

COPY

LESSEE: MOOREMERY AIRPORT
HOLDINGS, LTD., a Texas
Limited Partnership

I N D E X
PERCENTAGE LEASE

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PERCENTAGE LEASE

Approved by Council Resolution

No. R-259434 dated OCT 17 1983

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and MONTGOMERY AIRPORT HOTEL, LTD., a Texas Limited Partnership, the General Partner being Longcrier Associates San Diego-I, Limited; H. L. Longcrier, Jr., hereinafter called "LESSEE".

- I. DEMISED 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 as Lots 14 and 15, Montgomery Field and shown delineated on Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."
- A. PERMITTED USE. Said premises are leased to LESSEE only for the purpose of construction, operation and maintenance for use by the general public of a hotel facility consisting of a hotel, restaurants, cocktail lounges, banquet and conference rooms, lobby shops for the sale of clothing, jewelry, novelties, sundries, off-sale liquor, and personal services, and transient tiedown and hangar facilities for hotel guests and for such other related or incidental purposes as may first be approved in writing by the City Manager and for no other purpose.
- B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently conduct the business thereon to produce a reasonable and substantial gross income.
- C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of the City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required.

II. TERM OF AGREEMENT

- A. COMMENCEMENT AND TERMINATION. The term of this agreement shall be fifty (50) years commencing on the first day of the calendar month following the date of execution hereof by CITY.
- B. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five days after written demand by CITY, a valid and recordable quitclaim deed

covering all of the leasehold premises. The leasehold premises shall be delivered free and clear of all liens and encumbrances.

III. CONSIDERATION

A. PERCENTAGE RENT.

Beginning on the date of commencement of the Operation Period as herein defined, LESSEE shall pay to CITY, monthly in arrears, and on or before the last day of the calendar month following that month in which the revenue subject to rent was earned, a sum of money equal to:

SIX PERCENT (6%) of gross income derived from the rental of rooms up to and including a total gross room rental income of \$3,500,000 for the first lease year; SEVEN PERCENT (7%) of said gross room rental income exceeding \$3,500,000 up to and including \$4,000,000; and EIGHT PERCENT (8%) of said gross room rental income in excess of \$4,000,000 for the first lease year.

SIX PERCENT (6%) of gross room rental income derived from the rental of rooms up to and including a total gross room rental income of \$4,200,000 for the second lease year; SEVEN PERCENT (7%) of said gross room rental income exceeding \$4,200,000 up to and including \$4,700,000; and EIGHT PERCENT (8%) of said gross room rental income in excess of \$4,700,000 for the second lease year.

SIX PERCENT (6%) of gross room rental income derived from the rental of rooms up to and including a total gross room rental income of \$4,700,000 for the third lease year; SEVEN PERCENT (7%) of said gross room rental income exceeding \$4,700,000 up to and including \$5,200,000; and EIGHT PERCENT (8%) of said gross room rental income in excess of \$5,200,000 for the third lease year.

SIX PERCENT (6%) of gross room rental income derived from the rental of rooms up to and including a total of gross room rental income of \$5,200,000 for the fourth lease year; SEVEN PERCENT (7%) of said gross room rental income exceeding \$5,200,000 up to and including \$5,700,000; and EIGHT PERCENT (8%) of said gross room rental income in excess of \$5,700,000 for the fourth lease year.

SIX PERCENT (6%) of gross rental room rental income derived from the rental of rooms up to and including a total of gross room rental income of \$5,600,000 for the fifth lease year; SEVEN PERCENT (7%) of said gross room rental income exceeding \$5,600,000 up to and including \$6,100,000; and EIGHT PERCENT (8%) of said gross room rental income in excess of \$6,100,000 for the fifth lease year.

EIGHT PERCENT (8%) of gross income derived from the rental of rooms beginning with the sixth lease year.

THREE PERCENT (3%) of gross income derived from the sale of food and non-alcoholic beverages.

FIVE PERCENT (5%) of gross income derived from the sale of alcoholic beverages.

EIGHT PERCENT (8%) of gross income derived from all other sources except as otherwise specifically agreed.

Provided, however, that the City Manager and LESSEE may mutually agree in writing to another percentage rate or flat rate of rent for every such other sale, service or operation not specifically named herein prior to commencement of each other sale, service or operation as approved by the City Manager.

B. RENT.

1. FINANCING PERIOD. The Financing Period shall consist of that portion of the term of this lease beginning upon the effective date hereof, and ending upon the earlier of the date of Commencement of Construction (hereinafter defined) or the expiration of 120 days. For purposes hereof, Commencement of Construction shall be that date on which occurs excavation in preparation for the foundation for improvements to be constructed on the leased premises. This lease, and the covenants, agreements, representations, warranties, rights, obligations and duties of the parties hereunder, shall not be binding, and shall be of no force and effect in the event that LESSEE, upon the expiration of 120 days following the effective date hereof, is unable to secure construction period and permanent financing for the proposed development from an institutional lender upon terms and conditions reasonably satisfactory to LESSEE (and which financing is thereafter approved by City Manager, which approval shall not be unreasonably withheld or delayed) or a binding commitment from such a lender for such financing. Notwithstanding the foregoing, in the event that LESSEE is unable to secure such financing within 120 days from the effective date hereof, but reasonably anticipates that such financing will be available, LESSEE shall be entitled to not more than two additional periods of 30 days each within which to secure such financing, and LESSEE shall pay to CITY in advance for each such 30-day period or portion thereof that it elects to take, the sum of \$10,000.00.
2. CONSTRUCTION PERIOD. The Construction Period shall be that portion of the term of this agreement beginning upon the expiration of the Financing Period and ending upon the earlier of Commencement of Operations, as hereinafter defined, or upon the expiration of 20 months (subject to force majeure extensions) following the effective date of this lease. The consideration to CITY during said Construction Period shall be the development of the leased premises in accordance with Section IV. 8. DEVELOPMENT, to the reasonable satisfaction of City Manager. No cash rents shall be required during this Construction Period except as specified in Paragraph III. B. 3. below.

