition under Title 11, United States Code, shall be filed by or against Grantor or if Grantor shall seek or consent to the appointment of a receiver or trustee for itself or for any of the Security, file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, make a general assignment for the benefit of creditors, or be unable to pay its debts as they become due; if a court shall enter an order, judgment or decree appointing, with or without the consent of Grantor, a receiver or trustee for it or for any of the Security or approving a petition filed against Grantor which seeks relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, and any such order, judgment or decree shall remain in force, undischarged or unstayed, sixty (60) days after it is entered; or if all sums due under the Note, this Deed of Trust or any other Loan Document are not paid on the Maturity Date as set forth in the Note.

29. Late Charge. In the event any sums due under the Note, this Deed of Trust, or any other Loan Document, are not paid by Grantor when due, without regard to any cure or grace period, Grantor shall pay to Beneficiary a one-time late charge equal to the lesser of four percent (4%) of the delinquent payment or the maximum amount allowed by law, as the reasonable estimate by Beneficiary and Grantor of a fair average compensation for the loss that may be sustained by Beneficiary due to the failure of Grantor to make timely payments, and such amount shall be secured hereby. Such late charge shall be paid without prejudice to the right of Beneficiary to collect any other amounts provided to be paid or to declare an Event of Default under this Deed of Trust or any other Loan Document.

30. Waiver of Statutory Rights. Grantor agrees, to the fullest extent permitted by law, that in an Event of Default on the part of Grantor hereunder, neither Grantor nor anyone claiming through or under Grantor will set up, claim, or seek to take advantage of any moratorium, reinstatement, forbearance, appraisal, valuation, stay, homestead, extension, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the sale of the Security, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Grantor, for itself and all who may at any time claim through or under it, hereby waives to the fullest extent that it may lawfully do so, the benefit of all such laws, and any and all rights to have the assets subject to the security interest of this Deed of Trust marshalled upon any foreclosure or sale under the power granted herein.

31. Security Interest. This Deed of Trust shall, as to any equipment and other Personal Property covered hereby, be deemed to constitute a security agreement, and

Grantor, as debtor, hereby grants to Beneficiary, as secured party, a security interest therein pursuant to the California Uniform Commercial Code. Grantor agrees, upon request of Beneficiary, to furnish an inventory of Personal Property owned by Grantor and subject to this Deed of Trust and, upon request by Beneficiary, to execute and file and/or record all at Grantor's expense any supplements to this Deed of Trust, any separate security agreement and any financing statements and continuation statements in order to include specifically said inventory of Personal Property or otherwise to perfect the security interest granted hereby. Upon any Event of Default, Beneficiary shall have all of the rights and remedies provided in said Code or otherwise provided by law or by this Deed of Trust, including but not limited to the right to require Grantor to assemble such Personal Property and make it available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to both parties, the right to take possession of such Personal Property with or without demand and with or without process of law and the right to sell and dispose of the same and distribute the proceeds according to law. The parties hereto agree that any requirement of reasonable notice shall be met if Beneficiary sends such notice to Grantor at least five (5) days prior to the date of sale, disposition or other event giving rise to the required notice, and that the proceeds of any disposition of any such Personal Property may be applied by Beneficiary first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and legal expenses incurred, and then to payment of the Indebtedness in such order and amounts as Beneficiary shall elect. With respect to the Personal Property that has become so attached to the Real Property that an interest therein arises under the real property law of the State

of California this Deed of Trust shall also constitute a financing statement and a fixture filing under the California Uniform Commercial Code.

32. Right of Entry. Beneficiary and Beneficiary's representatives may at all times and without notice to Grantor enter upon the Security and inspect the same, or cause it to be inspected by agents, employees, or independent contractors of Beneficiary, and show the same to others, but Beneficiary shall not be obligated to make any such entry or inspection. Beneficiary's rights hereunder shall include its rights under California Civil Code Section 2929.5 as such Section may be amended from time to time.

33. Estoppel Certificate. Grantor, within fifteen (15) days after written request from Beneficiary, will furnish a signed statement in writing, duly acknowledged, of the amount then due or outstanding hereunder and whether or not any offsets or defenses exist against the Indebtedness, and if so, specifying such offsets and defenses. Upon request by Beneficiary, Grantor shall exercise any right it may have to request an estoppel certificate for any or all of the Lessees on the Security within five (5) days following Beneficiary's request.

34. Annual Statements. Grantor shall deliver to Beneficiary: (a) by April 15th of each calendar year, annual statements audited and certified by an independent certified public accountant reasonably satisfactory to Beneficiary and prepared in accordance with generally accepted accounting principles, showing in detail (1) a balance sheet for the Security as of the last day of the preceding calendar year and (2) financial statements for Grantor as of the last day of the preceding calendar year; (b) within ninety (90) days after the end of each calendar year, annual capital expenditure summaries for

the Security; and (c) such other financial information as Beneficiary (or any rating agency in the event the Loan is securitized) shall request in writing.

Notwithstanding anything herein to the contrary, for so long as title to the Real Property remains with Grantor and there is no current event of default, or any state of facts which, with the passage of time or giving of notice, or both, would constitute a default under any of the Loan Documents, then in lieu of the opinion from certified public accountants, Beneficiary will accept financial statements containing the information set forth in the preceding paragraph, in form and substance satisfactory to Beneficiary signed by Grantor's chief financial officer or authorized general partner.

If Grantor omits to prepare and deliver promptly any report or statement required by this Section, Beneficiary may elect, in addition to exercising any remedy for an Event of Default as provided for in this Deed of Trust, to make an audit of all books and records of Grantor and its principals, including without limitation their bank accounts, which in any way pertain to the Security, and to prepare the statement or statements which Grantor failed to procure and deliver. Such audit shall be made and such statements shall be prepared by an independent Certified Public Accountant to be selected by Beneficiary. Grantor shall pay all expenses of the audit and other services, which expenses shall be secured hereby as part of the Indebtedness and shall be immediately due and payable with interest thereon at the Default Rate set forth herein.

Beneficiary shall afford any information received pursuant to this Section the same degree of confidentiality that Beneficiary affords similar information proprietary to Beneficiary; provided, however, that Beneficiary does not in any way warrant or represent that such information received from Grantor will remain confidential, and, provided further, that

Beneficiary shall have the unconditional right to disclose, as Beneficiary deems necessary or desirable, to any and all investors, purchasers, transferees, servicers, participants, rating agencies or any organizations maintaining databases on the underwriting and performance of commercial loans, any and all such information and documents in the event Beneficiary sells, transfers, conveys, or assigns the Deed of Trust or any portion of the Indebtedness.

35. Rights Cumulative. Each right and remedy of Beneficiary under this Deed of Trust, the Note and any other Loan Documents, shall be in addition to every other right and remedy of Beneficiary and such rights and remedies may be enforced separately or in any combination and the exercise of any of the same shall not constitute an exhaustion of that right or remedy.

36. Subrogation. To the extent that proceeds of the Indebtedness are used to pay any outstanding lien, charge or encumbrance affecting the Security, such proceeds have been advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interest and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, that the terms and provisions hereof shall govern the rights and remedies of Beneficiary and shall supersede the terms, provisions, rights, and remedies under the lien or liens to which Beneficiary is subrogated hereunder.

37. No Waiver. Any failure by Beneficiary or Trustee to insist upon the strict performance by Grantor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Beneficiary, notwithstanding

any such failure, shall have the right thereafter to insist upon the strict performance by Grantor of any and all of the terms and provisions hereof to be performed by Grantor.

38. Deed of Trust Extension. The lien hereof shall remain in full force and effect during any postponement or extension of the time of payment of the Indebtedness, or of any part thereof, and any number of extensions or modifications hereof, or any additional notes or other note(s) in substitution for the Note taken by Beneficiary, shall not affect the lien hereof or the liability of Grantor or of any subsequent obligor to pay the Indebtedness unless and until such lien or liability be expressly released in writing by Beneficiary.

39. Indemnification. Grantor shall indemnify and hold Beneficiary harmless from and against all obligations, liabilities, losses, costs, expenses, fines, penalties or damages (including attorneys' fees) which Beneficiary may incur (except if caused by Beneficiary's negligence or intentional misconduct) by reason of this Deed of Trust or with regard to the Security prior to the exercise of any remedies under this Deed of Trust. Grantor shall defend Beneficiary against any claim or litigation involving Beneficiary for the same, and should Beneficiary incur such obligation, liability, loss, cost, expense, fine, penalty or damage, then Grantor shall reimburse Beneficiary upon demand. Any amount owed Beneficiary under this provision shall bear interest at the Default Rate and shall be secured hereby.

