

**COPY
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THE CITY OF SAN DIEGO

HILTON SAN DIEGO CORPORATION

Percentage Lease

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LEASE OUTLINE

SECTION 1 : USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Related Council Actions</u>	1
1.4 <u>Quiet Possession</u>	2
1.5 <u>Easements and Reservations</u>	2
1.6 <u>Competent Management</u>	2
SECTION 2: TERM	3
2.1 <u>Commencement</u>	3
2.2 <u>Holdover</u>	3
2.3 <u>Surrender of Premises</u>	3
SECTION 3: RENT	3
3.1 <u>Time and Place of Payment</u>	3
3.2 <u>Rent</u>	3
3.3 <u>Payment Procedure</u>	10
3.4 <u>Gross Income</u>	11
3.5 <u>Inspection of Records</u>	12
3.6 <u>Delinquent Rent and Audit Fees</u>	14
3.7 <u>Unauthorized Use Charge</u>	14
SECTION 4: ASSIGNMENT	15
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	15
4.2 <u>Assignment and Subletting</u>	15
4.3 <u>Encumbrance</u>	15
4.4 <u>Assurance to Leasehold Beneficiary</u>	16
4.5 <u>Defaults and Remedies</u>	20
4.6 <u>Eminent Domain</u>	22
4.7 <u>Sale or Transfer of Stock</u>	23
SECTION 5: INSURANCE RISKS/SECURITY	23
5.1 <u>Indemnity</u>	23
5.2 <u>Insurance</u>	24
5.3 <u>Waste, Damage, or Destruction</u>	25
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	27
6.1 <u>Acceptance of Premises</u>	27
6.2 <u>Entry and Inspection</u>	27
6.3 <u>Maintenance</u>	27
6.4 <u>Improvements/Alterations</u>	27
6.5 <u>Utilities</u>	28
6.6 <u>Construction Bond</u>	28
6.7 <u>Liens</u>	28

6.8	<u>Taxes</u>	28
6.9	<u>Signs</u>	29
6.10	<u>Ownership of Improvements and Personal Property</u>	29
6.11	<u>Unavoidable Delay</u>	30
6.12	<u>Development Plan</u>	30
6.13	<u>Hazardous/Toxic Waste</u>	30
6.14	<u>Coastal Commission Approval</u>	32
SECTION 7: GENERAL PROVISIONS		32
7.1	<u>Notices</u>	32
7.2	<u>Compliance with Law</u>	32
7.3	<u>CITY Approval</u>	33
7.4	<u>Nondiscrimination</u>	33
7.5	<u>Equal Opportunity</u>	33
7.6	<u>Partial Invalidity</u>	34
7.7	<u>Legal Fees</u>	34
7.8	<u>Number and Gender</u>	34
7.9	<u>Captions</u>	34
7.10	<u>Entire Understanding</u>	34
7.11	<u>CITY Employee Participation Policy</u>	34
7.12	<u>Corporate Authority</u>	35
7.13	<u>Planting Strips</u>	35
7.14	<u>Standard of Employees</u>	35
7.15	<u>Boat Rentals</u>	35
7.16	<u>Enforcement of Live-Aboard Regulation</u>	36
7.17	<u>Damaged Equipment</u>	36
7.18	<u>Trash and Refuse</u>	37
7.19	<u>Plastic Food Containers</u>	37
7.20	<u>Supersedure</u>	37
7.21	<u>Additional Consideration to CITY</u>	37
7.22	<u>Public Access</u>	38
7.23	<u>Water Quality - Best Management Practices</u>	38
SECTION 8: SIGNATURES		41
8.1	<u>Signature Page</u>	41
SECTION 9: EXHIBITS		42
9.1	<u>Legal Description</u>	42
9.2	<u>Parcel Map(s)</u>	43
9.3	<u>General Development Plan</u>	44
9.4	<u>Corporate Name</u>	45

**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and HILTON SAN DIEGO CORPORATION, hereinafter called "LESSEE."

SECTION 1 : USES

1.1 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 agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely for the purpose of operating and maintaining, for the use of the general public, a resort hotel including banquet facilities, one or more restaurants, one or more cocktail lounges, coffee shop, lobby shops for the sale of clothing, jewelry, novelties, sundries and personal services such as hairstyling, snack bars, bicycle rentals, swimming pools, cabanas, boat dock, and boat rentals, playground areas, administrative facilities and parking, all as shown on the General Development Plan as described in Section 6.12 and Exhibit 9.3 hereof and for such other incidental uses as are approved in writing by the City Manager of the City and for no other purpose.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above-specified purposes in accordance with the General Development Plan and to diligently conduct the business thereon so as to reasonably maximize, consistent with sound business practices and the reasonable preservation of the character, quality and reputation of the premises and its operator, the gross revenues that can be derived therefrom.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

1.3 Related Council Actions. By the granting of this lease, neither the CITY Manager nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency 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.

- 1.4 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. If during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, this lease shall not be voidable but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 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; provided, however, CITY shall not be entitled to access such subsurface materials from the surface of the premises or from a level higher than 500 feet from the surface of the premises if lateral entry from outside the premises is accomplished.
- 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.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements 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 determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the reasonable satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a resort hotel and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be fifty (50) years commencing on the first day of January, 1996 (Lease Commencement). "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of January, 1996.
- 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 agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement 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 rental value and to terminate the holdover tenancy at will.
- 2.3 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances created by LESSEE or its assignees, and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the premises.

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, 92112-4165, 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. Guaranteed Minimum Rent. Following the effective date of this lease, LESSEE shall pay the greater of annual minimum rent, percentage rent, or

the annual guaranteed minimum rent on a calendar month basis as defined herein.

Annual Guaranteed Minimum Rent	Lease Year	Monthly Installments
\$1,100,000	One	\$ 91,666.67
\$1,100,000	Two	\$ 91,666.67
\$1,200,000	Three	\$100,000.00
\$1,200,000	Four	\$100,000.00
\$1,300,000	Five	\$108,333.34
\$1,300,000	Six	\$108,333.34
\$1,300,000	Seven	\$108,333.34
\$1,400,000	Eight	\$116,666.67
\$1,400,000	Nine	\$116,666.67
\$1,400,000	Ten	\$116,666.67

- b. Minimum Rent. Subject to the annual guaranteed minimum rent schedule above, the annual minimum rent established for the first four (4) years following the effective date of this lease is Eight hundred, sixty-four thousand, three hundred seventy-three dollars and 44 cents (\$864,373.44), which is Seventy-two thousand, thirty-one dollars and 12 cents (\$72,031.12) on a monthly installment basis.

On a calendar month basis, LESSEE shall pay CITY whichever is greater: one twelfth of the annual guaranteed rent, one-twelfth of the annual minimum rent, or the percentage rent for that month. Minimum or guaranteed 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.

Provided, however, in the event that the combined total percentage rent payments and monthly installments during any lease year equal or exceed either the greater of required annual minimum rent or guaranteed annual minimum rent for that lease year, then for the balance of such lease year, LESSEE shall discontinue paying monthly installments of the minimum rents or guaranteed minimum rents and shall continue paying only percentage rents until the beginning of the ensuing lease year. Provided further, in the event minimum rents paid plus guaranteed minimum rents paid, plus percentage rents paid during any lease year exceed the greater of the annual guaranteed minimum rent or annual minimum rent (whichever is greater) 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 total rent owed 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 or guaranteed minimum rent (whichever is greater) as a guarantee against the percentage rent requirement and that the greater of the three requirements, guaranteed minimum, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- c. Minimum Rent Adjustment. Effective at the beginning of the first day of the fifth lease year of this lease and at the beginning of each five year 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 two (2) 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 annual guaranteed minimum rent requirement in effect immediately prior to the adjustment date.
- d. 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%)

Business Activities

Of the gross income from the rental of rooms and other living accommodations provided, however, LESSEE may deduct from such gross income before computing the rent due to the CITY any commission or fee paid to a travel agency or other rental agent as a result of procurement or attempted procurement by said agency or agent of tenants for said rooms and other living accommodations; provided, further, that such deductions shall not exceed 3 percent of such gross income and provided further, that no deductions shall be made for fees paid to any such agent or agents in

which LESSEE has any financial interest, with the exception of LESSEE'S reservation system, which shall not exceed 3 percent of such gross income. The percentage rate for this activity will increase to seven and one-half percent (7.5%) on January 1, 2011.

Three Percent (3%)

Of the gross income from the serving or dispensing of food, nonalcoholic beverages on the leased premises, and mandatory service charges and gratuities. The percentage rate for this activity will increase to three and one-half percent (3.5%) on January 1, 2011.

Three Percent (3%)

Of all gross income from non-alcoholic beverages prepared at/or dispensed from all bar facilities. The percentage rate for this activity will increase to five percent (5%) on January 1, 2011.

Six Percent (6%)

Of all gross income from the sale of alcoholic beverages. The percentage rate for this activity will increase to six and one-half percent (6.5%) on January 1, 2011.

Ten Percent (10%)

Of gross income from the operation of a beauty shop and of a barber shop.

Ten Percent (10%)

Of gross income from coin-operated telephones and all other telephone operations.

Ten Percent (10%)

Of LESSEE's gross income from in-house movies, or fifty percent (50%) of commissions or any other compensation paid to LESSEE or sublessee for the right to install or operate in-house movies on the premises.

Seven Percent (7%)

Of gross income from the operation of a tennis center, gift shop and dress shop.

Twenty-five Percent (25%)

Of commissions or any other compensation paid to LESSEE or sublessee for the right to install or operate coin-operated vending,

game or service machines or devices on the premises, excluding coin-operated telephones which are provided for above, or ten percent (10%) of the gross revenue generated from any such coin-operated machine or devices owned, rented, or leased by LESSEE or sublessee for use on the premises.

Ten Percent (10%)

Of gross income from any other source permitted on the leased premises except as otherwise provided for herein, or permitted by subsequent written agreement.

Ten Percent (10%)

Of the commissions paid to LESSEE for the right to install or operate audio visual equipment on the premises.

Ten Percent (10%)

Of the gross income from the operation of the Lady Hilton, or similar boat operation used as additional meeting or gathering space.

Ten Percent (10%)

Of gross income from the operation of any boat rentals.

EFFECTIVE JANUARY 1, 1997:

Ten Percent (10%)

Of the gross income from a car rental operation located on the premises. LESSEE has paid rental consideration to CITY in the amount of \$8,000.00 for the period of January 1, 1996 through December 31, 1996, for a car rental operation on the premises.

The City Manager, may reasonably approve, in writing, another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof. Provided, however, any activity conducted on the Premises not otherwise approved hereunder or without written approval by the City Manager, shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, hereof.

e. Percentage Rate Adjustment.