3. SOFT OPENING PERIOD. Included in the Construction Period, shall be a 4-month "Soft Opening Period". Said Soft Opening Period shall be considered a training period for LESSEE's operations staff and shall begin on the date upon which a certificate of occupancy is filed for any improvements on the premises and a hotel room is first occupied by any member of the general public, and shall end 120 days thereafter, but in no event more than 16 months following the Commencement of the Construction Period. LESSEE shall pay CITY percentage rents (but not minimum rents as set forth in Paragraph III.E.) as set forth in Paragraph III. A. above during said Soft Opening Period, but said rents shall not affect the provisions of, or the beginning of, the Operations Period as set out in Paragraph III. B. 4 and 5 below.

3A. OPERATIONS PERIOD. For that portion of the term of this agreement beginning upon the date of Commencement of Operations, as hereinafter defined, and for the remainder of said term, the rent shall be payable to CITY in accordance with Sections III. A. PERCENTAGE RENT and III. E. MINIMUM RENT.

3B. DEFINITION OF COMMENCEMENT OF OPERATIONS. For the purpose of determining when LESSEE shall commence payment of rental based on the provisions of Sections III. A. and III. E., "Commencement of Operations" shall commence on the earlier of the expiration of the Soft Opening Period or the expiration of 16 months following the commencement of the Construction Period.

4. PERCENTAGE RENT ADJUSTMENT. At least four (4) months prior to the end of the 20th year of the term of this agreement and at least four months prior to the end of each tenth year thereafter, the parties hereto shall negotiate in good faith to adjust the percentage rate(s), consistent with the uses authorized by this lease, to be in effect for the ensuing ten-year period. Said adjusted percentage rate(s) shall become

effective upon the first day of the succeeding ten-year period. Provided, however, in the event that such adjustment is not made by mutual consent prior to sixty days before the end of said ten-year periods, then the parties hereto will refer the matter to arbitration under the terms hereinafter set forth.

5. APPRAISER DETERMINED PERCENTAGE RENT ADJUSTMENT. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous paragraph, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by the City Council of CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE will each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser who will be employed to set the percentage rates to be applied to LESSEE's gross income for the ensuing period until the next percentage rent adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten days, then the two selected appraisers will be discharged and the process repeated until mutuality is achieved and an appraiser is selected to complete the assignment. 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 appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider the CITY's property as a fee simple absolute estate, as vacant and available for a full lease term on the open market for uses consistent with the authorized purposes of this lease at the commencement of the rental period under consideration. The appraiser will be guided by the then prevailing published market percentage rates for similar operations primarily (if available) within the Southern California area.

The date of value of the appraisal shall be on the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the date specified, 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 within sixty days after determination of the new percentage rate(s). In no event, however, shall any rent adjustment result in any decrease in any percentage rental rate.

- C. GROSS INCOME. Gross Income, as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived

whether received or to become due. Gross income from vending machines and/or coin-operated machines, not owned by LESSEE, shall be based on commissions derived by LESSEE from the vending machines and/or coin-operated machines, rather than the total gross receipts of said vending and/or coin-operated machines. In the event that the total gross receipts of said machines exceed \$5,000. per month, then said total gross receipts shall be subject to the applicable percentages outlined in Section III. A. hereof instead of the income received by LESSEE from said machines. 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. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. The aforesaid 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 or their agents and all gross income received by any sublessee 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 the LESSEE to CITY.

D. FINANCIAL RECORDS MAINTENANCE

- (1) LESSEE shall keep true, accurate and complete records in a manner and form mutually satisfactory to CITY and LESSEE and agreed upon within 90 days after the effective date of this agreement from which CITY can at all reasonable times determine the nature and amounts of gross income subject to rental from the operation of the leased premises. In the event that LESSEE and CITY fail to agree on a mutually satisfactory manner and form of recordkeeping within such ninety (90) day period, CITY shall select an independent firm of certified public accountants of national standing and a determination of that firm as to the records to be kept, and the manner and form of such records, shall be binding upon the parties hereto. Such records shall show all transactions relative to the conduct of the operation and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes, all sales or rentals of merchandise and services rendered shall be recorded by means of a cash register system and/or comparable computer system which automatically issues a customer's receipt or certifies the amount recorded on a sales slip. Said cash register shall have a locked-in total which is constantly accumulating, which total cannot be reset, and at the option of CITY, a constantly locked-in accumulating printed transaction counter which cannot be reset, and/or a printed detailed audit tape located within the register. Complete beginning and ending cash register reading shall be made a matter of daily record, purchase invoices and tickets issued, or other means satisfactory to CITY. The CITY Auditor and Comptroller shall audit the business of LESSEE, its agents, sublessees, concessionaires or licensees operating on the premises at least once every three (3) years or more frequently as appropriate.

- In the event such audit discloses that the percentage rental required for the period audited exceeds the amount of percentage rental paid to CITY by LESSEE during said period, LESSEE shall pay to CITY the amount of such deficiency within thirty (30) days of notification thereof by CITY. In the event that such audit discloses that the percentage rental required for the period audited is less than the amount of rents paid to CITY during said period, the amount of overpayment shall be credited against the then next successive rent payments until said overpayment is fully credited. Any such overpayment occurring in the last lease year shall be refunded by CITY within thirty (30) days of said audit findings.
- (2) LESSEE shall also maintain accurate records of actual and projected operating expenses and revenue, and such other operating information as City from time to time deems necessary and LESSEE shall submit such information to CITY upon request.
 - (3) Said records and accounts shall be maintained separate from all other accounts not relating to the operation of the leased premises and shall be made available to CITY at one location within the limits of the City of San Diego. CITY shall have, through its duly authorized agents or representatives, the right to examine and audit said records and accounts at any and all reasonable times. In the event of discrepancies between the audit furnished to CITY in the behalf of LESSEE and the CITY's audit, a final determination shall be made by one of the "Big 3" accounting firms. Any additional sums due CITY as determined by CITY's audit are due and payable within thirty (30) days of notification thereof by CITY.
 - (4) In the event that such audit 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 ten percent (10%) of the amount by which said rent was underpaid in addition to the unpaid rents so shown to be due CITY as compensation to CITY for administrative cost and loss of interest.