40. Nonrecourse. Except as hereinafter in this Section and in Section 15 of the Note specifically provided, no judgment in the nature of a deficiency judgment for the repayment of the Indebtedness or the collection of any amount due pursuant to the Loan Documents will be enforced against the undersigned personally or any property of

Grantor other than the Security and any other security furnished under the Loan Documents in any action to foreclose this Deed of Trust or to otherwise realize upon any security furnished under the Loan Documents or to collect any amount payable under the Loan Documents. Notwithstanding the foregoing:

(a) Nothing herein contained shall be construed as prohibiting Beneficiary from exercising any and all remedies which the Loan Documents permit, including the right to bring actions or proceedings (including an action or suit for judicial foreclosure) against Grantor, and to enter a judgment against Grantor, so long as (except as otherwise provided in this Section 40 or in Section 15 of the Note) the exercise of any remedy does not extend to obtaining a judgment in the nature of a deficiency judgment or to execution against or recovery out of any property of Grantor, other than the Security and any other security furnished under the Loan Documents on account of a judgment in the nature of a deficiency judgment.

(b) The foregoing limitations shall not be construed to relieve Grantor from being fully and personally liable for (i) Grantor misapplying any condemnation awards or insurance proceeds attributable to the Security, to the full extent of such awards or proceeds so misapplied, (ii) Grantor misapplying any security deposits or reserves attributable to the Security, to the full extent of such deposits and reserves so misapplied, (iii) intentionally deleted, (iv) Grantor committing any fraud, misrepresentation or waste in connection with the operation of the Security or the making of the Loan, to the full extent of any loss, damage, expense or costs (including reasonable attorneys' fees) incurred by Beneficiary resulting from such fraud, misrepresentation or waste, (v) Grantor failing to pay when due any portion of the Indebtedness, operating and maintenance expenses, insurance premiums, deposits into a reserve account, or other sums required by the Loan Documents, including, but not limited to, the FF&E Reserve,

when gross revenues from the Security are sufficient to pay such payments, expenses, or deposits to the extent any such funds are diverted from such payments, expenses, or deposits, (vi) for any guarantee and/or indemnification agreement(s) and/or master lease(s), as may be required under the Loan Documents, to the full extent as provided in such guarantee, indemnification or master lease, (vii) Grantor failing to pay real estate taxes and assessments which are a lien against the Security during the period of Grantor's ownership, to the full extent of such unpaid taxes, and assessments, and any additional interest, penalties or other charges assessed as a result of such nonpayment, and (viii) Grantor failing to maintain the levels of insurance required under this Deed of Trust or any other of the Loan Documents, to the full extent that a casualty or liability occurs or arises and insurance proceeds would have been available had such levels of insurance been maintained, to the full extent of the amount of the loss incurred as the result of such uninsured casualty or uninsured liability;

(c) There shall be no limitation, on Grantor's personal liability under, nor on the exercise of any of Beneficiary's rights (i) under, any indemnity from Grantor to Beneficiary, including, but not limited to, the Environmental Indemnification Agreement except as may be expressly set forth in the terms of such Environmental Indemnification Agreement; and (ii) in accordance with the Civil Procedure Code Section 736 to recover any costs, expenses or liabilities (including attorneys fees) which Beneficiary is permitted to recover under Civil Procedure Code Section 736 for breach of any "environmental provision" (as defined in the Civil Procedure Code Section 736) contained in this Deed of Trust, the Environmental Indemnification Agreement or any other of the Loan Documents relating to the Security or any portion of the Security;

(d) There shall be no limitation on or prejudice to the rights of Beneficiary to proceed against any entity or person whatsoever, including Grantor, with respect to the enforcement of any guarantees of the Indebtedness or other sums due hereunder or under any of the other Loan Documents or any part thereof, including, but not limited to, leases, master leases, or similar rights of payment; and

(e) Beneficiary shall be permitted to bring an action against Grantor personally and to execute against and recover out of any property of Grantor, for all sums due pursuant to the Loan Documents to the extent permitted by the terms of the Civil Procedure Code Section 726.5 as a result of any parcel of the Security being "environmentally impaired" or an "affected parcel" as such terms are defined in the Civil Procedure Code Section 726.5 and to have the rights and remedies of an unsecured Beneficiary to the extent permitted thereunder. If Beneficiary exercises the rights and remedies of an unsecured creditor in accordance with this clause (e), Grantor promises to pay to Beneficiary, on demand by Beneficiary following such exercise, all amounts owed to Beneficiary under any Loan Document, and Grantor agrees that it will be personally liable for the payment of all such sums. Grantor and Beneficiary acknowledge that pursuant to Civil Procedure Code Section 726.5, Beneficiary's rights under this clause (e) are limited to instances in which Grantor or any affiliate, agent, cotenant, partner, or joint venturer of Grantor either (i) caused, contributed to, permitted, or acquiesced in the release (as defined in Civil Procedure Code Section 726.5) or threatened release of toxic or hazardous waste or waste products or (ii) had actual knowledge or notice of such release or threatened release prior to the execution and delivery of this Deed of Trust and failed to disclose such release or threatened release to Beneficiary in writing after Beneficiary's written request for information concerning the environmental condition of the Security, unless Beneficiary otherwise obtained

actual knowledge of such release or threatened release prior to the execution and delivery of this Deed of Trust.

41. Attorneys' Fees. Any reference to "attorney fees", "attorneys' fees", or "attorney's fees" in this document includes but is not limited to both the reasonable fees, charges and costs actually incurred by Beneficiary or Trustee through Beneficiary's or Trustee's retention of outside legal counsel and the allocable fees, costs and charges for services rendered by Beneficiary's or Trustee's in house counsel. Any reference to "attorney fees", "attorneys' fees", or "attorney's fees, shall also include but not be limited to those attorneys or legal fees, costs and charges incurred by Beneficiary or Trustee in the collection of any Indebtedness, the enforcement of any obligations hereunder, the protection of the Security, the appointment of a receiver as permitted hereunder, the foreclosure of this Deed of Trust and Security Agreement, the sale of the Security, any action by Beneficiary pursuant to Civil Procedure Code Section 726.5, the defense of actions arising hereunder and the collection, protection or setoff of any claim Beneficiary may have in a proceeding under Title 11, United States Code, or any state bankruptcy or insolvency statute. Attorneys fees provided for hereunder shall accrue whether or not Beneficiary has provided notice of default or of an intention to exercise its remedies for such default.

42. Administrative Fees. Beneficiary shall have the right to charge administrative fees during the term of the Note as Beneficiary may determine, in its sole reasonable discretion, in connection with any servicing requests made by Grantor requiring Beneficiary's evaluation, preparation and processing of any such requests. Administrative fees shall not be charged for routine servicing matters contemplated by

the Loan Documents including, without limitation: processing payments; processing insurance and UCC continuation documentation; processing escrow draws; review of tenant leases, subordination non disturbance and attornment agreements and tenant estoppels on standard forms approved by Beneficiary without material modifications. Such administrative fees shall apply without limitation to requests for matters not permitted or contemplated by the Loan Documents (including, without limitation: requests for transfers or assignments, requests for partial releases; requests for review of new easements), and to requests, which, while contemplated by the Loan Documents, because of the nature of the request, will require significantly more time than an institutional Beneficiary, acting reasonably, would contemplate for such request (including without limitation, requests for the approval of tenant leases, tenant estoppels and tenant subordination, non disturbance and attornment agreements which contain material differences from standard forms previously approved by Beneficiary). Beneficiary shall also be entitled to reimbursement for professional fees it incurs for such administration, including without limitation, those of architects, engineers and attorneys (whether (i) employed by Beneficiary or its affiliates or (ii) engaged by Beneficiary or its affiliates as independent contractors).

43. Trustee's Costs and Expenses; Governmental Charges. Grantor shall pay all costs, fees and expenses of Trustee, its agents and counsel in connection with the performance of its duties hereunder, including without limitation the cost of any trustee's sale guaranty or other title insurance coverage ordered in connection with any foreclosure proceedings hereunder, and shall pay all taxes (except federal and state income taxes) or

other governmental charges or impositions imposed by any governmental authority on Trustee or Beneficiary by reason of their interest in the Loan Documents.