- (1) At least twelve (12) months prior to January 1, 2011, the parties hereto, by mutual consent or through a percentage rate market appraisal as hereinafter set forth, will adjust the percentage rates for all categories of LESSEE'S gross income to be paid to CITY effective on January 1, 2011 and during the succeeding ten-year period, excluding those categories with pre-established increases. Said adjustment will be made to the degree necessary to provide a fair rent to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.2e below. The adjusted rates will not, as a result of the process, be increased by more than one-half of one percent (.5%) also, the adjusted percentage rates will not be less than the percentage rates in existence at the time of the adjustment. In the event that such adjustment is not made by mutual consent prior to three (3) months before January 1, 2011, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- (2) At least twelve (12) months prior to January 1, 2021, the parties hereto, by mutual consent or through a percentage rate market appraisal as hereinafter set forth, will adjust the percentage rates for the categories of food and non-alcoholic beverages prepared and dispensed on the lease premises, non-alcoholic beverages prepared and dispensed from all bar facilities, mandatory service charges and gratuities, alcoholic beverages, rooms and other living accommodations of LESSEE'S gross income to be paid CITY effective on January 1, 2021 and during the succeeding ten-year period. The adjusted rates will not, as a result of the process, be increased by more than one-half of one percent (.5%) or conversely be decreased by more than one-half of one percent (.5%). In the event that such adjustment is not made by mutual consent prior to three (3) months before January 1, 2021, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- (3) At least twelve (12) months prior to January 1, 2021, the parties hereto, by mutual consent or through a percentage rate market appraisal as hereinafter set forth, will adjust the percentage rates for the categories of beauty shop and barber shop, tennis center, gift shop and dress shop, commissions for audio visual equipment, boat operation used as meeting space, vending machines, game rooms, coin-operated telephones, and in-room movies, of LESSEE'S gross income to be paid CITY effective on January 1, 2021 and during the succeeding ten-year period. The adjusted rates will not, as a result of the process, be increased by more than two and one-half (2.5%) of gross income or conversely be decreased by more than two and one-half percent (2.5%) of gross income. In the event that such adjustment is not made by mutual consent prior to three (3) months before January 1, 2021, then

the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.

- (4) At least twelve (12) months prior to January 1, 2021, the parties hereto, by mutual consent or through a percentage rate market appraisal as hereinafter set forth, will adjust the percentage rates for the categories of boat rentals and other authorized sources for LESSEE'S gross income to be paid CITY effective on January 1, 2021 and the succeeding ten-year period. The adjusted rates will not, as a result of the process, be increased by more than one and one-half percent (1.5%) or conversely be decreased by more than one and one-half percent (1.5%). In the event that such adjustment is not made by mutual consent prior to three (3) months before January 1, 2021, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.
- (5) At least twelve (12) months prior to January 1, 2031 and at least six (6) months prior to the end of each ten-year period thereafter, the parties hereto, by mutual consent or through a percentage rate market appraisal will adjust the percentage rates of all categories of LESSEE'S gross income to be paid CITY effective on January 1 of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rent to CITY as determined by the City Manager and LESSEE, taking into consideration the criteria set forth in Section 3.2e below. The adjusted rates will not, as a result of the process, be increased by more than one-half of one percent (.5%) or conversely be decreased by more than one-half of one percent (.5%) for each adjustment. Also, the adjusted percentage rates will not be less than the percentage rates in existence at the time of lease commencement. In the event that such adjustment is not made by mutual consent prior to three (3) months before January 1, 2031, or three months before the end of each succeeding 10 year period, then the parties hereto will refer the matter to appraisal under the terms hereinafter set forth.

- f. Percentage Rate Appraisal. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous section, 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 CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a qualified professional independent real estate appraiser, from the City's list of approved appraisers, (if LESSEE cannot find an acceptable appraiser on the CITY'S list of approved appraisers, then LESSEE may suggest additional appraisers for CITY approval, and CITY agrees to not unreasonably withhold approval of such suggested appraisers) who in turn will select a third qualified professional independent real estate appraiser, 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 third appraiser will 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. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. 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 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 assignment.

In establishing the percentage rates for the items under review, the appraiser shall consider CITY'S property as a fee simple absolute estate, and as vacant and available for a full lease term equal to the initial full term of lease on the open market for the authorized purposes of this lease at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area, if available. The appraisal shall be subject to limits on increases and decreases to percentage rates as set forth in this lease. 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), without penalty to LESSEE if such deficiency payment to CITY is delayed through no fault of LESSEE. Any refund from CITY to LESSEE shall be credited to the next rent payment, or payments.

Notwithstanding the foregoing contained in Sections 3.2d and e., in no event shall any percentage rate adjustment and or appraisal, for any business activity, result in a lowering of the percentage rate below the percentage rate in effect at lease commencement. Additionally, with regards to the foregoing percentage rate adjustments and/or appraisals, the parties may agree that the percentage rates then in effect are appropriate and mutually agree to waive the adjustment process.

- 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 of the annual minimum rent until the full annual rent is achieved in any lease year.
- b. One-twelfth of the annual guaranteed minimum rent until the full guaranteed minimum annual rent is achieved in any lease year.
- c. 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.
- d. The percentage rental due CITY, computed and totaled.
- e. The accumulated total of all rents previously paid for the current lease year.
- f. Payment in the greater of the three following amounts:

One-twelfth of the annual minimum rent, one-twelfth of the guaranteed 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 "gross receipts", as used in this lease, shall include all income accrued (adjusted for uncollectible accounts) resulting from occupancy of the leased premises from whatever source derived. 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 income from the sale of furniture, fixtures or equipment, refunds for goods returned for resale on the premises or refunds of deposits, employee meals (unless given in lieu of pay or if reportable for sales tax purposes), voluntary gratuities, nor shall it include insurance or condemnation proceeds, with the exception of business interruption insurance proceeds. The amount of such taxes, proceeds 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.

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 issue 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. CITY hereby approves of the computerized property management system currently being used for recording retail sales and charges.

- b. Financial Statements. Within sixty (60) 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, which shall be legally binding upon LESSEE.

- c. Right to Inspect. All LESSEE'S books of account, records; and supporting documentation, as described under Section 3.5a. hereinabove, 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. The 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 notice of such audits. Audits will be conducted at reasonable times during normal business hours and without 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 CITY'S audit(s) 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 \$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(s); or
 - (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

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, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. 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(s) findings.

- e. Default. LESSEE'S failure to keep complete and accurate records in accordance with generally accepted accounting principles and make them available for CITY inspection at reasonable times and upon reasonable notice is, like all other failures to comply with 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.

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) 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 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 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 that is not permitted by 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

- 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 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. Such consent shall not be unreasonably withheld. All assignees and sublessees will be subject review by the City, in accordance with City Charter Section 225, and shall be of good moral character with no prurient interests. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

Subject to Section 4.7 herein, "Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals. In addition, "Assignment" shall not include intra-corporate transfers or assignments where there is no financial consideration.

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 shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as hereinafter set forth in Section 7.21, Additional Consideration, commencing at the effective date of such proposed sublease of the majority portion of the leasehold or assignment and shall further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other

security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that

- a. The principal amount of the applicable promissory note or notes shall not exceed 70% of the value of Lessee's interest in the Premises, as determined by an appraisal prepared at Lessee's expense by an independent, M.A.I. (or equivalent) appraiser, reasonably approved by CITY;
- b. The debt coverage ratio shall not exceed 1.5 to 1; and
- c. Lessee pays additional consideration to CITY as applicable, and as hereinafter set forth in Section 7.21, Additional Consideration.

LESSEE understands and specifically agrees that the City Manager shall have the reasonable discretion to approve or disapprove any such proposed encumbrance, including but not limited to amending the lease to provide then current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must approve every person or entity which will have a financial interest in this lease. The CITY's approval will not be unreasonably withheld, so long as all such persons and entities are of good character and reputation in the community.

- 4.4 Assurance to Leasehold Beneficiary. If LESSEE shall subject the leasehold under this lease agreement to one or more deeds of trust to secure an obligation permitted hereunder, and if LESSEE or the beneficiary under such deed of trust ("Leasehold Beneficiary") shall 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 deeds of trust, CITY agrees that so long as any such deeds 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 agreement by joint action of CITY and LESSEE without prior written notice to 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 notices by LESSEE to a Leasehold Beneficiary shall be given by United States mail or overnight courier, postage prepaid, 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, but not the obligation, within thirty (30) days after the grace period available to LESSEE or receipt by the Leasehold Beneficiary of notice from CITY, whichever is later, to remedy or cause to be remedied the defaults complained of, whether such default consists of the failure to pay rent or the failure to perform any other obligation (subject to the provisions set forth below), 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 agreement, CITY shall take no action to effect a termination of this agreement because of such default unless Leasehold Beneficiary's cure period, as set forth in paragraph 4.3.c. above, has expired without Leasehold Beneficiary curing such monetary default.
- e. In the case of any default other than a monetary default by LESSEE, CITY shall take no action to effect a termination of this agreement 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 LESSEE or such Leasehold Beneficiary shall have paid, and shall continue to pay, to CITY all monetary amounts then required to be paid hereunder), 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 and thereafter to complete such foreclosure proceedings or otherwise acquire LESSEE'S interest under this agreement 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 agreement as long as all rent continue to be paid in accordance with the terms of this agreement. 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 rent and all charges payable by LESSEE hereunder.
- g. Any sale of this lease agreement and the leasehold estate in any proceedings for the foreclosure of any deeds of trust, or the assignment or transfer of this agreement and the leasehold estate in lieu of the foreclosure of any deeds of trust shall be deemed to be permitted sale, transfer or assignment of this agreement and of the leasehold estate hereby created; provided, however, such transferee must be in good standing and of good general reputation in its business community, trade or industry and shall be of good moral character with no prurient interests and subject to City Charter Section 255.
- 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 or its successor in interest, referred to in Section 4.5 Defaults and Remedies, 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 agreement 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 sixty (60) 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 hereof. 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, the Leasehold Beneficiary or its designee 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 agreement, including loss of rent from date of termination to date of commencement of such new lease. 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 4.2 and 4.4 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 deeds of trust, and upon payment of such sums all rights of the Leasehold Beneficiary under Section 4.2 of this lease agreement shall cease and terminate and CITY shall thereupon have the right to terminate this agreement 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) or 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 the LESSEE'S interest hereunder upon the exercise of any remedy provided for in the leasehold deeds 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 4.2.
- 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 agreement 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 agreement, 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.

4.5 Defaults and Remedies.

- a. Default. 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, and LESSEE shall fail to commence to cure the default(s) within said thirty-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;

then 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 4.5a.(1), hereinabove 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.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Right of Substitution. Any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary 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 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 the 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.

4.6 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the reasonable opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the reasonable opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. The termination of the Lease as a result of any total or partial condemnation shall not abrogate or defeat Lessee's right to receive its share of any condemnation award, as herein provided.

- e. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest; LESSEE'S physical improvements on the condemned real property; and, the loss of the goodwill for LESSEE's operating the business on the premises. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - f. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
 - g. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- 4.7 Sale or Transfer of Stock. Sale or transfer of stock, or divestment of any interest in LESSEE in excess of 5 percent either in a single transaction or as a result of cumulative transactions, shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2, Assignment & Subletting and Section 7.21, Additional Consideration. Sections 4.2 and 7.21 shall not apply to transfer of stock of any stockholder to his or her spouse or direct lineal heirs or to a transfer or assignment to a Controlled Affiliate. "Controlled Affiliate" shall mean an entity directly controlling, controlled by or under common control with Lessee, or any person or entity owning or controlling fifty percent (50%) or more of the outstanding voting securities of LESSEE. LESSEE shall provide written notice to CITY of any such exempt transfer.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, 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 LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work to be performed by LESSEE, its employees, agents, contractors, guests, invitees or officers under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the active negligence or willful misconduct of the CITY, its agents, officers, or employees. The term "active negligence" shall be defined for the purposes of the Lease as participation in an

affirmative act, or a failure to affirmatively act when there is a duty to act, that results in injury to a person or property.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - (1) Public liability and property damage insurance in the amount of not less than Five Million Dollars (\$5,000,000) 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 CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent 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 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
 - (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" 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. A copy of the insurance policy will remain on file with CITY during the entire 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.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice, to the extent that such amounts and coverages are reasonably available in the market. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Twenty-five Thousand Dollars (\$25,000) 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 of any witnesses, and other pertinent information.
- (4) 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, upon 5 days prior written notice, 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 (4), 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.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur 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. 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.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30)

days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenantable by reason of such damage, except to the extent LESSEE receives business interruption insurance.