E. MINIMUM RENT

1. Amount and Payment. For that period of this lease agreement beginning upon the commencement of operations period and through the last day of the fifth year following said beginning date LESSEE is required to pay CITY percentages of gross income, if the total amount of said percentage of gross income paid to CITY by LESSEE is any one year ending upon the day prior to the anniversary date of the commencement of this agreement (lease year) is less than the sum of \$230,000 herein referred to as "minimum rent", then LESSEE shall pay to CITY within sixty days of said anniversary date a sum of money equal to the difference between the amount actually paid to CITY and the minimum rent. Provided, however, if the anniversary date and the date upon which LESSEE is required to commence payment of a percentage of gross income do not coincide, then said minimum rent and percentage rents for that year shall be prorated to the anniversary date, which shall become the computation date thereafter.

2. Minimum Rent Adjustment. Prior to the end of the fifth year following the commencement of the operations period and prior to the end of each third year thereafter, the minimum rent for the ensuing three-year period shall be adjusted to eighty percent (80%) of the average annual rent paid CITY during the three years preceding the rental review date. In no event, however, shall any rental adjustment result in a decrease in rents.

F. DELINQUENT RENT

In the event LESSEE fails to pay the applicable rents when due, then LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to THREE PERCENT (3%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen days of becoming delinquent, then LESSEE shall pay CITY, instead of said THREE PERCENT, a sum of money equal to EIGHT PERCENT (8%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency including costs to CITY of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon written application of LESSEE.

G. DEVELOPMENT AS ADDITIONAL CONSIDERATION

LESSEE agrees that as consideration for granting this lease it is LESSEE's obligation to develop the leased premises in accordance with the City approved Development Plan identified in Section IV, 8, DEVELOPMENT of this agreement.

I. COVENANTS AND CONDITIONS

A. CITY COVENANTS

1. Quiet Possession. LESSEE, paying the said rent and performing the covenants and agreements herein, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term hereof. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at the commencement of said term as hereinbefore specified, or if LESSEE is dispossessed through action of a title superior to CITY's, then and in either of such events, this lease shall not be void or voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the rent covering the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the demised premises.
2. Assignment and Subletting. Subject to prior CITY approval in each instance, LESSEE may assign this lease or any interest therein and may sublease any portion hereof to an assignee or sublessee who has, in the opinion and in the sole and absolute discretion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY.

"Assignment," for the purpose of this clause shall include any transfer of any ownership interest in LESSEE by any partners, principal, or stockholders, as the case may be.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee pay additional rent to CITY to equal the full fair market rent justifiable at the date of such proposed sublease or assignment.

3. Right to Encumber. CITY does hereby consent and agree that LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE only for improvements to the leasehold. CITY further agrees that in the event said deed should at any time be in default and be foreclosed or transferred in lieu of foreclosure, the CITY will accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, such as a State or Federal regulated financial institution, as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease contract. In the event said mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY, CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto.

B. LESSEE COVENANTS

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4. EQUAL OPPORTUNITY. LESSEE agrees to abide by the City's Equal Opportunity policy in accordance with the terms and conditions set forth in Council Policy 300-10, a copy of which is attached to this agreement and by this reference incorporated herein.
 5. Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees assessed or levied upon the LESSEE or the leased premises including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business
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or other activities of LESSEE upon or in connection with the leased premises. LESSEE recognizes and understands that this lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to payment of property taxes levied on such interest. LESSEE further agrees that such tax payment shall not reduce any rent due the CITY hereunder and that any such tax shall be paid by the LESSEE before becoming delinquent, except such as are being contested in good faith by LESSEE in proper administrative or judicial proceedings. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

6. Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. With such minor modifications as shall not deviate in any material respect from such approved plans, such approval shall not be unreasonably withheld. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises, except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in a decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make any improvements or alterations to said premises or to assume any expense therefor. CITY shall not unreasonably withhold its approval of plans and specifications submitted by LESSEE and CITY shall respond to all requests for approval of plans and specifications within thirty (30) days after submission by LESSEE. In the event that CITY fails to respond within the thirty (30) day period, such plans and specifications shall be deemed to have been approved by CITY.
7. Construction Bond. LESSEE agrees to file with CITY, prior to commencement of any construction performed upon the premises a faithful performance bond in the amount of 100% of the construction costs of the work to be performed. Said bond may be in cash or may be a corporate surety bond satisfactory to CITY or in a combination of both. Said bond shall insure that the construction commenced by LESSEE shall be completed in accordance with approved plans, or at option of the CITY, that the uncompleted construction be removed and the premises restored to a condition satisfactory to CITY. The surety bond will be filed with CITY and any cash used as a part of the bond may be deposited with CITY to be held in trust for the purpose specified above or may be placed in an escrow or other trust approved by CITY. Upon application

associated with the operation of the hotel facility on the leased premises pursuant to any agreement with LESSEE shall have approved such additional development, and (d) a firm of independent certified public accountants and/or other firm of nationally recognized business consultants (such as Laventhol & Horwath) shall have reviewed and reported favorably on the economic feasibility of such additional development. Before the commencement of construction of more than the original 234 rooms, and as a condition precedent to the obligation of LESSEE to construct any additional improvements, an Environmental Impact Report must be completed by LESSEE and certified by the City Council of CITY. The approval of the City Manager shall also be required for any subsequent phase of development; however, no such additional development shall result in a total amount of hotel rooms in excess of 551 without the approval of the City Council.

In addition, if full development of the leased premises as set out in the General Development Plan is not completed within ten (10) years of the effective date of this agreement, the undeveloped portions of the leased premises (i.e., Parcel B as shown on Exhibit A) shall revert to the CITY and CITY, at its sole discretion, may use said Parcel B for any purpose CITY may deem appropriate. Upon reversion of said Parcel B, CITY shall have the right to relocate any improvements on Parcel B to insure the remainder is a usable site.