44. Protection of Security; Costs and Expenses. Grantor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including without limitation cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust or to enforce or establish any other rights or remedies of Beneficiary hereunder (including, without limitation, any action pursuant to Civil Procedure Code Section 726.5). If Grantor fails to perform any of the covenants or agreements contained in this Deed of Trust, or if any action or proceeding is commenced which affects Beneficiary's or Trustee's interest in the Security or any part thereof, including, but not limited to, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal or state law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, or to a decedent, then Beneficiary or Trustee may, but without obligation to do so and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereunder, make such appearances, disburse such sums and take such action as Beneficiary or Trustee deems necessary or appropriate to protect Beneficiary's or Trustee's interest, including, but not limited to, disbursement of reasonable attorneys' fees, entry upon the Security to make repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of either Beneficiary or Trustee

appears to be prior or superior hereto. Grantor further agrees to pay all reasonable expenses of Beneficiary or Trustee (including without limitation fees and disbursements of counsel) incident to the protection of the rights of Beneficiary hereunder, or to enforcement or collection of payment of the Indebtedness, whether by judicial or non judicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Grantor, or otherwise. Any amounts disbursed by Beneficiary or Trustee pursuant to this Section shall be additional indebtedness of Grantor secured by the Loan Documents as of the date of disbursement and shall bear interest at the Default Rate. All such amounts shall be payable by Grantor immediately without demand. Nothing contained in this Section shall be construed to require Beneficiary or Trustee to incur any expense, make any appearance, or take any other action.

45. Notices. Any notice, demand, request, statement or consent made hereunder shall be in writing, signed by the party giving such notice, request, demand, statement, or consent, and shall be deemed to have been properly given when either delivered personally, delivered to a reputable expedited courier service providing a receipt or deposited in the United States mail, postage prepaid and registered or certified return receipt requested, at the address set forth below, or at such other address within the continental United States of America as may have theretofore have been designated in writing. The effective date of any notice given as aforesaid shall be the date of actual delivery of such notice or refusal thereof, as applicable. For purposes hereof, the addresses are as follows:

If to Beneficiary: Connecticut General Life Insurance Company
c/o CIGNA Retirement & Investment Services
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Debt Asset Management, H-I 1G

With a copy to: CIGNA Corporation
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Real Estate Law, H-11F

If to Grantor: CHH Torrey Pines Hotel Partners, LP
c/o CNL Hospitality Corp.
CNL Center at City Commons
450 South Orange Avenue, 12th Floor
Orlando, Florida 32801
Attn: Executive Vice President

With courtesy
copies to: Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
P.O. Box 2809
Orlando, Florida 32802
Attn: Richard Fildes, Esq.

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071
Attn: Jesse Sharf, Esq.

Notwithstanding the foregoing agreement to provide a courtesy copy to Grantor's attorneys, such copy shall be a courtesy copy only, and failure to provide such courtesy copy shall have absolutely no effect or entitle Grantor to any remedy whatsoever. Any notice duly given to Grantor shall be effective whether or not the courtesy copy was given to Grantor's attorneys.

46. Reconveyance. Upon the payment in full of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Security and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to

Trustee. Upon payment of its fees and any other sums owing to it under this Deed of Trust, Trustee shall reconvey the Security without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs or recordation, if any. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five (5) years after issuance of such full reconveyance, Trustee may destroy said notes and this Deed of Trust unless otherwise directed by Beneficiary.

47. Applicable Law. The provisions hereof shall be governed by and construed in accordance with the laws of the State of California (the "State").

48. Substitution of Trustee. Beneficiary may remove Trustee at any time or from time to time for any reason (with or without cause) and appoint a successor trustee, and upon such appointment, all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall be appointed by written instrument duly recorded in the county or counties where the Security covered hereby is located, which appointment may be executed by any authorized agent of Beneficiary or in any other manner permitted by applicable law.

49. Invalidity. If any provision of this Deed of Trust shall be held invalid or unenforceable, the same shall not affect in any respect whatsoever the validity of the remainder of this Deed of Trust, except that if such provision relates to the payment of a monetary sum, then Beneficiary may, at its option, declare the Indebtedness due and payable upon sixty (60) days prior written notice to Grantor and, provided there exists no Event of Default hereunder, without prepayment fee or premium.

50. Captions. The captions in this instrument are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be any part hereof.

51. Modifications. This Deed of Trust may not be changed or terminated except in writing by Grantor and Beneficiary. The provisions of this Deed of Trust shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications, of the other Loan Documents, and any and all references herein to the Loan Documents shall be deemed to include any such renewals, extensions, amendments, consolidations, or modifications thereof.

52. Bind and Inure. The provisions of this Deed of Trust shall be binding on Grantor and its heirs, successors and assigns, and any subsequent owners of the Security. The covenants of Grantor herein shall run with the land, and this Deed of Trust and all of the covenants herein contained shall inure to the benefit of Beneficiary, its successors and assigns.

53. Replacement of Note. Upon receipt of evidence reasonably satisfactory to Grantor of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Grantor or, in the case of any such mutilation, upon surrender and cancellation of the Note, Grantor will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Deed of Trust to the Note shall be deemed to refer to such replacement note.

54. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Grantor under this Deed of Trust, the Note and any of the other Loan Documents.

55. ERISA. (a) Beneficiary is entering into the Loan Documents in part on behalf of its separate accounts SA-DEWEY, SA-HSHC, SA-CAR, and SA-FUJI, each of which is a "separate account" as defined in Section 3(17) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Beneficiary therefore is subject to the fiduciary obligation provisions of ERISA and as a result may be prohibited by law from engaging in certain transactions. Grantor for itself and on behalf of the holders of any beneficial or ownership interest in Grantor hereby represents and warrants to Beneficiary that it is not related to or affiliated with any employee benefit plan, person or entity shown on the list delivered by Beneficiary to Grantor on the date hereof (the "ERISA List"), nor to the parent companies, nor to the subsidiaries, affiliates, officers, directors or major stockholders of such parent companies such that Grantor or such holder is a "party-in-interest" to any such person or entity as that term is defined in ERISA Section 3(14), as that Section may be interpreted or amended.

(b) Notwithstanding any other provision in this Deed of Trust, Grantor for itself and on behalf of the holders of any beneficial or ownership interest in Grantor represents and warrants that, during the term of the Loan, no interest in the Real Property or in Grantor will be transferred to any party in interest with respect to any of the persons or entities shown on the ERISA List, as amended from time to time, without the prior written approval of Beneficiary, which approval may be withheld if in Beneficiary's sole judgment such transaction will cause a violation by Beneficiary of any ERISA-related requirement.

(c) Grantor agrees to indemnify and hold Beneficiary harmless from any cost, expense or damage (including attorney's fees) resulting from a breach of the representations and warranties contained herein.

(d) Only the assets of the separate accounts SA-DEWEY, SA-HSHC, SA-CAR, and SA-FUJI shall be bound for the obligations of the separate accounts SA-DEWEY, SA-HSHC, SA-CAR, and SA-FUJI respectively, and no resort shall be had to the other assets of Beneficiary for the obligations of the separate accounts SA-DEWEY, SA-HSHC, SA-CAR, and SA-FUJI.

(e) The term "party in interest" means, as to an employee benefit plan –

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

- (iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D);
- (F) a relative (as defined in paragraph (e)) of any individual described in subparagraph (A), (B), (C), or (E);
- (G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of
 - (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,
 - (ii) the capital interest or profits interest of such partnership, or
 - (iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);
- (H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or
- (I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E)

and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stock holdings are taken into account.

The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

56. Business Day. The term "Business Day" as used in this Deed of Trust shall mean any calendar day other than Saturday, Sunday or a federal holiday on which the U.S. Postal Service offices are closed for business in one or more of Newark, Delaware, New York, New York, or Hartford, Connecticut.

57. Waiver of Hearing on Foreclosure. To the extent permitted by law, Grantor hereby waives all rights to a hearing prior to a sale in connection with any foreclosure of this Deed of Trust by advertisement.

58. Certain Legal Proceedings. Should Beneficiary or Trustee, or both, become parties to any action to enjoin foreclosure, or other legal proceedings instituted by Grantor, or by any third party, or should Grantor institute or be subject to any bankruptcy, reorganization, receivership or other proceeding in relation to creditors, then all attorneys' fees and costs incurred by Beneficiary or Trustee, or both, in any of those proceedings, shall be secured by this Deed of Trust and shall be paid by Grantor, upon demand, and if not paid, shall be recovered from the Security.

59. Ambiguity in Drafting. Grantor and Beneficiary are each deemed to have participated equally in the drafting and negotiation of this Deed of Trust and any ambiguity in this Deed of Trust shall not be construed against the draftsman hereof.