- 5.4 Uninsured Damage or Destruction. In the event the improvements situated on the premises are damaged or destroyed by a hazard which LESSEE is not required to insure against, by the terms of this agreement, and if the cost of repairing such damage or destruction is more than fifteen percent (15%) 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. LESSEE may elect to not repair, restore or reconstruct for partial damage and continue to operate the premises on a partial or reduced basis. In those cases where LESSEE has no obligation under this agreement 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 6.10 relating to LESSEE'S duty to remove fixtures and improvements upon termination or expiration of the lease term.
 - h. Removing, to the extent insured, 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 whether apparent or latent, in the premises.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right to enter 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. Except in the event of an emergency, 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 reasonable 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 6.12, Development Plan, hereof and with all applicable laws.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager, with the exception of interior room renovations. 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. This provision 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. CITY shall not be obligated by this lease to make or assume any expense for any improvements or 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. Whenever there is any construction to be performed on the premises and the cost of such construction exceeds \$500,000, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent 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, in the case of abandonment, 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 attorney's 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 five (5) 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 of all persons seeking relief under the lien.
- 6.8 Taxes. 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 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. CITY'S consent shall be based upon Mission Bay Park Design Guidelines and/or applicable government ordinances. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost. Internal directional and location signs which cannot be seen from outside the premises do not require the prior written consent of City.

6.10 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. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- 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 rent to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its 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 personal property, said right shall remain in effect for thirty (30) days after expiration or termination and shall be subject to CITY and LESSEE agreeing upon an acceptable price to be paid by CITY to LESSEE for such personal property. No rent shall be payable by LESSEE for any time period after lease expiration or termination where such property remains on the premises solely to accommodate CITY.
- 6.11 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, civil strife, terrorism, earthquake, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, 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.
- 6.12 Development Plan. LESSEE agrees to develop and maintain at all times during the lease term the leased premises in accordance with the General Development Plan attached hereto as Exhibit 9.3. 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. Failure by LESSEE to comply with the General Development Plan shall constitute a default by LESSEE hereunder.
- 6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in

the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance upon the leased premises, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. Provided the applicable problem was caused by Lessee, Lessee's sublessees, invitees, guests, successors and/or predecessors, Lessee shall cause the remediation and/or removal recommended by the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred with respect thereto.

- 6.14 Coastal Commission Approval. 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.

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, by recognized overnight carrier, or by United States mail, postage prepaid, addressed to LESSEE at the leased premises and as follows:

Hilton Hotels Corporation
9336 Civic Center Drive
Beverly Hills, CA 90210

and to CITY as follows:

City Manager
Attention Real Estate Asset Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

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

- 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. Such laws, statutes, ordinances or regulations shall include, but not be limited to a drug-free workplaces and the Americans with Disabilities Act of 1990 and/or any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.

- 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, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability 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. The LESSEE acknowledges and agrees that it is aware of, and will comply with the City's Council Ordinance No. 18173, Section 22.2701, EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM. The LESSEE and all its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended, and any other applicable federal and state laws and regulations hereinafter enacted. LESSEE will not discriminate against any employee or applicant for employment on an basis prohibited by law.

LESSEE submitted, and the CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that the consultant will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees that compliance with the foregoing provisions to be interested in subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subconsultant.. LESSEE agrees that compliance with regards to EEO provisions flowing from the authority of both parties will be implemented, monitored and reviewed by the CITY'S EOCP staff.

LOCAL BUSINESS AND EMPLOYMENT

LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to those requirements may result in

termination of this Agreement and debarment from participating on CITY contracts for a period of not less than one (1) year.

- 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 attorneys' 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. The Lease Outline, 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 unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

7.13 Planting Strips. In consideration of the maintenance by LESSEE of the 40-foot landscaped strip located between the leased premises and the public travel-way of East Mission Bay Drive, not a portion of the leased premises described in Exhibit "A" at LESSEE'S sole cost and to the satisfaction of the City Manager, CITY hereby indemnifies and holds free and harmless LESSEE, its agents, officers and employees from any claims or liabilities for damage to property of any persons whatsoever, and for personal injuries or death of any persons whatsoever, including any costs and expenses incurred by LESSEE on account of any such claims and liabilities arising out of, or alleged to arise out of, said maintenance by LESSEE or arising out of, or alleged to arise out of, the ownership of said 40-foot strip by CITY or caused by, or resulting from, any act or omission of CITY, its agents, employees or representatives in or about said 40-foot strip.

Maintenance for purposes of this section shall mean any grass cutting and trimming, watering, repairs or servicing of watering facilities such as, but not limited to, sprinkler systems, seeding, sodding, reseeding or resodding, fertilizing, landscaping or any preventive treatments. If at any time during the term of this agreement, LESSEE determines that it no longer wishes to maintain said planting strip, LESSEE shall provide CITY with written notice of such determination. CITY will henceforth assume responsibility of maintenance and watering subject to CITY standards as established in the Mission Bay Master Plan Update.

Anything to the contrary hereinabove notwithstanding, LESSEE agrees that it shall be responsible and hold CITY harmless for and from any claims or liability and costs incurred in connection therewith arising on account of the negligent acts or omissions of LESSEE and its agents, officers or employees in connection with such maintenance.

7.14 Standard of Employees. LESSEE shall endeavor, at all times, to have its employees conduct themselves and the operations on the leased premises in a creditable manner.

7.15 Boat Rentals. For purposes of this lease, "vessels" include ships of all kinds, motorboats, sailboats, personal watercraft, watercraft, houseboat, and every structure adapted to be navigated from place to place upon the water for recreation or for the transportation of merchandise or persons. LESSEE shall be permitted to rent vessels to the general public subject to the prior reasonable written

approval from the City Manager as to the number and type of vessels available for rent. The City Manager may, upon written notice to LESSEE and with reasonable cause, modify any approval previously given. LESSEE shall carry commercial general liability insurance, the amounts and coverages of which shall be based upon the City Manager's assessment of the risk associated with the rental operation.

All vessels for rent which are required by law to be registered with the California Department of Motor Vehicles shall be currently registered as rental vessels and carry proper registration numbers and stickers. All vessels for rent shall be identified by LESSEE through the use of distinctive markings or logos. Each rental vessel shall be equipped with a waterproof map detailing all current regulations and activity zones for Mission Bay, along with all safety equipment required by law. At any time that LESSEE is renting a vessel or vessels, LESSEE shall have at least one operational chase boat and staff to operate it available on the waters of Mission Bay. No rental vessel may be stored on public property outside the leasehold. LESSEE agrees that the City Manager or his designees shall have the authority to immediately terminate any rental activities which are not in conformance with the stipulations of this lease or current boating regulations.

- 7.16 Enforcement of Live-Aboard Regulation. LESSEE shall be responsible for the enforcement, both within and in connection with the leased premises, of the following live-aboard regulation, except to the extent it is superseded and controlled by state statute and/or regulation:

No person shall remain overnight on board any vessel in Mission Bay Park unless the vessel has a self-contained toilet on board that does not discharge into the waters of the Bay. No owner of any vessel shall allow it to be occupied overnight in Mission Bay Park for a period of more than ninety (90) days, whether successive or cumulative, during any one calendar year. A vessel is presumed to be occupied overnight when there are one or more persons on board after midnight. The lessees of Mission Bay Park lands are primarily responsible for the enforcement of this subsection on the water abutting their leased premises.

The above Live-Aboard Regulation is presently set forth in the San Diego Municipal Code Section 63.25.71 and is subject to amendment or modification by the City Council. LESSEE also agrees to comply or secure compliance with any such amendment or modification.

- 7.17 Damaged Equipment. LESSEE shall salvage within twenty-four (24) hours any property, real or personal, of LESSEE'S declared by CITY to be a menace to navigation or a nuisance within Mission Bay and to salvage or cause to be salvaged any sunken vessel or property upon the leased premises, irrespective of ownership. CITY may require that any boats not kept in a clean and operable condition be removed from the leased premises.

- 7.18 Trash and Refuse. LESSEE shall provide containers on the leased premises to receive trash and refuse generated aboard vessels using LESSEE'S docking or launching facilities. Refuse containers shall be located so as to be conveniently used by occupants of vessels using LESSEE'S facilities and shall be of sufficient size and number to contain the refuse generated aboard all vessels using LESSEE'S facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by LESSEE or others acting pursuant to LESSEE'S direction at authorized landfills or other garbage reception areas as provided under law applicable at the time of collection.
- 7.19 Plastic Food Containers. LESSEE shall comply with the following Plastic Food Container Regulation: LESSEE shall not, after the effective date of this agreement, manufacture, sell or distribute to any person any polystyrene food packaging product made of or with polystyrene food packaging product made of or with chlorofluorcarbon (CFC-12 dichlorodifluorothane), except with the authorization of the City Manager or as exempted by Municipal Code Section 42.0172 or any other City-enacted exemption. The above Plastic Food Container Regulation is presently set forth in the San Diego Municipal Code at Section 42.0171 and is augmented by Sections 42.0170, 42.0712 and 42.0173, all of which are subject to amendment or modification by the City Council. LESSEE also agrees to comply with any such amendment or modification.
- 7.20 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease filed in the Office of the City Clerk on the 31st day of October 1969, as Document No. 729938 (and as further amended), which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.21 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of Mission Bay Park areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent park areas. Therefore, LESSEE and CITY agree that in the event of an assignment; in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 6.12 herein, LESSEE shall pay to CITY one percent (1%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, one percent (1%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or one percent (1%) of the amount of any increased loan or

encumbrance against the property in excess of the amount of the encumbrance needed to finance the improvements, plus the aggregate debt existing against the leased premises (whether refinanced or not). The amount upon which the one percent (1%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearance regarding claims and judgments. In the event of a transfer of several of LESSEE'S properties at once, the one percent (1%) of the gross amount may be determined by using the value accepted by the County Tax Assessor for San Diego County. In further determining the one percent (1%) transfer fee, costs of closing the transaction (i.e., commissions, title policies, appraisal and survey costs) shall be excluded from the gross amount paid provided that such amounts shall not exceed two percent (2%) of the proceeds of the subject transaction, and such closing costs shall be the only exclusions from such gross proceeds in determining the one percent (1%) transfer fee. Existing debt against the leased premises, whether internal or third party, shall not be excluded from gross proceeds in determining the one percent (1%) transfer fee. Immediately subsequent to CITY'S consent to any assignment, majority subletting or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph together with an acknowledgment from the proposed assignee, sublessee or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction be it an assignment, a sublease or a refinancing. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Transfers of 5% interest or less in LESSEE permitted by Section 4.7 above.
- c. Such other assignment for which the City Manager reasonably determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to the leasehold as an asset, or the income produced thereby.

7.22 Public Access. LESSEE shall allow the general public access to the perimeter walkways around the entire leased premises at all times in so far as practicable unless closure is allowed with the City Manager's prior written consent.