9. INDEMNITY. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, alleged liabilities, penalties, fines or for any damages to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever, unless the same

by LESSEE, CITY may waive this requirement to file a bond. In the event that LESSEE fails to file any such required bond, this lease may be terminated by CITY.

8. DEVELOPMENT. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed with the Office of the City Clerk. LESSEE shall apply for and obtain all governmental and regulatory licenses, permits, or approvals as may be necessary to the construction of all or any phase of the improvements to be constructed upon the leased premises; provided, however, that if LESSEE is unreasonably denied any such license, permit or approval, LESSEE shall have no further obligations under this lease. To the extent applicable to the proposed development, said plan shows the design, materials of construction, elevations and colors of all structures, the plot plan of all structures and the above-ground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. 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 a document evidencing any approved changes shall be filed in the office of the City Clerk. The development shall consist of approximately 234 hotel rooms plus restaurant and meeting room facilities, and shall be constructed and in operation as provided for in this lease. Should LESSEE fail to complete construction of improvements on the leased premises in accordance with the schedule of development hereinabove, subject to such conditions as are provided for hereinabove, it is specifically agreed by LESSEE and CITY that CITY will be entitled to damages in the amount of THREE HUNDRED DOLLARS (\$300.00) for every day of failure to meet said schedule of development until completion of development, said amount representing liquidated damages therefore.

CITY and LESSEE agree that there will be a subsequent phase or phases of development. Any subsequent development shall bring the total development to a size appropriate for the area of the leased premises within ten years from the effective date of this lease, as determined by a firm of nationally recognized business consultants (such as Laventhol & Horwath) and the then licensor, franchisor or operator, if any, of the hotel on the leased premises. The improvements, after the construction of any such subsequent phase or phases shall include restaurants, shops, meeting rooms and tie-down facilities, and such subsequent phases shall be constructed and in operation within ten (10) years from the effective date of this agreement, provided that the following conditions shall have occurred: (a) construction period and permanent financing shall be available to LESSEE upon terms and conditions reasonably satisfactory to LESSEE, taking into consideration the then-prevailing conditions for loans by institutional lenders, (b) a hotel facility shall be in operation upon the leased premises and such hotel, during the 12 months immediately preceding such ninth anniversary, shall have achieved an average room occupancy of 75%, (c) the licensor, franchisor or operator, if any, who shall then be

shall have been caused by negligent acts or omissions by CITY, its agents, officers, and employees. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor, unless the same shall have been caused by negligent acts or omissions by CITY, its agents, officers, and employees.

10. Insurance Coverage. During the entire term of this lease, LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company satisfactory to CITY licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sublessees or any person acting for CITY or LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of CITY or LESSEE, or its sublessees, or any person acting for CITY or LESSEE, or under its control or direction. However, such insurance shall not be required to protect CITY against injuries, including death therefrom, or damages caused solely by the gross negligence of CITY or its employees. Such PD and PL insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss, until such time as it can be determined that said loss was a direct result of gross negligence on the part of CITY. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than ONE MILLION DOLLARS COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty days prior written notice thereof to CITY. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE's activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name the CITY as an additional insured and shall be written by an insurance company

satisfactory to CITY licensed to transact business in the State of California and shall be in an amount sufficient to cover at least 100% of the replacement costs of said property (replacement cost coverage). LESSEE agrees to submit a certificate of said policy to the CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Section IV, 16 Waste, Damage or Destruction, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

- a. As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction repair or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to LESSEE. Provided, further, however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary; and CITY.
- b. In the event that this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in the opinion of CITY, pursuant to a determination made in accordance with the rules and practices of the Board of Fire Underwriters, or a like board of generally recognized standing, the value of the improvements covered is increased, subject to the availability at reasonable rates of such insurance at the increased limits. LESSEE agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

11. Labor and Materialmen's Bond. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than the CITY, and a lien is filed, LESSEE agrees to file with CITY within ten days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.
12. Legal Proceedings. CITY and LESSEE agree that should it become necessary for either to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights and obligations hereunder. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.
13. Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises.

14. 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 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.
15. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground.
16. Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten 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 the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY shall determine an equitable deduction in the minimum annual rent requirements for such period or periods that said premises are untenable by reason of such damage.

C. RESTRICTIVE CONDITIONS

17. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the leased premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight hours after mailing in the manner required herein.
18. City Approval and Consent. The approval or consent of the CITY, wherever required in this agreement, shall mean the approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
19. Eminent Domain. In the event the leased 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 the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgage then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:
 - a. In the event of such taking of only a part of the leased 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 for the conduct thereon of the operations permitted hereunder,

this lease shall terminate and end as to the portion of the leased 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 leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

- b. In the event of the taking of only a part of the leased premises, leaving the remainder of said 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 CITY, 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. In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
- d. In the event of any taking under Subparagraphs a, b, or c, hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE'S interest in the improvements placed upon that portion of the leased premises which are taken by the condemning agency. It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE'S contractual rights in connection with the property condemned.
- e. Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the fair market value of LESSEE'S interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with the provisions of this lease.

20. Entry and Inspection. CITY reserves and shall always have the right to enter said premises at any reasonable time 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. 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 days written notice to LESSEE, to have any necessary maintenance work done for and 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 the 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 the 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 leased imposed on CITY.
21. Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month to month, and all other terms and conditions of this agreement shall continue in full force and effect.
22. Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
23. Oral Representation. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein; and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.

24. Ownership of Improvements. All improvements, except such fixtures as are hereinafter described on the attached addendum, which have been installed by LESSEE in accordance with the provisions of this agreement, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement. LESSEE shall have the right to remove from the demised premises only those fixtures described on the attached addendum at any time prior to the expiration or earlier termination of the agreement, provided that such removal would not, restrict the operation of the demised premises to the extent that the rent paid to CITY is reduced as a direct result therefrom. LESSEE's removal of any of said fixtures shall be at LESSEE's own expense and shall be conditioned upon LESSEE's repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said fixtures prior to the expiration of this agreement, CITY may remove, sell or destroy the same at the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY's property resulting from such removal, sale or destruction. At the option of CITY, any such fixtures not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively. Said addendum may be changed from time to time upon approval of the City Manager, without further resolution by the City Council.