60. Anti-Money Laundering/Anti-Terrorism Representations and Warranties.

Grantor warrants and represents that as of the date hereof and for so long as the Loan is outstanding:

- (a) Indemnitor (as defined in the Environmental Indemnification Agreement) is and will continue to be in compliance with the Anti-Terrorism Laws.
- (b) Indemnitor has established policies and procedures designed to prevent and detect money laundering, including processes to meet all applicable anti-money laundering requirements of the USA Patriot Act (hereinafter defined).
- (c) Indemnitor has identified, and will continue to identify, the entities with whom it does business, and will retain all documentation necessary to identify those entities and their sources of funds.
- (d) Indemnitor is not, and will not be, a Prohibited Person.
- (e) To Grantor's knowledge, Indemnitor does not and will not (i) conduct any business or engage in any transaction or dealing with any Prohibited Person or (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order 13224 (hereinafter defined).
- (f) Indemnitor will notify Beneficiary in the event that it ever becomes aware of any warranties and representations in paragraphs (a) through (e) above no longer being correct.

"Anti-Terrorism Laws" as used herein shall mean any laws related to terrorism or money laundering, including Executive Order 13224 and the USA Patriot Act, and any regulations promulgated under either of them.

"Executive Order 13224" as used herein shall mean Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001.

"Prohibited Person" as used herein shall mean (a) a person or entity subject to the provisions of Executive Order 13224; (b) a person or entity owned or controlled by, or acting for or on behalf of, an entity that is subject to the provisions of Executive Order 13224; (c) a person or entity with whom Indemnitor or Beneficiary is prohibited from dealing by any of the Anti-

Terrorism Laws; (d) a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order 13224; (e) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department's Office of Foreign Assets Control; or (f) a person or entity who is affiliated with a person or entity described in clauses (a) through (e) of this paragraph.

"USA Patriot Act" as used herein shall mean the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56, as may be amended from time to time.

61. Covenants Regarding Ground Lease.

(a) (1) Grantor covenants and agrees as follows: (i) to promptly and faithfully observe, perform and comply with all terms, covenants and provisions of the Ground Lease, on its part to be observed, performed and complied with, within the applicable grace periods, if any; (ii) to refrain from doing anything, as a result of which would cause a default beyond any applicable notice and/or cure period; (iii) not to cancel, terminate or surrender the Ground Lease, unless in connection with the acquisition by Grantor of the fee estate in the Land (which fee estate shall be automatically encumbered by the lien of this Deed of Trust pursuant to the terms hereof); (iv) unless Beneficiary's prior consent has been obtained, not to modify, amend or in any way alter or permit the alteration of any provisions of the Ground Lease or grant any consents or waivers thereunder; (v) to give Beneficiary notice of any default by any party under the Ground Lease, within five (5) days subsequent to learning of such default, and promptly to deliver to Beneficiary a copy of each written notice (including, without limitation, notices of default) received or delivered by Grantor in connection with the Ground Lease; and (vi) to furnish within a reasonable period of time to Beneficiary copies of such information and

evidence as Beneficiary may reasonably request concerning the due observance, performance and compliance by Grantor with the terms, covenants and provisions of the Ground Lease.

(2) In the event of the occurrence of any event which constitutes a default (or an event which may, with the passage of time or providing of notice or both, constitute a default) by Grantor in the performance of its obligations under the Ground Lease, Beneficiary shall be entitled to exercise all rights set forth herein or in the relevant provisions of the Ground Lease in accordance with the terms thereof.

(3) If the Ground Lease is cancelled or terminated by reason of a default thereunder by Grantor, then, if Beneficiary or its nominee shall acquire an interest in the Ground Lease or any new lease of all or any portion of the Land following such default, Grantor shall have no right, title or interest in or to the Ground Lease, the new lease or the leasehold estate created thereby.

(4) Grantor shall exercise, within five (5) business days after a written request by Beneficiary, any right to request from the ground lessor thereunder (for purposes hereof, the "Ground Lessor"), an estoppel certificate with respect to the status of the Ground Lease to the extent such right is permitted in the Ground Lease and addressing the matters set forth in the Ground Lease to be addressed therein.

(5) At Grantor's sole cost and expense, Grantor will appear in and defend any action growing out of or in any manner connected with the Ground Lease (including any actions commenced by Ground Lessor alleging a default thereunder) or the obligations or liabilities of the lessor or lessee thereunder, and Beneficiary, if made a party to any such action, may employ counsel and incur and pay necessary costs and expenses and reasonable attorneys'

fees, and all such sums, with interest at the rate applicable from and after maturity under the Notes, shall immediately be due from Grantor and be secured hereby.

(6) If Ground Lessor becomes the subject of a case under the United States Bankruptcy Code, as amended, and Ground Lessor or any member of Ground Lessor or any trustee of the bankruptcy estate of Ground Lessor rejects or seeks authority to reject or terminate the Ground Lease under 11 U.S.C. § 365 or any other successor provision permitting any similar relief, Grantor agrees that: (i) Grantor shall elect to remain in possession for the balance of the term of the Ground Lease pursuant to 11 U.S.C. § 365(h) or any other successor provision permitting a similar election; and (ii) any purported election by Grantor to treat the Ground Lease as rejected or terminated shall be void and of no effect unless Beneficiary expressly consents in writing thereto.

(7) If Grantor becomes the subject of a case under the United States Bankruptcy Code, as amended, any attempt by Grantor to surrender its leasehold estate, or any portion thereof, under the Ground Lease, or any attempt under such circumstances by Grantor to terminate, cancel or reject the Ground Lease without the consent of Beneficiary shall be null and void. Grantor hereby expressly releases, assigns, relinquishes and surrenders unto Beneficiary all of its right, power and authority to terminate, cancel, reject, modify, change, supplement, alter or amend the Ground Lease in any respect, either orally or in writing, in the event of the bankruptcy, reorganization or insolvency of Grantor, and any attempt on the part of Grantor to exercise any such right without the consent of Beneficiary shall be null and void.

(b) Appointment as Agent. Grantor hereby irrevocably appoints Beneficiary as its agent to exercise any and all rights of Grantor under the Ground Lease, as permitted

thereunder, effective upon the occurrence and during the continuance of an Event of Default.

The parties intend that this appointment be deemed an agency coupled with an interest.

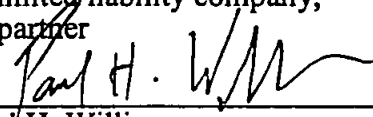
(c) Consent to Deed of Trust. Grantor shall use commercially reasonable efforts to obtain Ground Lessor's written approval (the "Consent") confirming Ground Lessor's acknowledgement that notwithstanding any limitation set forth in Section 4.2 of the Ground Lease and notwithstanding any provision herein to the contrary, the amount secured by this Deed of Trust shall be One Hundred Twenty-Seven Million Two Hundred Thousand Dollars (\$127,200,000.00), together with interest thereon, and together with applicable late charges, prepayment fees, default prepayment fees and all other applicable fees, costs and charges, if any. Grantor's failure to obtain the Consent shall not be deemed an Event of Default.

IN WITNESS WHEREOF, Grantor has duly executed this Leasehold Deed of Trust as of
the date first above written.

GRANTOR:

**CHH TORREY PINES HOTEL
PARTNERS, LP**, a Delaware limited
partnership

By: CHH Torrey Pines Hotel GP, LLC, a
Delaware limited liability company,
its general partner

By: 

Paul H. Williams
Senior Vice President

STATE OF NEW YORK

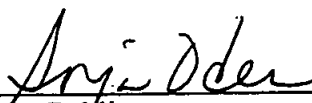
)

: SS.:

COUNTY OF NEW YORK

)

On the 11th day of December, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Paul H. Williams, known to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

SONJA M. ODEN
NOTARY PUBLIC, State of New York
No. 01J04894469
Qualified in Queens County
Certified in New York County
Commission Expires May 18, 20 04

Exhibit A

All that certain real property situated in the County of San Diego, State of California, described as follows:

All those portions of Pueblo Lots 1325, 1326, 1330 and 1331 of the Pueblo Lands of San Diego in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe, in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego County, November 14, 1921 as Miscellaneous Map 36, more particularly described as follows:

Beginning at the Northeast corner of Pueblo Lot 1325, which is the common corner of Pueblo Lots 1325, 1326, 1330 and 1331; thence along the common line of Pueblo Lots 1325 and 1331 North 89°05'90" West, 255.74 feet; thence leaving said common line North 2°48'32" West 285.07 feet; thence North 7°31'23" West, 399.47 feet; thence North 6°28'50" West, 134.23 feet to a point that bears South 82°32'25" West 42.90 feet from the Southwest corner of the property described in that certain lease agreement executed October 2, 1961, filed in the Office of the County Clerk of the City of San Diego as File No. 629873 of Official Records, the boundaries of which are set out on City Engineer's Drawing 13929-CL on file in the Office of the County Engineer of the City of San Diego; thence North 82°32'25" East 42.90 feet to said Southwest corner; thence continuing along the South line of said property described in said Lease Agreement North 82°32'25" East to the Southeast corner of last said property; said point also being a point in the Westerly right of way line of Torrey Pines Road, as dedicated by City of San Diego Ordinance 7634 dated March 24, 1919; thence along said Westerly right of way line South 9°28'56" East 842.58 feet to Point "A"; thence South 80°31'04" West 368.36 feet to the Point of Beginning.