7.23 Water Quality - Best Management Practices. Mission Bay Park is a recreational aquatic park in the City of San Diego. The success of area businesses depends on the continued protection of water quality and the promotion of the enjoyment of Mission Bay's water resources by the public. To further these goals, the CITY

and LESSEE are committed to implementation of a program to manage activities in a manner which aids in the protection of water resources. Best Management Practices (BMP) are to be prepared by LESSEE, in order to control erosion and reduce the amount of pollutants and other sediments discharged from the leased premises into Mission Bay.

LESSEE will develop a comprehensive BMP plan that includes LESSEE'S existing practices and employing the water quality protection guidelines in this section by April 1, 2001, which shall thereafter be subject to annual review by CITY. Once a BMP has been developed by the LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE's responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP. In addition, LESSEE should include in each temporary or permanent slip rental agreement, the requirement for compliance with Mission Bay Park and marina rules and regulations, as well as BMP for maintenance of land/water quality within the leasehold.

The following are examples of BMP:

LAND

- a. Parking Lots. Cleaning and/or sweeping of parking lots and walkways on a daily basis is recommended. In addition, the use of water for cleaning and/or sweeping should be minimized. The sweeping program should include, but not be limited to, the removal of litter, oil, grease and particulate matter before it enters storm drains located on or around the leased premises. Catch basin inserts such as stormceptors or fossil filters should be installed at storm drains when any new construction is performed on the leased premises.
- b. Landscaping. To prevent an excess amount of water runoff into Mission Bay, grass filter strips or "fossil filters" should be utilized at all storm drain inlets that collect runoff from the existing landscaped areas of the parking lots. The use of drip irrigation in lieu of spray irrigation is suggested. The irrigation system shall operate in a manner that ensures vegetation survival. Inspection for damaged sprinkler heads and wear and tear should be performed regularly.

Water-conserving plants and turf should be used whenever feasible. Irrigation parts should be replaced immediately upon detection of failure. Intentional disposal of landscape debris into a storm drain should not be allowed. Water used for irrigation should not be allowed to run off the leased premises. Use of pesticides and fungicides that have been banned from manufacture by the U.S. EPA should be prohibited.

- c. Erosion Control. Vegetation and other appropriate ground cover on all slopes and other open areas should be maintained to provide adequate long-term soil protections and erosion control to prevent the transport of sediment from the leased premises during rainfall events and irrigation. Any erosion problems caused by rainfall, broken sprinkler heads, or irrigation should be

corrected promptly, and any transported sediment should be promptly removed before it reaches a storm drain or receiving water.

- d. Storm Drains. Hazardous material or waste, cleaning compounds or detergents (biodegradable or otherwise), run-off from cleaning operations of food containment vessels or transport devices, wash-down or wash-off containing organic matter either manmade or natural, liquid food products or grease, paint or paint cleaning materials, or anything else that is of a questionable nature should not be discharged or disposed into the storm drain system.

WATER

- e. Sewage Facilities. The discharge of effluent into marina waters should be expressly forbidden. All vessels with overnight capabilities that are berthed at the marina should be equipped with a marine toilet and holding tank. A portable toilet may be sufficient. Pump-out facilities (portable or permanent installation) should be provided by the marina, at no charge or for a nominal fee, to both marina tenants and the public. Pump-out facilities should be easily accessible to the public. Dye tablets should be provided to marina users by the marina operator.
- f. Annual Inspection. LESSEE should annually inspect each vessel moored at the marina to ensure that it is seaworthy, has dye tablets installed, and complies with all other BMP.
- g. Live-Aboards. LESSEE should monitor the frequency of visits to each slip in a good-faith effort to prevent live-aboard activity as delineated in Section 7.16, and San Diego Municipal Code Section 63.25.71.
- h. Maintenance/Repairs. Boat cleaning at the marina should be limited to light wash-down and in-water hull cleaning. Complete washing of vehicles, equipment and boats shall be done in a contained wash rack. Sandblasting, exterior hull painting, or other heavy maintenance is prohibited within the marina. Any boat maintenance task that could cause a toxic discharge shall not be conducted at the marina. Oil changes must be performed at a fuel dock or at a boat yard.
- i. Recyclables/Hazardous Materials. LESSEE will provide trash receptacles and containers for recyclables, that are cleaned on a regular basis and clearly marked and sited so that they are convenient for LESSEE's customers. All hazardous materials should be disposed of in a safe manner by LESSEE and/or LESSEE's staff. Use of any pesticide that has a high risk of runoff or leaching will be minimized and a suitable alternative utilized. The marina will provide a secure location to store hazardous wastes with each container properly labeled.

SECTION 8: SIGNATURES

8.1 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 7/27/00

By 
Real Estate Assets Director

LESSEE: HILTON SAN DIEGO CORPORATION

Date 7/27/00

By 
TED MIDDLETON

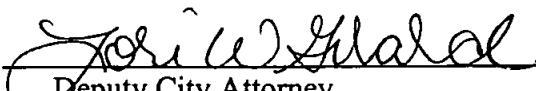
Its: SENIOR VICE PRESIDENT

By 

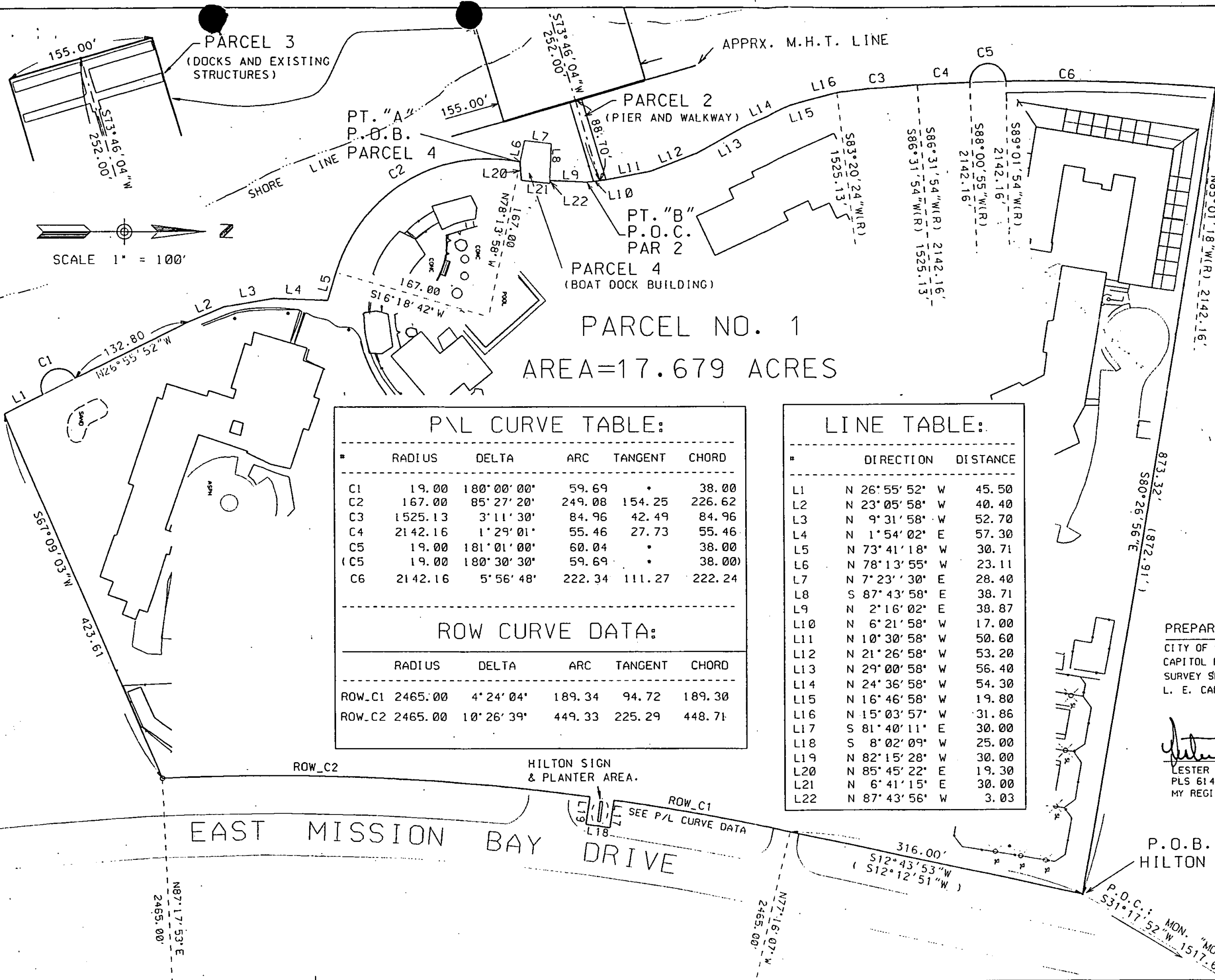
Its: 

APPROVED as to form and legality this 2nd day of October, 2000.

CASEY GWINN, City Attorney

By 
Deputy City Attorney

LMF:jmj-n
07/24/00
I:\WPO\2000\Fierro\LEASE-HILTON.wpd



BASIS OF BEARINGS/COORDINATES

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM (NAD83) ZONE 6, AS DETERMINED LOCALLY BY THE LINE BETWEEN HORIZONTAL CONTROL STATIONS (S.D. CITY) *GPS 1905* AND *GPS 1906*, I. E., *N 8-02-57 W*.

BASIS OF BEARINGS NOTE:
OLD TOWN TO LAMBERT BEARING ROTATION PER 1971 STD. DRAWING P-63 = 0° 30' 50.33".

LEGEND:

() = RECORD DATA PER 8646-D
DEL WEB LEASE

- REFERENCES:**
- 1) EXISTING LEGAL DESCRIPTION FOR HILTON LEASE PROVIDED BY R.E.A. DEPT. 6/30/94
 - 2) CITY OF SAN DIEGO FIELD NOTES, LEPAGE 8/10/94, LC 222-1704, W.O. 110012
 - 3) AERIAL MAPPING OF MISSION BAY PARK, NOV '91, 1216110.DGN & 1216K10.DGN NOTE: SEE MISSION BAY LEASE CALC FILE.
 - 4) CITY OF SAN DIEGO FIELD NOTES, BROOKS 9/19/95, LC 222-1704, W.O. 110012

P/L CURVE TABLE:					
#	RADIUS	DELTA	ARC	TANGENT	CHORD
C1	19.00	180°00'00"	59.69	*	38.00
C2	167.00	85°27'20"	249.08	154.25	226.62
C3	1525.13	3°11'30"	84.96	42.49	84.96
C4	2142.16	1°29'01"	55.46	27.73	55.46
C5	19.00	181°01'00"	60.04	*	38.00
C6	19.00	180°30'30"	59.69	*	38.00
C6	2142.16	5°56'48"	222.34	111.27	222.24

ROW CURVE DATA:					
	RADIUS	DELTA	ARC	TANGENT	CHORD
ROW_C1	2465.00	4°24'04"	189.34	94.72	189.30
ROW_C2	2465.00	10°26'39"	449.33	225.29	448.71

LINE TABLE:		
#	DIRECTION	DISTANCE
L1	N 26°55'52" W	45.50
L2	N 23°05'58" W	40.40
L3	N 9°31'58" W	52.70
L4	N 1°54'02" E	57.30
L5	N 73°41'18" W	30.71
L6	N 78°13'55" W	23.11
L7	N 7°23'30" E	28.40
L8	S 87°43'58" E	38.71
L9	N 2°16'02" E	38.87
L10	N 6°21'58" W	17.00
L11	N 10°30'58" W	50.60
L12	N 21°26'58" W	53.20
L13	N 29°00'58" W	56.40
L14	N 24°36'58" W	54.30
L15	N 16°46'58" W	19.80
L16	N 15°03'57" W	31.86
L17	S 81°40'11" E	30.00
L18	S 8°02'09" W	25.00
L19	N 82°15'28" W	30.00
L20	N 85°45'22" E	19.30
L21	N 6°41'15" E	30.00
L22	N 87°43'56" W	3.03

PREPARED BY:
CITY OF SAN DIEGO ENGINEERING AND CAPITOL PROJECTS DEPARTMENT, FIELD DIV., SURVEY SECTION, UNDER THE DIRECTION OF L. E. CARTER JR., SR. LAND SURVEYOR.