25. Remedies of City.

a. Default by Lessee. In the event that:

- (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail or if such default pertains to payment of rent, within thirty (30) days, to cure said default within sixty days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against him 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;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part a, (1) of this section is not curable within the time period herein stated and after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

Provided, further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty-day period shall be extended during the time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure.

Provided however, that in the event rent paid to CITY is calculated on the basis of a percentage or percentages of LESSEE'S gross income, and during said period required for mortgagee or beneficiary to perfect a cure of any default or defaults which have been caused by LESSEE'S failure to pay said rent; then in those events if CITY is paid the minimum rent due under this agreement, CITY will not prosecute its right to terminate the mortgagee's or beneficiary's interest. Provided further, that when the mortgagee or beneficiary has secured control of said premises, and before an assignment to a new LESSEE, mortgagee or beneficiary shall cause to be paid to CITY, any amounts due CITY as a result of the gross income of the said premises exceeding that amount necessary for payment of the minimum rent. In computing the gross rent upon which the computation of the CITY rent is based, reasonable administrative expenses of a court appointed receiver may first be deducted.

b. City Course. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

- (1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.
- (2) CITY may correct or cause to be corrected said defaults or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its selection to so substitute itself and commence performance within said thirty-day period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute

itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if possible by mortgagee or beneficiary, and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

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 LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:

- (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.
- (2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

d. Damages. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

26. Reservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good. Provided, however, CITY and those claiming by, through, or under CITY shall not unreasonably interfere with LESSEE's use of the premises and will reimburse LESSEE for physical damages, if any to the permanent improvements of LESSEE located on the leased premises resulting from CITY's exercising the rights retained in this paragraph. Such reimbursement shall include a reduction in the annual rent proportionate to the amount of said physical damage as determined by the City Manager. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.
27. Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of LESSEE.
28. Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this lease, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.

29. Control by Lessee. Longcrier Associates San Diego - I Limited and/or Longcrier Associates, Inc. shall continue as general partner(s) of LESSEE and shall, at all times during the term of this lease, retain a percentage interest of ownership in LESSEE of not less than 51%. Further, for a period expiring on the fifth anniversary of the effective date hereof, H.L. Longcrier, Jr., if then living, shall, collectively with any of Jane C. Longcrier, H.L. Longcrier, III, Steven W. Longcrier or Michael C. Longcrier, retain an ownership in Longcrier Associates, Inc. of not less than 51%; and Longcrier Associates, Inc. and H.L. Longcrier, Jr., if then living, shall continue as general partners of Longcrier Associates San Diego-I Limited and shall, collectively with any of Jane C. Longcrier, H.L. Longcrier, III, Steven W. Longcrier, Michael C. Longcrier, Barbara J. Blount, Susan D. Brown, Donald L. Solomon, David D. Simmonds or Gary K. Adams, retain an ownership interest therein of not less than 51%. Longcrier Associates San Diego-I Limited and/or Longcrier Associates, Inc. and the principals thereof, shall actively administer and supervise the business enterprise operated on the leased premises and H.L. Longcrier, Jr., Managing General Partner of LESSEE, during the period of his association with LESSEE, shall be principally responsible for such administration and supervision. LESSEE shall engage in no other business activities than the business associated with the operations conducted on the leased premises under the terms of this lease. Any voluntary sale or transfer or disposition of any interest in LESSEE by Longcrier Associates San Diego-I Limited and/or Longcrier Associates, Inc. which shall reduce the aggregate ownership interests of such parties in LESSEE below 51%, or any voluntary sale or transfer or disposition in violation of the second sentence of this Section IV. C. 29, shall be considered an assignment of interests and shall be treated in accordance with the provisions of Section IV. A. 2. hereof. The provisions of this Section IV. C. 29. shall not preclude a management contract for the purpose of operation of any or all of the facilities on the leased premises, providing that LESSEE shall retain supervision of the operations.

30. Right of First Refusal. Should CITY, or any other owner (through CITY other than LESSEE) of a legal or beneficial interest in the land or improvements comprising the leased premises propose to sell, transfer or convey all or any portion of its legal or beneficial interest therein during the term of this lease agreement, LESSEE shall have the first right and option to purchase or otherwise acquire such interest from such owner upon such terms and conditions and for a price no less favorable than those associated with the proposed sale, transfer or conveyance.
31. Effect of Force Majeure. If during the development period, an event or events of force majeure occurs so as to prevent Lessee from meeting the development as set out in Sections IV. B. 8. Development and III. B. 2. Construction Period, then Lessee shall not be excused from meeting said development requirements, but the subject period during which said requirements are to be met shall be extended to equal the period during which Lessee is affected by such event or events, commencing on the first day following such affected period. In the event LESSEE claims such an event or events of force majeure, LESSEE shall notify CITY in writing of such fact within ten days after the beginning of any such event or events.

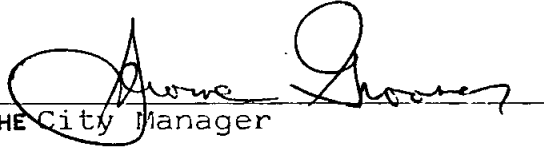
IN WITNESS WHEREOF, this lease agreement is executed by CITY,
acting by and through the City Manager, and by LESSEE, acting
by and through its lawfully authorized officers..

THE CITY OF SAN DIEGO

Date

10/25/83

By

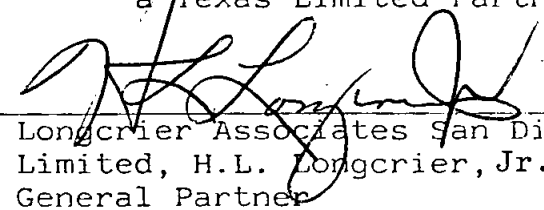


ASSISTANT TO THE City Manager

LESSEE: MONTGOMERY AIRPORT HOTEL, LTD.,
a Texas Limited Partnership

Date October 7, 1983

By


Longcrier Associates San Diego-I,
Limited, H.L. Longcrier, Jr.
General Partner

APPROVED as to form and legality this 28 day of

October, 1983.