The above described land is now commonly known as:

Lot 1 of Sheraton Hotel at Torrey Pines Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12164, filed in the Office of the County Recorder of San Diego County, August 12, 1988.

Assessor's Parcel Number: **760-103-60**

EXHIBIT B

CONNECTICUT GENERAL LIFE INSURANCE COMPANY
c/o CIGNA Retirement & Investment Services
280 Trumbull Street
Hartford, Connecticut 06103

December 24, 2003

Via Certified Mail Return Receipt Requested

City Manager
City Administration Building
202 "C" Street, M.S. 95
San Diego, California 92101-4155

San Diego City Real Estate
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attention: Mr. Paul Crawford

Re: Leasehold Deed of Trust delivered by CHH Torrey Pines Hotel
Partners, LP ("Borrower") to Connecticut General Life Insurance
Company ("Lender")

Ladies and Gentlemen:

Reference is made to that certain Percentage Lease between the City of San Diego, as landlord, and Torrey Pines Hotel Associates (the predecessor-in-interest to Borrower), as tenant, dated August 10, 1987, a memorandum of which was recorded on January 10, 1989 as Instrument No. 89-013605 in the Official Records of San Diego County, California, as amended by First Amendment to Lease Agreement, filed on May 21, 2002 as City Clerk Document No. RR-296617 (the "Ground Lease").

Please know that pursuant to a certain Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of December 17, 2003 (the "Deed of Trust"), Borrower has mortgaged its leasehold interest in the Ground Lease to Lender as security for a loan made by Lender to Borrower. A true, correct and complete copy of the Deed of Trust is attached hereto as Exhibit A. The recording information for the Deed of Trust is as follows: Document No. 2003-1487569, recorded in the Official Records on December 18, 2003 at 11:28 a.m.

Pursuant to Section 4.4(b) of the Ground Lease, any notice required to be provided to

Lender shall be sent to the following address:

Connecticut General Life Insurance Company
c/o CIGNA Retirement & Investment Services
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Debt Asset Management, H-I 1G

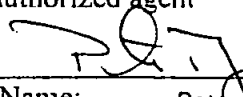
With a copy to: CIGNA Corporation
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Real Estate Law, H-I 1F

[no further text on this page]

Very truly yours,

CONNECTICUT GENERAL LIFE
INSURANCE COMPANY, a Connecticut
corporation

By: CIGNA Investments, Inc., a Delaware corporation,
its authorized agent

By: 

Name: Peter F. Roby

Title: Managing Director

Exhibit A

Deed of Trust

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
☐ Print your name and address on the reverse so that we can return the card to you.
☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
San Diego City Real Estate
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Mr. Paul Crawford

COMPLETE THIS SECTION ON DELIVERY

A. Signature:

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
 If YES, enter delivery address below.

☐ Yes

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7002 2030 0001 1417 0509

Domestic Return Receipt

102595-02-M-1540

PS Form 3811 August 2001

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece or on the front if space permits.

1. Article Addressed to:

City Manager
City Administration Building
202 "C" Street, M.S. 95
San Diego, CA 92101-4155

2. Article Number

(Transfer from service label)

7002 2030 0001 1417 0493

PS Form 3811, August 2001

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *MW*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

DEC 31 2003

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

102585-02-M-1540

EXHIBIT C

GROUND LESSOR'S CONSENT AND ESTOPPEL CERTIFICATE

WHEREAS, THE CITY OF SAN DIEGO (hereinafter "**Landlord**"), has leased certain lands described on Exhibit A attached hereto (hereinafter the "**Premises**") to Hilton Hotels Corporation ("**Tenant**") pursuant to that certain Percentage Lease between the Landlord and Torrey Pines Hotel Associates ("**Original Tenant**") dated August 10, 1987, a memorandum of which was recorded on January 10, 1989 as Instrument No. 89-013605 in the Office Records of San Diego County, California (together, the "**Lease**"), as assigned by Original Tenant to Tenant pursuant to that certain Assignment and Assumption of Percentage Lease and Deed to Improvements dated December 29, 1998 and recorded on December 29, 1998, as Instrument No. 1998-0853813 in the Office Records of San Diego County, California (the "**Lease Assignment**") (the Lease and Lease Assignment and the documents listed on Exhibit B attached hereto being collectively hereinafter referred to as the "**Lease**") (all capitalized words and phrases not otherwise defined in this Certificate shall have the meanings given them in the Lease);

WHEREAS, Tenant has caused the Premises to be improved with certain buildings and other improvements (collectively, the "**Improvements**") comprising the hotel, restaurant, and related facilities commonly known as the Hilton La Jolla Torrey Pines (the Improvements and the Premises are collectively referred to herein as the "**Property**");

WHEREAS, CNL Hospitality Properties, Inc. or its affiliated assigns ("**CNL**"), and Tenant or its affiliated assigns ("**Hilton**") intend to enter into a Limited Partnership Agreement to govern CHH Torrey Pines Hotel Partners, LP (the "**JV**") - (a partnership to enable Hilton and CNL to jointly own and operate the Property) providing for, among other things, the purchase by the JV and the sale by Tenant of Tenant's interest in the Property (including, without limitation, the leasehold estate in the Premises demised thereunder);

WHEREAS, simultaneously with the purchase of the Property by the JV (i) the JV will enter into an operating lease (the "**Operating Lease**") with an affiliate of the JV (the "**Operating Tenant**") pursuant to which the JV shall sub-lease the Property to the Operating Tenant for purposes of operating the Improvements, and (ii) the JV will enter into a management agreement with Hilton pursuant to which Hilton will provide management services with respect to the operation of the Property. The terms of the management agreement shall run concurrently with the term of the Lease; and (iii) the JV may obtain a loan from CIGNA Investments, Inc. or its affiliates ("**CIGNA**") to finance its acquisition of the Property; and

WHEREAS, the JV is unwilling to purchase the Property unless Landlord affirms the following for the JV's benefit, and Landlord understands that the JV has required this certificate from Landlord as an inducement for the JV to purchase the Tenant's interest in the Property.

WHEREAS, CIGNA is unwilling to finance the JV's acquisition of the Property unless Landlord affirms the following for CIGNA's benefit, and Landlord understands that CIGNA has required this Certificate as an inducement to make any loan to the JV for the purpose of financing the JV's acquisition of the Property.

NOW, THEREFORE, Landlord hereby certifies to the JV, Tenant and CIGNA as follows:

1. Landlord approves and consents to (i) the JV taking an assignment of all of the Tenant's interest in the Lease, (ii) the JV entering into the Operating Lease with the Operating Tenant. Subject only to the JV assuming all of the Tenant's obligations under the Lease first arising on or after the effective date of the assignment of Tenant's interest in the Lease to the JV, upon the effectiveness of such assignment, the JV shall succeed to all of the rights and benefits of the Lessee under the Lease, and pursuant to Section 4.8 of the Lease, Landlord hereby releases Tenant from any and all obligations and liability under the Lease arising on or after the effective date of said assignment.

2. Landlord hereby certifies as follows:

(a) To the best of Landlord's knowledge, the Lease is in full force and effect in accordance with its terms. Except as provided herein, Landlord has not assigned, supplemented, modified or otherwise amended the Lease. To Landlord's knowledge, Tenant has not assigned or otherwise transferred Tenant's interest in the Lease, except as security for a loan. Except as set forth in Exhibit B attached hereto, there does not exist any other agreements (including subordination, non-disturbance and attornments) concerning the Property, whether oral or written, between Landlord and Tenant.

(b) To the best of Landlord's knowledge, each of the obligations on Tenant's part to be performed to date under the Lease has been performed, including specifically as set forth below:

(i) The Tenant and the Property are in compliance with the General Development Plan.

(ii) Tenant has paid all costs and made all reimbursements, if any, required to be paid to date by the Tenant under the Lease and/or any other agreement with the Landlord relating to the development of the Property.

(c) To the best of Landlord's knowledge, there are no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease.

(d) Minimum rent and percentage rent due under the Lease have been paid in full through October 2003, subject to future City audit as permitted in the Lease.