Lester E. Carter Jr. 3-19-97
LESTER E. CARTER JR., DATE
PLS 6148
MY REGISTRATION EXPIRES: 3-31-98



CITY OF SAN DIEGO ENGINEERING DEPT., SURVEY SECTION MISSION BAY HILTON NAD83 LEASE BOUNDARY	
DATE: 11/27/95	CHIEF: LEPAGE
W.O.: 110012	INSTR: MARQUIS
INDEX: 222-1704	CHAIN: TICE
PROJECT FILES:	CHAIN:
SURVEY HILTON103.	CADD:
SHEET 1 OF 1	L. CARTER JR.

LEGAL DESCRIPTION:

"E. MISSION BAY HILTON- LEASE AREA "

PAGE 1 of 3

That portion of the tide lands and submerged or filled lands of "False Bay", also known as Mission Bay, and including any poriton of the Pueblo Lands of San Diego according to Map thereof by James Pascoe, a copy of which is on file in the office of the County Recorder of said County and is known as Miscellaneous Map No. 36, described as follows:

PARCEL NO. 1

Commencing at City of San Diego Control Monument Station "MORENA", having NAD83 Lambert Zone 6 Coordinates of North 1866406.405 and East 6267555.712; Thence South 31°17'52" West, 1517.69 feet to the POINT OF BEGINNING, having NAD83 Lambert Zone 6 Coordinates of North 1865109.573 and East 6266767.295; Thence South 12°43'53" West, 316.00 feet to the beginning of a curve, concave Easterly, having a radius of 2465.00 feet, a radial line bears North 77°16'07 West; Thence Southerly along the arc of said curve 189.34 feet through a central angle of 4°24'04" to a point on said curve, to which a radial line which bears North 81°40'11" West; Thence South 81°40'11" East 30.00 feet; Thence South 8°02'09" West 25.00 feet; Thence North 82°15'28" West 30.00 feet to a point on a curve, concave Easterly, having a radius of 2465.00 feet, to which a radial line bears North 82°15'28" West; Thence Southerly along the arc of said curve 449.33 feet through a central angle of 10°26'39", to which a radial line bears South 87°17'53" West; Thence South 67°09'03" West 423.61 feet; Thence North 26°55'52" West 45.50 feet to a point on a curve, concave Easterly, having a radius of 19.00 feet, to which a radial line bears South 26°55'52" East; Thence Westerly, Northwesterly, Northerly and Northeasterly along the arc of said curve 59.69 feet through a central angle of 180°00'00", to a point on said curve, to which a radial line bears North 26°55'52" West; Thence North 26°55'52" West 132.80 feet; Thence North 23°05'58" West 40.40 feet; Thence North 9°31'58" West 52.70 feet; Thence North 1°54'02" East 57.30; Thence North 73°41'18" West 30.71 feet to the beginning of a curve, concave Easterly, having a radius of 167.00 feet, a radial line bears South 16°18'42" West; Thence Northwesterly and Northerly along the arc of said curve 249.08 feet through a central angle of 85°27'20", to a point hereinafter referred to as POINT "A", to which a radial line bears North 78°13'58" West; Thence North 85°45'22" East 19.30 feet; Thence North 6°41'15" East 30.00 feet; Thence North 87°43'56" West 3.03 feet; Thence North 2°16'02" East 38.87 feet to a point hereinafter referred to as POINT "B"; Thence North 6°21'58" West 17.00 feet; Thence North 10°30'58" West 50.60 feet; Thence North 21°26'58" West 53.20 feet; Thence North 29°00'58" West 56.40 feet; Thence North 24°36'58" West 54.30 feet; Thence North 16°46'58" West 19.80 feet; Thence North 15°03'57" West 31.86 feet to the beginning of curve, concave Easterly, having a radius of 1525.13 feet, a radial line bears South 83°20'24" West; Thence Northerly

(Continued on Page 2)

LEGAL DESCRIPTION:

"E. MISSION BAY HILTON- LEASE AREA "

PAGE 2 of 3

along the arc of said curve 84.96 feet through a central angle of 3°11'30" to the beginning of a compound curve, concave Easterly, having a radius of 2142.16 feet, a radial line bears South 86°31'54" West; Thence Northerly along the arc of said curve 55.46 feet through a central angle of 1°29'01" to an intersection with a curve, concave Easterly, having a radius of 19.00 feet, a radial line to said intersection bears South 1°59'06" East; Thence Westerly, Northwesterly, Northerly, Northeasterly and Easterly along the arc of said curve 60.04 feet through a central angle of 181°01'00" to a point on curve, concave Easterly, having a radius of 2142.16 feet, a radial line to said point bears South 89°01'54" West; Thence Northerly along the arc of said curve 222.34 feet through a central angle of 5°56'48", to which a radial line bears North 85°01'18" West; Thence South 80°26'56" East 873.32 feet to the POINT OF BEGINNING.

The above described parcel contains an area of 17.6793 acres more or less.

EXCEPTING THEREFROM all gas, oil, minerals or water upon or beneath said land. Reserving an easement and right of way for slope rights in excavation or embankment over the Easterly 10.00 feet thereof.

PARCEL NO. 2 (Pier and Walkway)

The revocable permission to maintain a concrete walkway and portions of a pier serving PARCEL No. 3, being a strip 13.00 feet wide lying 6.50 feet on each side of the following described line:

Commencing at POINT "B" as set out and established in Parcel No. 1 above; Thence North 6°21'58" West 12.00 feet to the POINT OF BEGINNING, NAD 83 Zone 6 Lambert Coordinates of said POINT OF BEGINNING being North 1864601.568 and East 6266002.588; Thence South 73°46'04" West 88.70 feet to the Mean High Tide Line of Mission Bay.

The side lines of said 13.00 foot strip to be extended or shortened to terminate as follows:

On the West at the mean high tide line and on the East, at the Westerly line of above said PARCEL 1.

(Continued on Page 3)

LEGAL DESCRIPTION:

"E. MISSION BAY HILTON- LEASE AREA "

Page 3 of 3

PARCEL NO. 3 (Docks)

A 155.00 foot wide strip of land Southwesterly of the Mean High Tide Line lying 77.50 feet on each side of the following described line:

BEGINNING at the POINT OF BEGINNING for aforesaid Parcel No. 2; Thence South 73°46'04" West, 252.00 feet.

On the East, the side lines of said 155.00 foot strip are to be extended or shortened to terminate at the Mean High Tide Line.

The above described parcel contains an area of 1,144.00 Square Feet more or less.

PARCEL NO. 4 (Boat Dock Building)

Being the revocable permission to maintain a boat dock building on the following described parcel.

BEGINNING at POINT "A" as set out and established in Parcel No. 1 above; Thence North 78°13'55" West 23.11 feet; Thence North 7°23'30" East 28.40 feet; Thence South 87°43'58" East 38.71 feet; Thence South 87°43'56" East 3.03 feet; Thence South 6°41'15" West 30.00 feet; Thence South 85°45'22" West 19.30 feet to the POINT OF BEGINNING.

The above described parcel contains an area of 1281.33 Square Feet more or less.

 3-19-97
Lester E. Carter Jr. PLS 6148
Sr. Land Surveyor, Field Engineering
My Registration Expires 3/31/98



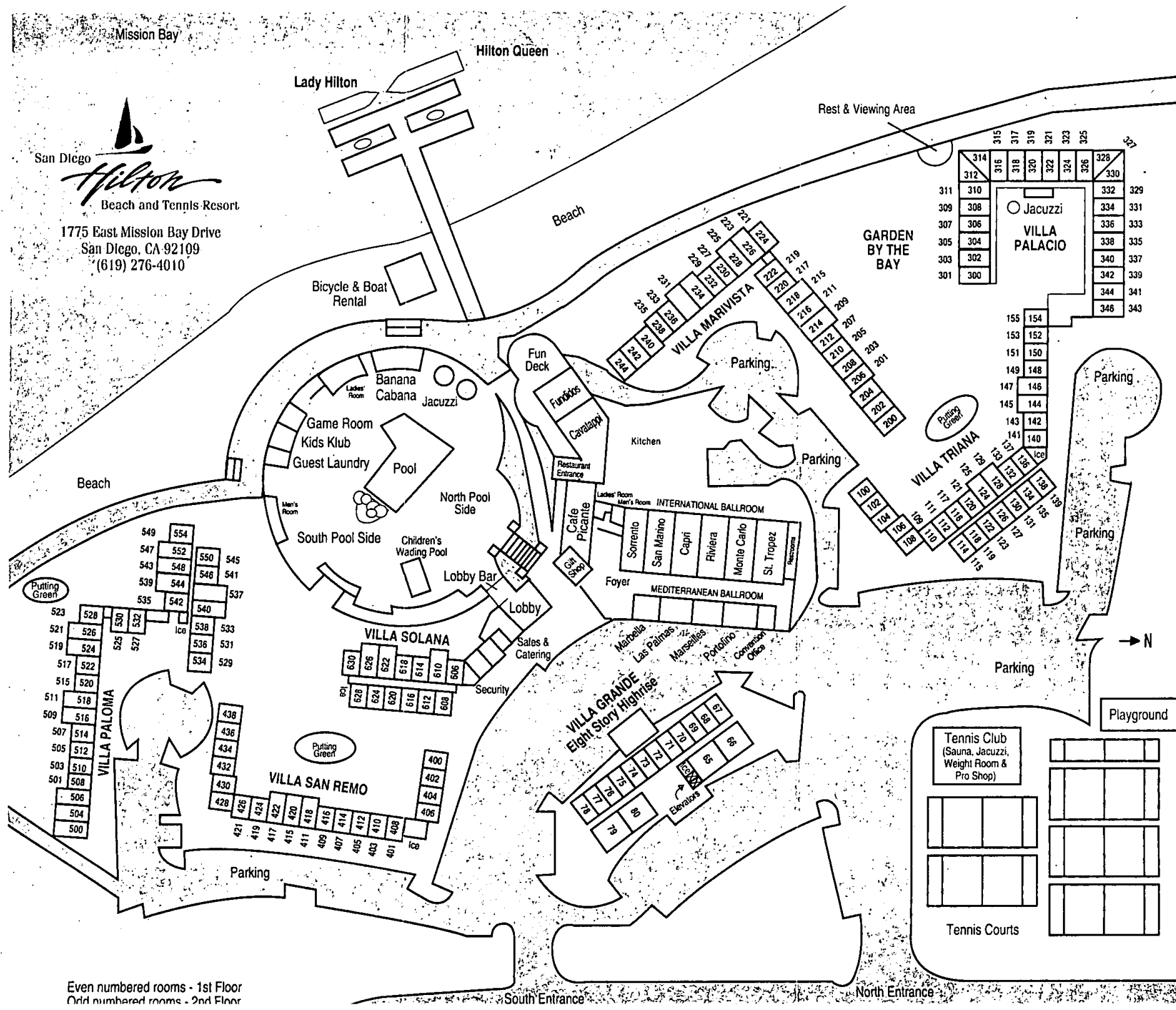
Mission Bay

San Diego

 Beach and Tennis Resort

1775 East Mission Bay Drive
 San Diego, CA 92109
 (619) 276-4010

9.3 General Development Plan.

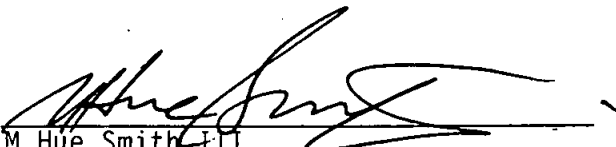


Even numbered rooms - 1st Floor
 Odd numbered rooms - 2nd Floor

9.4 Corporate Name.

HILTON SAN DIEGO CORPORATION
CORPORATE NAME

I, M. Hue Smith III, certify that I am the
Vice President and Secretary of the corporation named in the attached
agreement; that Ted Middleton, who signed this agreement on behalf of
the corporation, was then Senior Vice President of said corporation; that said
agreement was duly signed for and on behalf of said corporation by authority of its governing body,
the corporation's By-Laws,
pursuant to ~~a resolution duly adopted by its Board of Directors on~~ in the attached Exhibit A, 2000,
and is within the scope of its corporate powers; and that set out ~~below~~ are the names of the officers
and directors of said corporation.