JOHN W. WITT, City Attorney

By


Deputy

THIS ADDENDUM IS ATTACHED TO AND MADE A PART OF THAT CERTAIN LEASE BY
AND BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, AND MONTGOMERY
AIRPORT HOTEL, LTC., a Texas Limited Partnership, LESSEE

DATED _____.

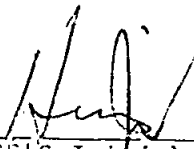
SECTION IV PARAGRAPH C 24, OWNERSHIP OF IMPROVEMENTS (continued)

The Lessee, in accordance with this section hereof, has the right to
remove from the demised premises only those fixtures as described below:
(if none, write none)

Furniture and equipment as defined in the bidding documents to be
submitted to the City for approval 30 days before the start of
construction.



City Manager's Initials



LESSEE'S Initials

SSISTANT TO THE

V. SPECIAL CONDITIONS - AIRPORTS

1. The lessee licensee, permittee contractor, etc., for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
2. That in the event of breach of any of the above nondiscrimination covenants, CITY shall after written notice specifying such breach and the expiration of a reasonable time thereafter within which to effect a cure, have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.
3. LESSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchases.
4. Non-compliance with Provision 3 above shall constitute a material breach thereof and in the event of such non-compliance the CITY shall have the right after written notice specifying such breach and the expiration of a reasonable time thereafter within which to effect a cure, to terminate this lease agreement and the estate hereby created without liability therefore or at the election of the CITY or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, and 3.
5. LESSEE agrees that it shall insert the above four Provisions in any lease (agreement, contract, etc.) by which said LESSEE grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein leased.
6. The CITY reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the LESSEE, and without interference or hindrance.

7. The CITY reserves the right, but shall not be obligated to the LESSEE, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the LESSEE in this regard.
8. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the CITY and the United States, relative to the development, operation or maintenance of the airport.
9. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
10. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349).
11. There is hereby reserved to the CITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on Montgomery Field airport.
12. The LESSEE by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder above a mean sea level elevation of 480 feet. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the LESSEE.
13. The LESSEE by accepting this lease agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft from Montgomery Field Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the LESSEE.
14. This lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.

15. LESSEE shall control all aircraft parking on the leased premises and at no time shall any aircraft, vehicles or other object, including refuse, under LESSEE's control be allowed to obstruct any designated taxiways. It shall be the responsibility of the LESSEE to require that all aircraft under his control be parked only on the leased premises, except as otherwise provided by the direction of the airport manager.
16. LESSEE shall maintain competent management of the leased premises to the satisfaction of the City Manager throughout the term of this agreement.
17. AFFIRMATIVE ACTION ON FEDERAL AID AIRPORTS. The LESSEE assures that it will undertake an affirmative action program as required by Title 14 of Code of Federal Regulations (CFR) Part 152, Subpart E, to insure that no program shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it will require that its covered suborganizations provide assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

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

October 17, 1983 by the following votes:

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

By BARBARA BERRIDGE

Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 259434 passed and adopted by the Council of The City of San Diego, California, on 10-17-83.

(SEAL)