(e) The term commencement date of the Lease was July 1, 1988 and the initial term of the Lease shall expire on June 30, 2043. Nothing herein shall be construed as extending the term of the Lease beyond the current expiration date.

(f) The lease with Wansa Enterprises, Inc. ("Wansa") referenced in Section 1.1(a) of the Lease has been terminated, any and all monies to be paid to Wansa in connection with the termination of said lease have been paid to Wansa and Wansa has no right, title or interest in and to the Property.

(g) During the term of the Lease, Hilton has provided "competent management" as the same is defined in Section 1.7 of the Lease.

(h) CIGNA is an "Institutional Lender" as defined in Section 4.3 of the Lease. Furthermore, upon (i) the funding of the acquisition loan from CIGNA to the JV, (ii) the recording of the leasehold deed of trust (the "Leasehold DOT") in the form attached hereto as Exhibit C and (iii) delivery to Landlord of a signed copy of such Leasehold DOT, together with written notice to Landlord specifying the name and address of CIGNA and the pertinent recording information with respect to the Leasehold DOT, then CIGNA will be a "Leasehold Beneficiary" (as defined in the Lease) without any further action of CIGNA or Landlord."

3. Without limitation on the foregoing, upon JV's acquisition of Tenant's interest under the Lease and JV's assumption of the obligations of the Lessee first arising on or after such assignment, all of the leasehold mortgage protection provisions contained in the Lease, including but not limited to Sections 4.2 and 4.4 of the Lease, and all other provisions inuring to the benefit of a Leasehold Beneficiary, shall continue in full force and effect and are hereby confirmed by Landlord for the benefit of the JV and any Leasehold Beneficiary, including, without limitation, CIGNA, that provides financing of the Property.

4. Landlord hereby confirms that the leasehold estate in the Premises or any deed of trust or mortgage held by a Leasehold Beneficiary, including, without limitation, the Leasehold Deed of Trust, which encumbers the leasehold estate under the Lease shall not be subject or subordinate to any mortgage encumbering the fee estate to the Premises.

This Certificate and the representations made herein shall inure, to the benefit of Tenant, JV and any Leasehold Beneficiary of the JV, including, without limitation, CIGNA, and their respective successors and assigns, and shall be binding on the Landlord and its legal representatives, its successors and assigns.

Date Dec. 11, 2003

CITY OF SAN DIEGO

By Carol A. Chiodo

Name Carol A. Chiodo

Title Deputy Director
Real Estate Assets

APPROVED as to form and legality this 11th day of December, 2003

CASEY GWINN, CITY ATTORNEY

By [Signature]

Deputy City Attorney

EXHIBIT "A"

All that certain real property situated in the County of San Diego, State of California, described as follows:

All those portions of Pueblo Lots 1325, 1326, 1330 and 1331 of the Pueblo Lands of San Diego in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe, in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego County, November 14, 1921 as Miscellaneous Map 36, more particularly described as follows:

Beginning at the Northeast corner of Pueblo Lot 1325, which is the common corner of Pueblo Lots 1325, 1326, 1330 and 1331; thence along the common line of Pueblo Lots 1325 and 1331 North 89°05'90" West, 255.74 feet; thence leaving said common line North 2°48'32" West 285.07 feet; thence North 7°31'23" West, 399.47 feet; thence North 6°28'50" West, 134.23 feet to a point that bears South 82°32'25" West 42.90 feet from the Southwest corner of the property described in that certain lease agreement executed October 2, 1961, filed in the Office of the County Clerk of the City of San Diego as File No. 629873 of Official Records, the boundaries of which are set out on City Engineer's Drawing 13929-CL on file in the Office of the County Engineer of the City of San Diego; thence North 82°32'25" East 42.90 feet to said Southwest corner; thence continuing along the South line of said property described in said Lease Agreement North 82°32'25" East to the Southeast corner of last said property; said point also being a point in the Westerly right of way line of Torrey Pines Road, as dedicated by City of San Diego Ordinance 7634 dated March 24, 1919; thence along said Westerly right of way line South 9°28'56" East 842.58 feet to Point "A"; thence South 80°31'04" West 368.36 feet to the Point of Beginning.

The above described land is now commonly known as:

Lot 1 of Sheraton Hotel at Torrey Pines Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12164, filed in the Office of the County Recorder of San Diego County, August 12, 1988.

Assessor's Parcel Number: **760-103-60**

EXHIBIT "B"
ADDITIONAL RELATED AGREEMENTS

Agreement on Percentage Rental Rate for Mandatory Banquet Service Charges, filed in the Office of the City Clerk on December 1, 1993 as Document C-05187.

First Amendment to Lease Agreement, City Clerk Document No. RR-296517, filed May 21, 2002.

Torrey Pines Golf Course Agreement on Reserved Nonresident Tee Times last executed on September 27, 2002.

GROUND LESSOR'S CONSENT AND ESTOPPEL CERTIFICATE

WHEREAS, THE CITY OF SAN DIEGO (hereinafter "**Landlord**"), has leased certain lands described on Exhibit A attached hereto (hereinafter the "**Premises**") to Torrey Pines Hotel Associates, a California General Partnership ("**Tenant**") pursuant to that certain Percentage Lease dated August 10, 1987 (the "**Lease**"), a memorandum of which Lease was recorded January 10, 1989 as Instrument No. 89-013605 in the Office Records of San Diego County, California (all capitalized words and phrases not otherwise defined in this Certificate shall have the meanings given them in the Lease);

WHEREAS, Tenant has caused the Premises to be improved with certain buildings and other improvements (collectively, the "**Improvements**") comprising the hotel, restaurant, and related facilities commonly known as the Sheraton Grande Torrey Pines Hotel (the Improvements and the Premises are collectively referred to herein as the "**Property**");

WHEREAS, Hilton Hotels Corporation, a Delaware corporation ("**Purchaser**"), and Tenant have entered into an agreement providing for, among other things, the purchase by Purchaser and the sale by Tenant of Tenant's interest in the Property (including, without limitation, all of the Tenant's interest as Lessee under the Lease, including the leasehold estate in Premises demised thereunder); and

WHEREAS, Purchaser is unwilling to purchase the Property unless Landlord affirms the following for Purchaser's benefit, and Lessor understands that Purchaser has required this certificate from Lessor as an inducement for Purchaser to purchase Tenant's interest in the Property.

NOW, THEREFORE, Landlord hereby certifies to Purchaser and Tenant as follows:

1. Landlord approves Purchaser as an assignee of Tenant's interest in the Lease. Subject only to Purchaser assuming all of the Lessee's obligations under the Lease first arising on or after the effective date of the assignment of Tenant's interest in the Lease to Purchaser, upon the effectiveness of such assignment, Purchaser shall succeed to all of the rights and benefits of the Lessee under the Lease, and pursuant to Section 4.8 of the Lease, Landlord hereby releases Tenant from any and all obligations and liability under the Lease arising on or after the effective date of said assignment.

2. Landlord hereby certifies as follows:

(a) To the best of Landlord's knowledge, the Lease is in full force and effect in accordance with its terms. Landlord has not assigned, supplemented, modified or otherwise amended the Lease. To Landlord's knowledge, Tenant has not assigned or otherwise transferred Tenant's interest in the Lease, except as security for a loan. Except as set forth in Exhibit B attached hereto, there do not exist any other agreements (including subordination, non-disturbance and attornments) concerning the Premises, whether oral or written, between Landlord and Tenant.

(b) To the best of Landlord's knowledge, each of the obligations on Tenant's part to be performed to date under the Lease or under any other agreement described in Exhibit B attached hereto have been performed, including specifically as set forth below:

(i) The Tenant is in compliance with the General Development Plan.

(ii) Tenant has paid all costs and made all reimbursements, if any, required to be paid to date by the Lessee under the Lease.

(c) To the best of Landlord's knowledge, there are no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease, or any amounts owing by the Lessee under any other agreement described in Exhibit B attached hereto.

(d) Minimum rent and percentage rent due under the Lease have been paid in full through October 31, 1998, subject to future City audit.

(e) The term commencement date of the Lease was July 1, 1988 and the initial term of the Lease shall expire on June 30, 2043.

3. Without limitation on the foregoing, upon Purchaser's acquisition of Tenant's interest under the Lease and Purchaser's assumption of the obligations of the Lessee first arising on or after such assignment, all of the leasehold mortgage protection provisions contained in the Lease, including but not limited to Sections 4.2 and 4.4 of the Lease, and all other provisions inuring to the benefit of a Leasehold Beneficiary, shall continue in full force and effect and are hereby confirmed by Landlord for the benefit of Purchaser and each Leasehold Beneficiary that provides financing of the Property.