By 
M. Hue Smith III
Vice President and Secretary

CORPORATE SEAL

-EXHIBIT A-

Directors, Officers Report

Hilton San Diego Corporation

Thursday, July 27, 2000

DIRECTORS

Dieter H. Huckestein Director

Ted Middleton Director

OFFICERS

Robert M. La Forgia Senior Vice President and Treasurer

Ted Middleton Senior Vice President

Hilmar A. Rosenast Senior Vice President

M. Hue Smith, III Vice President and Secretary

W. Steven Standefer Vice President - Tax

Dieter H. Huckestein President

Bryan S. White Vice President and Assistant Secretary

Patrick J. Duffy Assistant Secretary

Catherine Schneider Assistant Secretary

RESOLUTION NUMBER R- 293815

ADOPTED ON SEP 12 2000

WHEREAS, in March of 1994, the City Council authorized exclusive negotiations with the lessee of the San Diego Hilton Resort, Hilton San Diego Corporation [Lessee], who proposed to invest \$25 million dollars in improvements to the hotel interior and exterior [Project], and requested a twenty-five year lease extension; and

WHEREAS, City staff began negotiations for a new lease with the Lessee, and the Lessee began work on the Project, which was completed in 1995; and

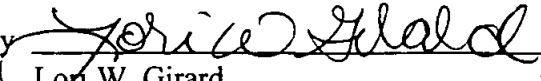
WHEREAS, the City and Lessee have negotiated a fifty-year Percentage Lease, retroactive to January 1996, at the initial rental rate of the greater of an annual guaranteed minimum rent ranging from \$1.1 million to \$1.4 million during the first ten lease years, or various percentage rates of the Lessee's gross revenue, the fair market rate as determined by City valuation staff; and

WHEREAS, the property to be leased consists of approximately 18 acres and is located in Mission Bay Park, and is more particularly described in the Percentage Lease; NOW, THEREFORE,

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, a fifty-year Percentage Lease with Hilton

San Diego Corporation under the terms and conditions set forth in that lease agreement on file in
the office of the City Clerk as Document No. RR- 293815.

APPROVED: CASEY GWINN, City Attorney

By 
Lori W. Girard
Deputy City Attorney

LWG:cdk
08/30/00
Or.Dept:REA
Aud.Cert:N/A
R-2001-346
Form=leaser.frm

Passed and adopted by the Council of San Diego on September 12, 2000 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, STALLINGS, McCARTY, VARGAS

NAYS: _____

NOT PRESENT: MAYOR GOLDING

VACANT: DISTRICT 5 VACANT

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

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

(SEAL)

By: Ramone Lewis, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 293815, passed and adopted by the Council of The City of San
Diego, California on September 12, 2000.

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

(SEAL)

By: Ramone Lewis, Deputy

**CONSENT TO LICENSE AMENDMENT, RENEWAL AND EXTENSION THIRD
AMENDMENT TO LICENSE**

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

HILTON HOTEL SAN DIEGO CORPORATION

("Lessee") and filed in the Office of the City Clerk as Document No. RR-293815 dated September 12, 2000, hereby consents to that certain Third Amendment To License Dated October 1, 2002, to the Space Licence Agreement ("Agreement") dated April 28, 1998, License Amendment, Renewal and Extension Agreement No. 1 dated December 1, 1999 and Second Amendment to License dated September 14, 2001 between the above Lessee ("Licensor") and

SCUBA SAN DIEGO, INC., a California Corporation

("Licensee"). Said Agreement shall be subordinate to the Master Lease in all respects. The City is merely approving the 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 Agreement. The City is not bound by any term or condition in the Agreement 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:

ASSIGNMENT AND SUBLICENSING: Licensee shall not assign the license or sublicense the licensed area or any part thereof without the prior written consent of City. An assignment by operation of law shall automatically terminate this consent.

HOLD HARMLESS: Licensee shall assume the defense of, indemnify and hold harmless City 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 premises, the condition of the premises 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 the City, its agents, officers, or employees.

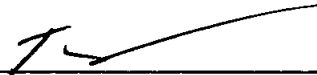
LEGAL PROCEEDINGS: Should it become necessary for Licensor or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this consent, the Master Lease or the Agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

INSURANCE: Licensee shall be insured by an insurance carrier acceptable to the Licensor and City against loss from public liability arising from the use or condition or operation conducted on

the permitted use space or any space designated by the Licensor for license use. Minimum coverage shall be One Million Dollars (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of policy of insurance shall be filed with the City and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said 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.

THE CITY OF SAN DIEGO

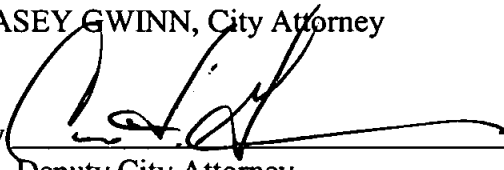
Dated 3-28-03

By 
Tim C. Rothans
Deputy Director
for the City Manager

APPROVED AS TO FORM:

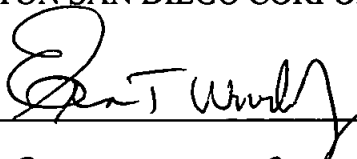
CASEY GWINN, City Attorney

Dated 4-22-03

By 
Deputy City Attorney

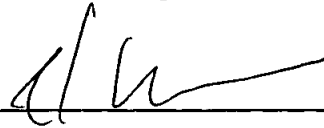
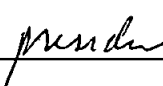
HILTON SAN DIEGO CORPORATION

Dated 3/10/03

By 
Its: Senior Vice President

SCUBA SAN DIEGO, INC.,
a California Corporation

Dated 03/07/03

By 
Its: 

1
2
3 **THIRD AMENDMENT TO LICENSE**

4 THIS THIRD AMENDMENT TO LICENSE ("Third Amendment"), dated for reference
5 purposes only October 1, 2002, is by and between **Hilton San Diego Corporation**, by its
6 Managing Agent Hilton Hotels Corporation, d/b/a Hilton San Diego Resort, Licensor, and **SCUBA**
7 **San Diego, Inc.**, a California corporation, Licensee;

8 WITNESSETH:
9

10 WHEREAS, Licensor and Licensee have entered into that certain Space License
11 Agreement dated April 28, 1998 as amended by License Amendment, Renewal and Extension
12 Agreement No. 1 dated December 1, 1999, and as amended by Second Amendment to License
13 dated September 14, 2001 (collectively, the "Original License") for that certain space in the
14 **Hilton San Diego Resort** (the "Hotel") located at **1775 East Mission Bay Drive, San Diego,**
15 **California 92109** (the "Original Space"), for a term ending September 30, 2002, under terms and
16 conditions further described in the Original License; and,
17

18 WHEREAS, it is now the intention of Licensor and Licensee to renew, extend and to
19 further amend, modify and supplement the Original License as set forth herein; and,
20

21 WHEREAS, capitalized terms not defined herein shall have the meaning set forth in the
22 Original License.
23

24 NOW THEREFORE, in consideration of the mutual covenants and provisions herein
25 contained and other good and valuable consideration, the parties hereto agree that the License shall
26 be amended as follows:
27

- 28 1. **AMENDMENT:** This Third Amendment modifies and amends the Original License. In the
29 event of any conflict between any provision of this Third Amendment and any provision of
30 the Original License, this Third Amendment shall control. The Original License, as hereby
31 modified and amended, shall be referred to herein as the "License." Any reference in the
32 Original License to the "License" shall, from and after the date hereof, be deemed to refer to
33 the Original License, as amended hereby.
34
- 35 2. **TERM:** The term of the License shall be and is hereby amended, extended and renewed for a
36 period of **One (1) year** (the "New Term") commencing **October 1, 2002**, and ending
37 **September 30, 2003**, unless earlier terminated as provided for herein.
38
- 39 3. **LICENSE FEE:** There is no change in the License Fee during the New Term of the License;
40 therefore, Licensee shall continue to pay Licensor the License Fee set forth in the Original
41 License.
42
- 43 4. **EXHIBIT "A":** Estoppel and Release, attached hereto shall by this reference be incorporated in
44 and constitute an integral part of the License Agreement.
45

1 **5. MISCELLANEOUS.**

- 2
- 3 A. Counterparts. This Third Amendment may be executed in counterparts, each
- 4 of which, when executed and delivered, shall constitute an original, and all of
- 5 which together shall constitute one and same agreement.
- 6
- 7 B. Applicable Law. This Third Amendment shall be construed under the laws of
- 8 the State in which the Hotel is located.
- 9
- 10 C. Drafting and Preparation. Each party has cooperated and participated in the
- 11 drafting and preparation of this Third Amendment. Therefore, if any
- 12 construction is to be made of this Third Amendment, both parties shall be
- 13 construed to be equally responsible for the drafting and preparation of same.
- 14

15 Except as modified herein above, the remaining provisions of the Original License are

16 hereby ratified, confirmed and remain in full force and effect.

17

18 IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of

19 the day and year first above written.