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By Barbara Berridge

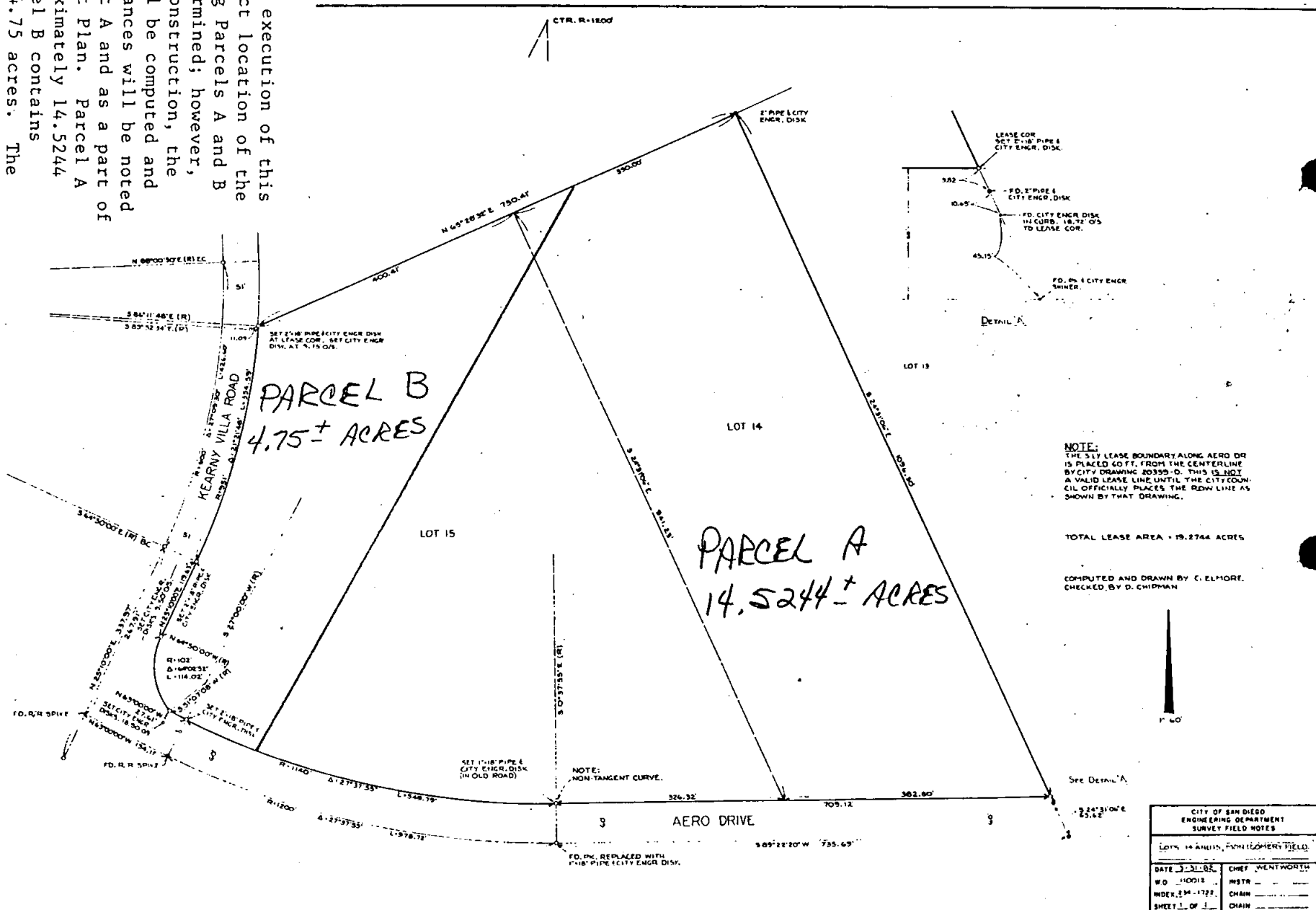
Deputy

(Rev. 5/83)

bb

At the time of execution of this lease, the exact location of the line separating Parcels A and B cannot be determined; however, prior to any construction, the exact line will be computed and the exact distances will be noted on this Exhibit A and as a part of the Development Plan. Parcel A contains approximately 14.5244 acres and Parcel B contains approximately 4.75 acres. The minimum size of Parcel B will be no less than 4.7 acres and shall be located generally in the area shown on this Exhibit.

EXHIBIT "A"



CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
	300-10	5-9-83	1 of 3

BACKGROUND

Since the adoption of the City's second Five-Year (1979-1984) Affirmative Action Program, significant progress has been made towards realizing the goal of equal employment opportunity. The City has, in most cases, achieved its interim goal that the representation of women and minorities in its work force mirror the representation of women and minorities with requisite skills, based on job-related criteria, in the labor force of the County of San Diego. However, there continue to be job areas within the City in which women and minorities are underrepresented.

PURPOSE

The City Council, in this Policy, declares its commitment to provide Equal Opportunity in all activities of the City and its agencies, including employment of individuals and firms which contract with the City. This policy is intended to reinforce the merit principle in public employment. Its provisions serve to promote equal opportunity in a cooperative spirit and to create goodwill throughout the community.

POLICY

1. The City Council is committed to an Equal Opportunity Program pursuant to applicable State and Federal laws and guidelines, to provide Equal Opportunity in all activities of the City and its agencies, including employment of individuals and firms which contract with the City. The Council has extended this commitment even further to have as the City's goal that the representation of women and minorities in the City's work force achieve parity with the ethnic and sex composition of the population of the City of San Diego.
2. The Personnel Director will submit quarterly reports detailing goals, progress, and strategies to the City Council for review and approval by the Rules Committee and Council. These reports will contain data of sufficient detail as to provide a clear and comprehensive breakdown of the City's workforce in all city departments.
3. The agency and corporate directors of those entities under Council direction and contract will submit quarterly reports detailing goals, progress and strategies to the City Council for review and approval by the Rules Committee and Council. These reports will contain data of sufficient detail so as to provide a clear and comprehensive breakdown of the workforce.

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
	EQUAL OPPORTUNITY	300-10	5-9-83
			2 of 3

POLICY (continued)

4. The City Council will require reports on Equal Opportunity programs and progress to be submitted by those individuals and companies doing contract work with the City.
5. The City will continue its efforts to employ and retain women and minorities in occupational categories where they appear to be under-represented so that they may obtain requisite skills.
6. The City is committed to eliminating architectural barriers to the employment of the disabled and to provide equal opportunity in City employment to the disabled community.
7. The City Council encourages equal opportunity for women, minorities and the disabled to serve on City commissions, boards, committees, and panels.
8. The City Council in order to achieve the goals of this Equal Opportunity Policy shall create a nine-member Equal Opportunity Commission to monitor, review, report and assist in the overall equal opportunity effort of the City and the community at large. The Equal Opportunity Commission shall be appointed by and report to the City Council, and shall:
 - A. Monitor and/or evaluate the Equal Opportunity Program of the City as it exists and as it may be amended from time to time by the City Council.
 - B. Advise on a continuing basis and make recommendations regarding the Program, as are deemed appropriate and/or necessary, to the Mayor, City Council, Civil Service Commission, Manager and other agencies and appropriate authority of City government.
 - C. Submit written quarterly reports which evaluate the progress of the City and its agencies for review and acceptance by the Rules Committee and Council. Submittal should coincide with quarterly submittals by the City Manager, Civil Service Commission, non-managerial departments and agencies.
 - D. In coordination with City Manager, Civil Service Commission, non-managerial departments and agencies, assist in the recruitment of competent minorities, women and handicapped to compete for available City positions, particularly in specific classes and occupations which reflect underrepresentation.

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
	300-10	5-9-83	3 of 3

EQUAL OPPORTUNITY

POLICY (continued)

- E. Promote the City of San Diego as an Equal Opportunity Employer of individuals and firms desiring to contract with the City in order to build confidence and goodwill between the City and all citizens.
- F. Meet regularly with the staff of the City and its agencies to carry out its responsibilities.

Adopted by Resolution No. 258429, 5/9/83

(R-84-591)

RESOLUTION NUMBER R- **259434**

Adopted on OCT 17 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, a 50-year lease agreement with MONTGOMERY AIRPORT HOTEL, LTD., a Texas limited partnership, for the construction and operation of a hotel complex on Lots 14 and 15, Montgomery Field, on a percentage rent basis with a minimum annual rent to City of \$230,000, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- **259434** .