4. Landlord hereby confirms that the leasehold estate in the Premises or any deed of trust or mortgage held by a Leasehold Beneficiary which encumbers the leasehold estate under the Lease shall not be subject or subordinate to any mortgage encumbering the fee estate to the Premises.

This Certificate and the representations made herein shall inure to the benefit of Tenant, Purchaser and any Leasehold Beneficiary of Purchaser, and their respective successors and assigns, and shall be binding on the Landlord and its legal representatives, its successors and assigns.

Executed this 17 day of December 1998.

APPROVED AS TO FORM
AND LEGALITY

CASEY GWINN, CITY ATTORNEY

By Pasciella Dwyer
Deputy City Attorney

THE CITY OF SAN DIEGO

By: William T. Griffith
William T. Griffith,
Acting Director, Real Estate
Assets Department

EXHIBIT A

PROPERTY DESCRIPTION

(Legal Description Attached)

EXHIBIT A

LEGAL DESCRIPTION

(SHERATON HOTEL)

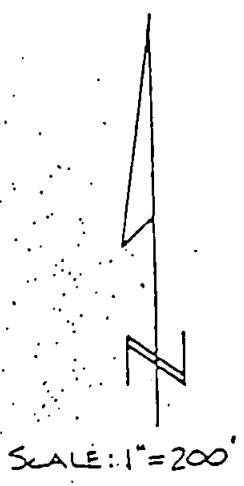
ALL THOSE PORTIONS OF PUEBLO LOTS 1325, 1326, 1330, AND 1331 OF THE PUEBLO LANDS OF SAN DIEGO IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN 1870, A COPY OF WHICH MAP WAS FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AS MISCELLANEOUS MAP 36, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PUEBLO LOT 1325 WHICH IS THE COMMON CORNER OF PUEBLO LOTS 1325, 1326, 1330 AND 1331; THENCE ALONG THE COMMON LINE OF PUEBLO LOTS 1325 AND 1331 NORTH 89° 05' 90" WEST 255.74 FEET; THENCE LEAVING SAID COMMON LINE NORTH 2° 48' 32" WEST 285.07 FEET THENCE NORTH 7° 31' 23" WEST 399.47 FEET; THENCE NORTH 6° 28' 50" WEST 134.23 FEET TO A POINT THAT BEARS SOUTH 82° 32' 25" WEST 42.90 FEET FROM THE SOUTHWEST CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN LEASE AGREEMENT EXECUTED OCTOBER 2, 1961, FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF SAN DIEGO AS DOCUMENT 629873, THE BOUNDARIES OF WHICH ARE SET OUT ON CITY ENGINEER'S DRAWING 13929-CL ON FILE IN THE OFFICE OF THE CITY ENGINEER OF THE CITY OF SAN DIEGO; THENCE NORTH 82° 32' 25" EAST 42.90 FEET TO SAID SOUTHWEST CORNER; THENCE CONTINUING ALONG THE SOUTH LINE OF SAID PROPERTY DESCRIBED

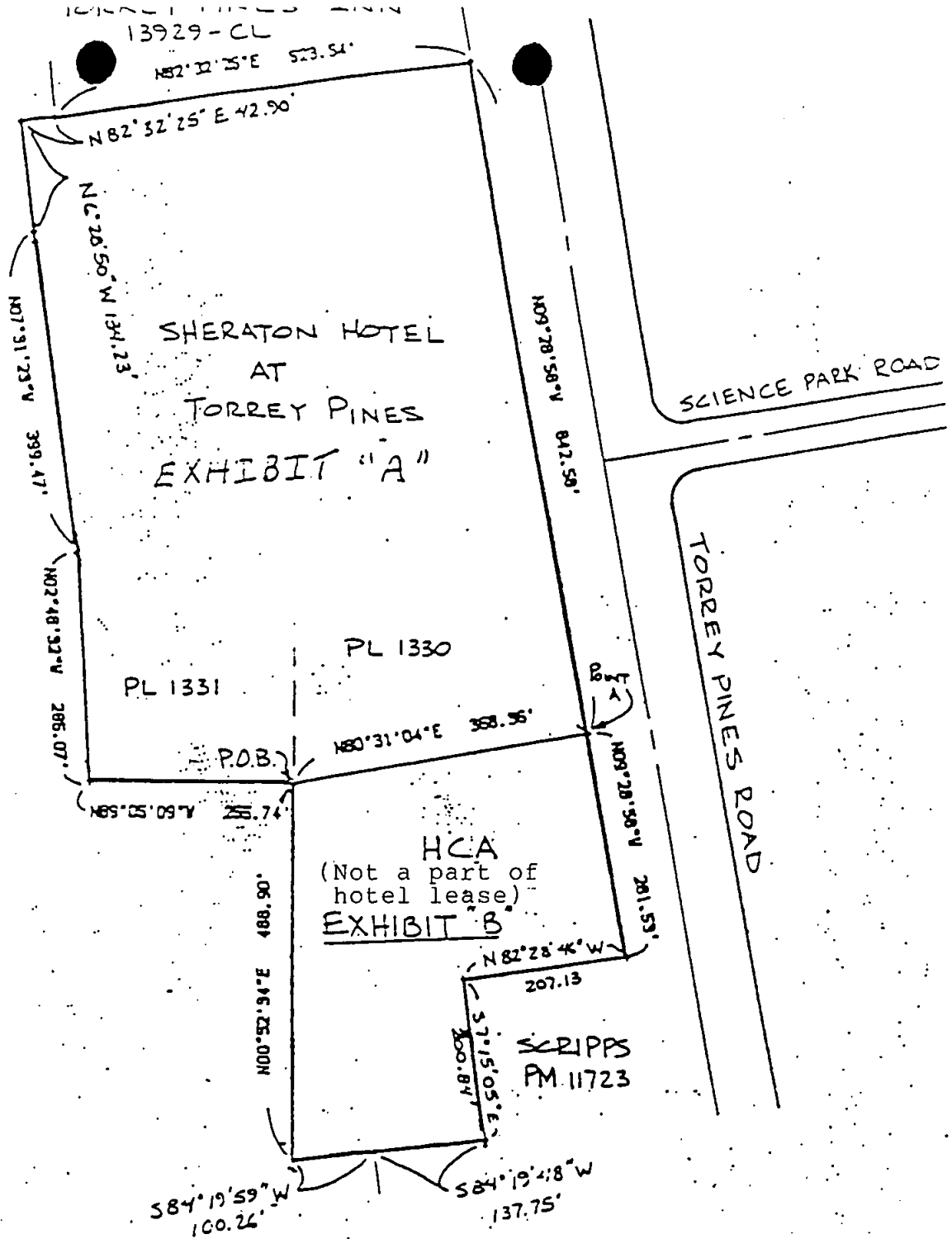
EXHIBIT A 4

IN SAID LEASE AGREEMENT NORTH 82° 32' 25" EAST TO THE SOUTHEAST
CORNER OF LAST SAID PROPERTY; SAID POINT ALSO BEING A POINT IN
THE WESTERLY RIGHT OF WAY LINE OF TORREY PINES ROAD, AS DEDICATED
BY CITY OF SAN DIEGO ORDINANCE 7634 DATED MARCH 24, 1919, THENCE
ALONG SAID WESTERLY RIGHT OF WAY LINE SOUTH 9° 28' 56" EAST
842.58 TO POINT "A"; THENCE SOUTH 80° 31' 04" WEST 368.36 FEET TO
THE POINT OF BEGINNING.

EXHIBIT A



PUEBLO
LANDS



LEASE LINES

SHERATON HOTEL
TORREY PINES

APRIL 10, 1986

Prepared by:

James A. Hutchison & Assoc.

Civil Engineers

8324 Allison Ave., La Mesa, CA 92041

EXHIBIT A

EXHIBIT B

ADDITIONAL RELATED AGREEMENTS

Agreement on Percentage Rental Rate
for Mandatory Banquet Service Charges
filed in the Office of the City Clerk
on December 1, 1993 as Document C-05187.

EXHIBIT B

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

MAIL TAX STATEMENTS TO:

(Space Above For Recorder's Use)

ASSIGNMENT AND ASSUMPTION OF PERCENTAGE LEASE

This Assignment and Assumption of Percentage Lease ("Assignment") is entered into and made effective as of the ____ day of June, 1998, by and between Torrey Pines Hotel Associates, a California general partnership ("Assignor") and Hilton Hotels Corporation, a Delaware corporation ("Assignee") with reference to the following facts and intentions:

RECITALS:

A. Assignor, as Lessee, and the City of San Diego, a Municipal corporation (the "City"), as Lessor, entered into that certain Percentage Lease dated August 10, 1987, a memorandum of which was recorded January 10, 1989 as Instrument No. 89-013605 in the Official Records of San Diego County, California (the "Lease").