20

21 Hilton San Diego Corporation

22 by its Managing Agent

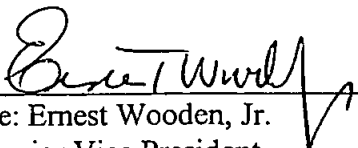
23 Hilton Hotels Corporation

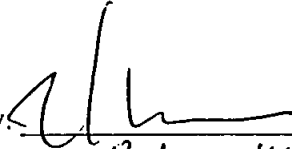
24 d/b/a Hilton San Diego Resort

25

SCUBA San Diego, Inc.
a California corporation

26

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

By: 
Name: Rodney M. Watkins
Its: President

30 \\
31 \\
32 \\
33 \\
34 \\

1 **EXHIBIT "A"** to Third Amendment to License dated October 1, 2002, by and between Hilton San
2 Diego Corporation, by its Managing Agent Hilton Hotels Corporation d/b/a Hilton San Diego
3 Corporation, Licenser, and SCUBA San Diego, Inc., a California corporation, Licensee;

4
5 **ESTOPPEL AND RELEASE**
6

7 **Estoppel and Release.** In consideration of the foregoing, Licensee hereby (i) certifies to **Hilton**
8 **San Diego Corporation, Hilton Hotels Corporation and the Hotel** that the Agreement (the
9 "Agreement") are in full force and effect, and no default, claim, breach, offset, defense to full
10 and strict enforcement, waiver or estoppel (collectively, a "Claim"), or condition that could with
11 the passage of time, giving of notice or otherwise become a Claim, currently exists or has existed
12 on the part of **Hilton San Diego Corporation, Hilton Hotels Corporation or the Hotel** under
13 the Agreement; (ii) fully and forever releases, discharges, and agrees to indemnify, defend, and
14 hold harmless **Hilton San Diego Corporation, Hilton Hotels Corporation and the Hotel** and
15 each of their respective former and present owners, and each of such entities' officers,
16 employees, directors, shareholders, alter egos, affiliates, partners, representatives, agents,
17 attorneys, successors and assigns (collectively, the "Released Parties"), from any and all
18 Claims, demands, liens, actions, agreements, suits, causes of action, obligations, controversies,
19 debts, costs, attorneys' fees, expenses, damages, judgments, orders, and liabilities of whatever
20 kind or nature in law, equity, or otherwise, whether now known or suspected which have existed
21 or may have existed, or which do exist or which hereafter can, shall, or may exist, based on any
22 facts, events, or omissions occurring from any time on or prior to the execution of this
23 Amendment which arise out of, concern, pertain, or relate in any way to the Agreements (the
24 "Released Claims"). Licensee acknowledges that there is a possibility that subsequent to the
25 execution of this Amendment, Licensee will discover facts or incur or suffer claims which were
26 unknown or unsuspected at the time this Amendment was executed, and which if known by
27 Licensee at that time may have materially affected Licensee's decision to execute this
28 Amendment. Licensee hereby acknowledges and agrees that by reason of this Amendment and
29 the release contained in this Amendment, it is assuming any risk of such unknown facts and such
30 unknown and unsuspected claims. Licensee has been advised of the existence of Section 1542 of
31 the California Civil Code ("Section 1542"), which provides:

32
33 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
34 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
35 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
36 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
37 DEBTOR.
38

39 Notwithstanding such provisions, this release shall constitute a full release in accordance with its
40 terms. Licensee knowingly and voluntarily waives the provisions of Section 1542, as well as any
41 other statute, law, or rule of similar effect (or in any state having similar statutes governing
42 releases). In connection with such waiver and relinquishment Licensee hereby acknowledges
43 that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts
44 in addition to or different from those which it now knows or believes to be true with respect to
45 the matters released herein. Nevertheless, it is the intention of Licensee, through this
46 Amendment, and with the advice of its respective counsel, to fully and finally settle and release

1 all such matters, and all claims relative thereto, which do now exist, may exist or have existed
2 between and among the parties hereto. Licensee hereby acknowledges that it has been advised by
3 its respective legal counsel, understand and acknowledge the significance and consequence of
4 this release and of this specific waiver of Section 1542 and other such laws.
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and constitute an integral part of the License Agreement.

6. **MISCELLANEOUS.**

A. Counterparts. This Second Amendment may be executed in counterparts, each of which, when executed and delivered, shall constitute an original, and all of which together shall constitute one and same agreement.

B. Applicable Law. This Second Amendment shall be construed under the laws of the State in which the Hotel is located.

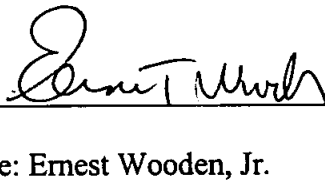
C. Drafting and Preparation. Each party has cooperated and participated in the drafting and preparation of this Second Amendment. Therefore, if any construction is to be made of this Second Amendment, both parties shall be construed to be equally responsible for the drafting and preparation of same.

Except as modified herein above, the remaining provisions of the Original License are hereby ratified, confirmed and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first above written.

Hilton San Diego Corporation
by its Managing Agent
Hilton Hotels Corporation
d/b/a Hilton San Diego Resort

SCUBA San Diego, Inc.
a California corporation

By: 
Name: Ernest Wooden, Jr.

By: 
Name: Rodney M. Watkins
Its: president

Its: Senior Vice President

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Approved:

date

1 **EXHIBIT "A"** to Second Amendment to License dated September 14, 2001, by and between
2 Hilton San Diego Corporation, by its Managing Agent Hilton Hotels Corporation d/b/a Hilton San
3 Diego Corporation, Licensor, and SCUBA San Diego, Inc., a California corporation, Licensee;

4
5 **AMERICANS WITH DISABILITIES ACT**
6

7 The Americans with Disability Act of 1990 (42 U.S.C. SS 12101 et seq.) (the "ADA"),
8 effective January 26, 1992, is a comprehensive Federal civil rights law which, among other things,
9 prohibits discrimination against disabled persons with respect to the use of certain "public
10 accommodations" as defined under that Act. That law provides in part that:

11
12 "No individual shall be discriminated against on the basis of disability in the full and equal
13 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place
14 of public accommodation by any person who owns, leases (or leases to), or operates a place of
15 public accommodation."
16

17 It is the policy of Licensor to comply with its obligations as a public accommodation under
18 the ADA and to require its Licensees to do the same with respect to Licensed Space.
19

20 The ADA permits the parties to a license to allocate responsibility for compliance with the
21 ADA as between themselves. Accordingly, to the extent that the Hotel or the Licensed Space are
22 "public accommodations" as defined in the ADA, the parties agree that the responsibility shall be
23 allocated as between themselves as follows:
24

25 1. Licensor agrees that it shall be responsible for complying with the ADA in all respects,
26 as it affects the common areas of the Building, including making required "readily achievable"
27 changes to remove any architectural or communications barriers and modifying policies applicable
28 to all Licensees as may be necessary.
29

30 Licensor agrees that it will defend, indemnify and hold harmless Licensee from and against
31 any and all liability, claims, damages and expenses, (including reasonable attorneys' fees and costs)
32 which may arise out of any legitimate claim by any person for failure of Licensor to comply with its
33 obligation under this subparagraph 1.
34

35 2. Licensee agrees that it shall familiarize itself with the requirements of the ADA and that
36 it shall be responsible for complying with the ADA in all respects, as it affects the Licensed Space,
37 including but not limited to, making required "readily achievable" changes to remove any
38 architectural or communications barriers, and providing auxiliary aides and services within the
39 Licensed Space.
40

41 3. Licensee further agrees that any and all alterations made to the Licensed Space during
42 the term of this License Agreement will comply with the requirements of the ADA. All plans for
43 alterations that must be submitted to the Licensor under the provisions of the License Agreement
44 must include a statement from a Leased Architect or Engineer certifying that they have reviewed
45 the plans, and that the plans comply with all applicable provisions of the ADA. Any subsequent
46 approval or consent to the plans by the Licensor shall not be deemed to be a representation of the

1 Licensors part that the plans comply with the ADA which obligation shall remain with the License
2 Agreement.

3
4 Licensee agrees that it will defend, indemnify and hold harmless **Licensors, Hilton Hotels**
5 **Corporation its affiliates and subsidiaries, and the Hotel** from and against any and all liability,
6 claims, damages and expenses (including reasonable attorneys' fees and costs) which may arise out
7 of any legitimate claim by any person for failure of Licensee to comply with its obligation under
8 this subparagraph 3.

9
10 Nothing contained herein is intended to create any rights in any third parties.

1 **EXHIBIT "B"** to Second Amendment to License dated September 14, 2001, by and between
2 Hilton San Diego Corporation, by its Managing Agent Hilton Hotels Corporation d/b/a Hilton San
3 Diego Corporation, Licensor, and SCUBA San Diego, Inc., a California corporation, Licensee;

4
5 **ESTOPPEL AND RELEASE**
6

7 **Estoppel and Release.** In consideration of the foregoing, Licensee hereby (i) certifies to **Hilton**
8 **San Diego Corporation, Hilton Hotels Corporation and the Hotel** that the Agreement (the
9 "Agreement") are in full force and effect, and no default, claim, breach, offset, defense to full
10 and strict enforcement, waiver or estoppel (collectively, a "Claim"), or condition that could with
11 the passage of time, giving of notice or otherwise become a Claim, currently exists or has existed
12 on the part of **Hilton San Diego Corporation, Hilton Hotels Corporation or the Hotel** under
13 the Agreement; (ii) fully and forever releases, discharges, and agrees to indemnify, defend, and
14 hold harmless **Hilton San Diego Corporation, Hilton Hotels Corporation and the Hotel** and
15 each of their respective former and present owners, and each of such entities' officers,
16 employees, directors, shareholders, alter egos, affiliates, partners, representatives, agents,
17 attorneys, successors and assigns (collectively, the "Released Parties"), from any and all
18 Claims, demands, liens, actions, agreements, suits, causes of action, obligations, controversies,
19 debts, costs, attorneys' fees, expenses, damages, judgments, orders, and liabilities of whatever
20 kind or nature in law, equity, or otherwise, whether now known or suspected which have existed
21 or may have existed, or which do exist or which hereafter can, shall, or may exist, based on any
22 facts, events, or omissions occurring from any time on or prior to the execution of this
23 Amendment which arise out of, concern, pertain, or relate in any way to the Agreements (the
24 "Released Claims"). Licensee acknowledges that there is a possibility that subsequent to the
25 execution of this Amendment, Licensee will discover facts or incur or suffer claims which were
26 unknown or unsuspected at the time this Amendment was executed, and which if known by
27 Licensee at that time may have materially affected Licensee's decision to execute this
28 Amendment. Licensee hereby acknowledges and agrees that by reason of this Amendment and
29 the release contained in this Amendment, it is assuming any risk of such unknown facts and such
30 unknown and unsuspected claims. Licensee has been advised of the existence of Section 1542 of
31 the California Civil Code ("Section 1542"), which provides:

32
33 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
34 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
35 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
36 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
37 DEBTOR.
38

39 Notwithstanding such provisions, this release shall constitute a full release in accordance with its
40 terms. Licensee knowingly and voluntarily waives the provisions of Section 1542, as well as any
41 other statute, law, or rule of similar effect (or in any state having similar statutes governing
42 releases). In connection with such waiver and relinquishment Licensee hereby acknowledges
43 that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts
44 in addition to or different from those which it now knows or believes to be true with respect to
45 the matters released herein. Nevertheless, it is the intention of Licensee, through this
46 Amendment, and with the advice of its respective counsel, to fully and finally settle and release

1 all such matters, and all claims relative thereto, which do now exist, may exist or have existed
2 between and among the parties hereto. Licensee hereby acknowledges that it has been advised by
3 its respective legal counsel, understand and acknowledge the significance and consequence of
4 this release and of this specific waiver of Section 1542 and other such laws.
5 \\\

CONSENT TO LICENSE AMENDMENT, RENEWAL AND EXTENSION
AGREEMENT No. 1

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

HILTON HOTEL SAN DIEGO CORPORATION

("Lessee") and filed in the Office of the City Clerk as Document No. RR-293815 dated September 12, 2000, hereby consents to that certain License Amendment, Renewal and Extension Agreement No. 1 dated December 1, 1999, to the Space Licence Agreement ("Agreement") dated April 28, 1998 between the above Lessee ("Licensor") and

SCUBA SAN DIEGO, INC., a California Corporation

("Licensee"). Said Agreement shall be subordinate to the Master Lease in all respects: The City is merely approving the 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 Agreement. The City is not bound by any term or condition in the Agreement 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:

ASSIGNMENT AND SUBLICENSING: Licensee shall not assign the license or sublicense the licensed area or any part thereof without the prior written consent of City. An assignment by operation of law shall automatically terminate this consent.