APPROVED: John W. Witt, City Attorney

By 
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
10/4/83
Or.Dept:Prop.
Job:252002
Form=r.none

CITY of SAN DIEGO
MEMORANDUM

FILE NO.: Montgomery Airport Hotel, Ltd.
DATE : June 21, 1990
TO : Susan Drake, Lease Audit Manager, City Auditor's Office
FROM : Carole Brock, SR/WA, Supervisor, Airports Leasing
SUBJECT: Montgomery Airport Hotel, Ltd. - Document No. RR-259434 -
Clarification of Lease Year for Percentage Rent Purposes

Paragraph III.A. PERCENTAGE RENT of the above-referenced lease provides for a graduated rent for room rentals over the first five (5) "lease years", which begins on the date of commencement of the Operations Period. The term "lease year" in this paragraph is confusing because the anniversary date (November 1, 1983) which determines the lease year for minimum rent purposes and the date of commencement of operations (August 29, 1985) is different.

In an effort to clarify the intent of Paragraph III.A. and simplify the auditing process, please incorporate the first two-plus months of the Operations Period into the first lease year for percentage rents as follows:

First Lease Year	8/29/85 thru 10/31/86
Second Lease Year	11/1/86 thru 10/31/87
Third Lease Year	11/1/87 thru 10/31/88
Fourth Lease Year	11/1/88 thru 10/31/89
Fifth Lease Year	11/1/89 thru 10/31/90

Under this schedule, the beginning date of the lease year for both percentage rents and minimum rents, as well as the anniversary date, will be the same (November 1). The fixed rate of 8% of gross income for room rental will then begin November 1, 1990. If this schedule is acceptable, I will inform the lessee of the clarification.

If you have any questions, please give me a call at 6496.

Carole Brock
Carole Brock, SR/WA

CB

hotel.doc

cc: Deputy Director/Airports
Property Services Supervisor, Prop.Mgmt.
Emily Perrone, City Auditor's Office
Lease Billing Supervisor



THE CITY OF

SAN DIEGO

AIRPORTS DIVISION

MONTGOMERY AND BROWN FIELDS

Main Office

Montgomery Field Administration Building

3750 John J. Montgomery Drive

San Diego, California 92123-1769

Phone (619) 573-1425

Fax (619) 279-0536

REAL ESTATE ASSETS
DEPARTMENT

December 19, 1994

Montfield Financial, LTD
2800 28th Street, Suite 100
Santa Monica, CA 90404

Attention: Mr. Brian Corbell, President

Dear Mr. Corbell:

Subject: Development of Phase II of Development Plan
Lease Agreement: Lots 14 & 15, MYF

Dear Mr. Corbell:

In a previous letter the City extended the deadline for completing development of Phase II of your approved General Development Plan until December 31, 1994.

You submitted a written proposal this week requesting an additional 5-year extension to the deadline, using Parcel "B" for an interim recreation use; and to add a portion of Lot 16 to your leasehold for development of an aircraft tiedown area and additional recreational facilities.

The City is willing to consider your proposal providing you submit an acceptable plan for development of the portion of Lot 16 and an interim-use plan for Parcel "B" within the next 60 days. Provided we can reach an agreement on these issues an amendment to your lease would have to be promptly executed to allow for implementation of the plans.

You are hereby informed that the City shall not exercise its right under the lease terms to take back possession of Parcel "B" during the next four months to allow you time to design and submit your plans and to process the possible amendment to your lease.

Please include the following in your development plan for the portion of Lot 16 and interim-use plan for Parcel "B":

site plan
itemized cost estimates
proposed improvements
time schedule showing start date and completion date
proof of reasonable ability to finance the development

DOCUMENT NO. 82-259434-4

FILED JAN 17 1995
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA



DIVERSITY
BRINGS US ALL TOGETHER

Please be aware that in the event the City executes the amendment to your lease you will be expected to construct the aircraft tiedown area and complete the drainage ditch improvements on Lot 16, plus complete the interim uses for Parcel "B" within one year. The lease rent for the portion of Lot 16 is somewhat negotiable depending on your costs for improvements. Consequently, it would be helpful to have your cost estimates as soon as possible for our review.

Please submit your plans to Diana Drake. You can reach her by calling (619) 573-1433.

Yours truly,



Peter Soderquist
Airports Deputy Director

PRS:JLS:dld

pc: Real Estate Assets Director
Property Agent, MYF
Airports Operations Manager
City Clerk

File: hotel.ext



THE CITY OF SAN DIEGO

January 31, 1998

Mr. Nabih Geha, Manager
Sheraton Four Points Hotel
8110 Aero Drive
San Diego, CA 92123

Re: Percentage Rents for Golf Amenity Activities

Dear Mr. Geha:

It was our intent to include the percentage rates for the golf amenity in your proposed lease agreement for a portion of Lot 16 at Montgomery Field. The hotel has decided not to execute an agreement on this property, so I am notifying you by letter that your percentage rates for the hotel's golfing activities are those shown below:

Percentages

Business Activities

Eight Percent (8%)

On the first \$200,000 of gross income earned, in each lease year, from golf fees, golf instruction, renting and selling golfing equipment and all other golfing activities not mentioned herein.

Ten Percent (10%)

On all gross income earned above \$200,000, in each lease year, from the above-mentioned business activities.

The percentage rates on the gross income earned from the sale of food, liquor and beverages are those shown for these categories in Section III A. Percentage Rent of your existing lease agreement.

DOCUMENT NO. 259434 7

FILED FEB 03 1998
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA



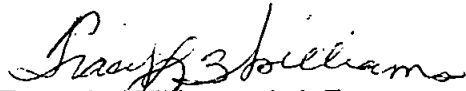
Airports Division • Montgomery and Brown Fields

Real Estate Assets • Public Works • Main Office, 3750 John J. Montgomery Drive • San Diego, CA 92123-1769

Tel (619) 573-1425 Fax (619) 279-0536

Let me take this opportunity to thank you and the hotel owners for the many improvements you have made to the hotel over the last two years and for your excellent management.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tracy L. Williams".

Tracy L. Williams, A.A.E.
Airports Deputy Director

TLW: did

cc: Robert Collins, Airports Real Estate Manager
Bill Svensson, Supervising Asset Agent
Diana L. Drake, Asset Agent, MY
Auditor