B. Assignor and Assignee are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of June 2, 1998 ("Agreement"). Pursuant to the terms and subject to the conditions set forth in the Agreement, Assignor has agreed to assign to Assignee all of Assignor's rights, title and interest under the Lease.

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

1. Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title and interest in and to the Lease, and Assignee hereby accepts such assignment.

2. Assignor hereby covenants that Assignor will, at any time and from time to time upon written request therefor, execute and deliver to Assignee, Assignee's successors, nominees or assigns, such documents as Assignee or they may reasonably request in order to fully assign and transfer to and vest in Assignee or Assignee's successors, nominees and assigns, and protect

Assignee's or Assignee's successors, nominees and assign's right title and interest in and to the Lease and the rights of Assignor intended to be transferred and assigned hereby, or to enable Assignee, Assignee's successors, nominees and assigns to realize upon or otherwise enjoy such rights in and to the Lease.

3. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

4. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

5. This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of their respective parties hereto.

6. This Assignment shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of California.

7. This Assignment, and the parties respective obligations hereunder, are conditioned upon the full execution and delivery by the City, Assignor and Assignee of that Consent and Estoppel Certificate in the form attached hereto as Exhibit 1 ("City Consent").

IN WITNESS WHEREOF, this Assignment has been executed and delivered as the date and year first above written.

"ASSIGNOR"

TORREY PINES HOTEL ASSOCIATES, a California
general partnership

By: TAISEI AMERICA CORPORATION, a Delaware
corporation, its Managing Partner

By: _____

"ASSIGNEE"

HILTON HOTELS CORPORATION, a Delaware
corporation

By: _____

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____, before me, _____, a
Notary Public in and for said state, personally appeared _____, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name
is subscribed to the within instrument and acknowledged to me that he/she executed the same in
his/her authorized capacity, and that by his/her signature on the instrument, the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On _____, before me, _____, a
Notary Public in and for said state, personally appeared _____, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name
is subscribed to the within instrument and acknowledged to me that he/she executed the same in
his/her authorized capacity, and that by his/her signature on the instrument, the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

15036

DOC # 2004-0394844

MAY 03, 2004 12:04 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 59.00
MAY: 6



RECORDED REQUEST OF FIRST AMERICAN TITLE
COMMERCIAL/INDUSTRIAL DEPARTMENT

THIS INSTRUMENT WAS DRAFTED BY, AND
UPON RECORDING SHOULD BE RETURNED TO:

Prudential Retirement Insurance and Annuity Company
c/o Prudential Asset Resources, Inc.
2200 Ross Avenue, Suite 4900E
Dallas, TX 75201

Attn: Ms. Gricelda Beyler

Loan No: 140030-01

This document is being recorded by
First American Title Insurance Co. as
an accommodation only. It has not
been examined as to execution or
impact on title.

ASSIGNMENT OF DEED OF TRUST

KNOW THAT Connecticut General Life Insurance Company, a Connecticut corporation having an address at Two Liberty Place, 1601 Chestnut Street, Philadelphia, Pennsylvania 19192 (the "Assignor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assigns to CIGNA Life Insurance Company, a Connecticut corporation, to be known as Prudential Retirement Insurance and Annuity Company, having an address at c/o Prudential Asset Resources, Inc., 2200 Ross Avenue, Suite 4900E, Dallas, TX 75201 (the "Assignee"), all of Assignor's right, title and interest in and to that certain loan more fully described in Exhibit A annexed hereto and made a part hereof (collectively, the "Loan Documents") and secured by the real property described in Exhibit B annexed hereto and made a part hereof;

TOGETHER with the obligations described in the documents evidencing, governing and/or otherwise relating thereto and the moneys due and to grow due thereon with the interest;

TOGETHER with any and all other liens, privileges, security interests, rights, entitlements, equities, claims and demands as to which Assignor possesses or to which Assignor is otherwise entitled as additional security for the payment of the Loan Documents and the other obligations described therein;

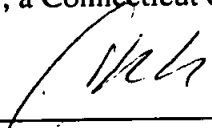
TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns of the Assignee forever.

The Assignor represents and warrants to the Assignee that: the Assignor (either alone or together with Life Insurance Company of North America) owns and holds 100% of the Loan Documents and is transferring the Loan Documents to the Assignee free and clear of any liens or other encumbrances; the Assignor has obtained all requisite consents and other approvals, and otherwise has all requisite power and authority, to transfer the Loan Documents to the Assignee as provided herein; the Assignor has not given or received notice of any default with respect to the Loan Documents that has not been cured; and the current outstanding principal amount of the Loan Documents is as set forth in the Loan Schedule being delivered to the Assignee concurrently herewith.

This Assignment of Deed of Trust shall inure to the benefit of, and be binding upon, the Assignor and the Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed by its proper officers, as of the 15th day of April, 2004.

CONNECTICUT GENERAL LIFE INSURANCE
COMPANY, a Connecticut corporation

By: 

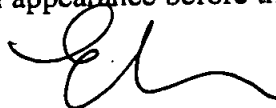
Name: Colin Hill

Title: Authorized Signatory

CERTIFICATE OF ACKNOWLEDGMENT

State of New York)
County of New York) ss.:

On the 30th day of March in the year 2004 before me, the undersigned, personally appeared Colin Hill personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of New York, State of New York.



Signature and Office of individual
taking acknowledgment.)

ELAINE A. CRONIN
Notary Public, State of New York
No. 01CR6084987
Qualified in New York County
Commission Expires Dec. 16, 2006

EXHIBIT A

Loan made by Assignor to CHH Torrey Pines Hotel Partners, LP ("Borrower") in the original principal amount of \$127,200,000.00 and evidenced by, among other things:

1. **Two Promissory Notes**, dated December 17, 2003 by Borrower in favor of Assignor;
2. **Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing**, dated December 17, 2003 by Borrower to and for the benefit of Assignor and recorded in the land records in the State of California, County of San Diego as Document #2003-1487569, on December 18, 2003;
3. **Assignment of Rents, Revenues and Leases**, dated December 17, 2003 by Borrower to and for the benefit of Assignor and recorded in the land records in the State of California, County of San Diego as Document #2003-1487570, on December 18, 2003;
4. any and all guarantees, indemnities, collateral assignments, interest rate protection arrangements, cash management accounts and/or other arrangements, escrows, certifications and other agreements, documents and/or any amendments, or any instruments evidencing, governing, and/or otherwise relating to any of the foregoing.

Exhibit B

All that certain real property situated in the County of San Diego, State of California, described as follows:

All those portions of Pueblo Lots 1325, 1326, 1330 and 1331 of the Pueblo Lands of San Diego in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe, in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego County, November 14, 1921 as Miscellaneous Map 36, more particularly described as follows:

Beginning at the Northeast corner of Pueblo Lot 1325, which is the common corner of Pueblo Lots 1325, 1326, 1330 and 1331; thence along the common line of Pueblo Lots 1325 and 1331 North $89^{\circ}05'90''$ West, 255.74 feet; thence leaving said common line North $2^{\circ}48'32''$ West 285.07 feet; thence North $7^{\circ}31'23''$ West, 399.47 feet; thence North $6^{\circ}28'50''$ West, 134.23 feet to a point that bears South $82^{\circ}32'25''$ West 42.90 feet from the Southwest corner of the property described in that certain lease agreement executed October 2, 1961, filed in the Office of the County Clerk of the City of San Diego as File No. 629873 of Official Records, the boundaries of which are set out on City Engineer's Drawing 13929-CL on file in the Office of the County Engineer of the City of San Diego; thence North $82^{\circ}32'25''$ East 42.90 feet to said Southwest corner; thence continuing along the South line of said property described in said Lease Agreement North $82^{\circ}32'25''$ East to the Southeast corner of last said property; said point also being a point in the Westerly right of way line of Torrey Pines Road, as dedicated by City of San Diego Ordinance 7634 dated March 24, 1919; thence along said Westerly right of way line South $9^{\circ}28'56''$ East 842.58 feet to Point "A"; thence South $80^{\circ}31'04''$ West 368.36 feet to the Point of Beginning.

The above described land is now commonly known as:

Lot 1 of Sheraton Hotel at Torrey Pines Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12164, filed in the Office of the County Recorder of San Diego County, August 12, 1988.

Assessor's Parcel Number: 760-103-60

Capitol Hill