HOLD HARMLESS: Licensee shall assume the defense of, indemnify and hold harmless City 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 premises, the condition of the premises 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 the City, its agents, officers, or employees.

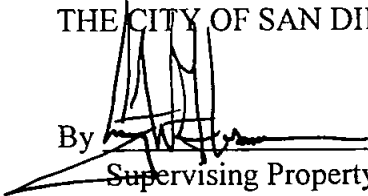
LEGAL PROCEEDINGS: Should it become necessary for Licensor or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this consent, the Master Lease or the Agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

INSURANCE: Licensee shall be insured by an insurance carrier acceptable to the Licensor and City against loss from public liability arising from the use or condition or operation conducted on the permitted use space or any space designated by the Licensor for license use. Minimum coverage shall be One Million Dollars (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY

in an occurrence form. A copy of policy of insurance shall be filed with the City and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said 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.

Dated 12/15/00

THE CITY OF SAN DIEGO

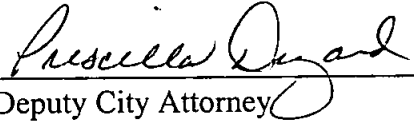
By 

Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

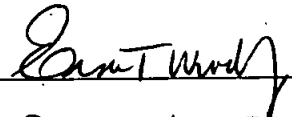
Dated 12/20/00

By 

Deputy City Attorney

HILTON SAN DIEGO CORPORATION

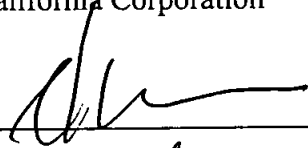
Dated 12-3-00

By 

Its: Senior Vice President

SCUBA SAN DIEGO, INC.,
a California Corporation

Dated 11/21/2000

By 

Its: president

LICENSE AMENDMENT, RENEWAL AND EXTENSION AGREEMENT NO. 1

THIS AMENDMENT, RENEWAL AND EXTENSION AGREEMENT NO. 1, dated for reference purposes only, **September 25, 1998**, by and between **Hilton Hotels Corporation**, as **Managing Agent for Hilton San Diego Corporation**, Licensors, and **SCUBA San Diego, Inc.**, a **California corporation**, Licensee;

WITNESSETH:

WHEREAS, by Indenture of License made and entered into **April 28, 1998**, by and between **Hilton Hotels Corporation as Managing Agent for Hilton San Diego Corporation**, Licensors, and **SCUBA San Diego, a California corporation**, Licensee (the "License"), wherein Licensors licensed unto Licensee that certain space in the **San Diego Hilton Beach & Tennis Resort**, located at **1775 E. Mission Bay Drive, San Diego, CA 92109**, for a term of **one (1) year** commencing **May 26, 1998**, and ending **May 25, 1999**, under terms and conditions further described in the License; and,

WHEREAS, it is now the intention of the Licensors and Licensee to enter into an agreement amending, renewing and extending the License; and,

NOW THEREFORE, in consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, the parties hereto agree that the License shall be amended as follows:

1. TERM: The term of the License shall be and is hereby amended, extended and renewed for a period of **four (4) months**. The License shall hereafter terminate on **September 30, 1999**.

Except as modified herein above, the remaining provisions of the License are hereby ratified, confirmed and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this License Amendment Agreement as of the day and year first above written.

Hilton Hotels Corporation,
as Managing Agent for
Hilton San Diego Corporation,

By: _____
Hilmar Rosenast,
Its: Sr. Vice President

SCUBA San Diego, Inc.,
a California corporation

By:  _____
Rodney M. Watkins

City of San Diego

By: _____
Its: _____

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CONSENT TO SPACE LICENSE AGREEMENT

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

Hilton Hotels, USA

(LESSEE) and filed in the Office of the City Clerk as Document 606775 dated May 11, 1962 and as amended, hereby consents to that certain Space License Agreement (AGREEMENT) between the above LESSEE (LICENSOR) and

SCUBA San Diego, Inc., a California corporation

(LICENSEE) dated April 28, 1998. Said AGREEMENT as amended, renewed and extended shall be subordinate to the MASTER LEASE in all respects. The CITY is merely approving the 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 AGREEMENT. The CITY is not bound by any term or condition in the AGREEMENT 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:

ASSIGNMENT AND SUBLICENSING: LICENSEE shall not assign this AGREEMENT or sublicense the licensed area or any part thereof without the prior written consent of CITY. An assignment by operation of law shall automatically terminate this AGREEMENT.

HOLD HARMLESS: LICENSEE shall assume the defense of, indemnify and hold harmless CITY 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 premises, the condition of the premises 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 agents, officers, or employees.

LEGAL PROCEEDINGS: Should it become necessary for LICENSOR or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this AGREEMENT, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

THE CITY OF SAN DIEGO

Dated 12/2/98

By Linda M. Fiero
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Dated 2/20/99

By Presulla Demand
Deputy City Attorney

SCUBA San Diego, Inc.,
a California corporation

Dated 1/9/99

By Alb...

LMF:jmj
November 20, 1998
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SPACE LICENSE AGREEMENT

THIS SPACE LICENSE AGREEMENT ("Agreement") is executed as of the 28th day of April 1998, by and between Hilton San Diego Corporation, Hilton Hotels Corporation, Agent ("Licensor"), and SCUBA San Diego, Inc., a California corporation ("Licensee").

RECITAL

WHEREAS, Licensee is in the business of providing Services and Rental of certain watersports equipment as more particularly defined below in Paragraph 5; and

WHEREAS, Hilton desires to grant to Licensee the right to provide its services in the Hotel and Licensee desires to acquire such right; and,

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. **LICENSE.** Licensor hereby licenses to Licensee, and Licensee hereby licenses from Licensor, the nonexclusive right to operate its business as more particularly defined in Paragraph 5 in a space to be determined by Licensor (the "Licensed Area") located in the real property situated at 1775 E. Mission Bay Drive, San Diego CA 92109, which property is commonly known as the San Diego Hilton Beach & Tennis Resort ("Hotel"). The Licensed Area, as it may be changed by Licensor from time to time as defined in Paragraph 7.

2. **NATURE OF LICENSE.** The license granted hereby is a non-exclusive license for Licensee to use the Licensed Area solely as required to perform its obligations hereunder, revocable according to the terms hereof. In no event shall this license be deemed or construed to run with the land or create or vest any easements or other rights in Licensor's property. Licensee agrees that no permanent or possessory interest shall accrue to Licensee or its licensees in Licensor's property at any time or by exercise of the permission given hereunder, and that Licensee shall not claim any such interest in Licensor's property. THIS LICENSE DOES NOT CREATE ANY RECORDABLE INTEREST AND SHALL NOT BE RECORDED IN ANY OFFICIAL RECORDS.

3. **TERM.** Unless sooner terminated as provided herein, this Agreement shall be for an initial term of one (1) year, commencing as of May 26, 1998, and ending on May 25, 1999.

4. **LICENSE FEE.** The license fee ("License Fee") payable by Licensee for the Licensed Area shall be twenty percent (20%) of gross sales related to Scuba excursions, classes, and rental equipment, and twelve (12%) percent of gross retail sales for certain merchandise items bearing Licensee's logo subject to approval as described in Paragraph 5.

i) **GROSS RECEIPTS:** The term "Gross Receipts" includes the total of all sales of merchandise, all charges for services for which charge is made,

and the gross receipts from all business transacted, in, upon and from the Licensed Area during the term by Licensee and all others occupying the Licensed Area or any part thereof.

ii) The term "Gross Receipts" excludes bona-fide refunds and credits for services not performed and charges for Services performed. Also excluded are any federal, state, or local tax which is collected by the Licensee from its customers for any governing authority provided that said taxes are charged and stated separately and not included in the purchase price.

iii) The license fees shall be payable in lawful money of the United States at the Executive Office of the Hotel or at such other place as Hilton shall designate in writing.

iv) On or before the 10th of each month Licensee shall submit to Hilton a report showing, in reasonable detail, the gross receipts for the prior month, which statement will be certified as correct by Licensee. Licensee agrees that it will keep such accounts of the business conducted and transacted from the Hotel as may be necessary in order to compute the consideration payments due hereunder and will, upon request, make such accounts available for inspection and audit by Hilton or its representatives at all times during regular business hours.

5. USE OF LICENSED AREA. Licensee shall use the Licensed Area only for providing the following tours and rental equipment: Scuba Experience; Scuba Adventures; Snorkel Adventures; Scuba Excursions; Scuba Certified Classes; Rental of Scuba Equipment; Pool Floats; and, the retail sale of Licensee's Logo merchandise (all such merchandise shall be subject at all times to Licensor's approval, which may be granted or rescinded in its absolute and sole discretion). Licensee's operations shall be conducted in a manner not in violation of the ground lease or any laws, federal, state or local, or of any regulation of any governmental body having jurisdiction over the Hotel, Licensee's operations and/or the Licensed Area, all of which Licensee shall fully comply with. Licensee shall be responsible for the maintenance and repair of the Licensed Area and all equipment associated with the operation of Licensee's business. Licensor may enter the Licensed Area at any time. Licensor shall have complete design and decor approval for any signs or other materials viewable by hotel guests or patrons. Any changes, repairs, replacements or other work on or around the Licensed Area shall be made in a workmanlike manner as promptly as possible with minimum disruption to Hotel operations and only with the Hotel's prior consent in each instance. Licensee will pay all the bills incurred for installation of its equipment and trade fixtures, including without limitation labor and materials. Upon the expiration or other termination of this License, the Licensee shall deliver to the Licensor the Licensed Area in good and clean condition and repair with all electrical and mechanical systems in good working order, ordinary wear and tear excepted.

6. OPERATION OF LICENSEE'S BUSINESS. Licensee shall collect revenues from the sale of its services and remit the License Fee payable to Licensee as defined in Paragraph 4. Licensor shall comply with all applicable laws, visas, work permits, entry documents, codes, regulations, ordinances and rules ("Laws") with respect to the work to be performed and the Licensed Area promulgated by any and all federal, state, municipal or other legislative bodies, courts or agencies having jurisdiction over the business of Licensee, over services of the nature of the services provided hereunder or over the procurement, storage or use of any of the equipment, materials or supplies utilized by Licensee in connection therewith.

Licensee shall, at its expense, procure and maintain all permits or licenses which may be required at any time in connection with the performance of work hereunder, or the procurement, storage, maintenance, operation or use of the Licensed Area, and shall furnish to Licensor copies of each such permit or license upon request, shall obtain and pay for all inspections and give all notices required in connection herewith promptly and truthfully, and shall ensure that there is not interruption in its lawful ability to provide the services. Licensee agrees that it will conduct its activities in a lawful and non-tortious manner and specifically will not engage in any illegal, unconscionable, unlicensed or unethical acts, including without limitation any interference with existing or proposed contracts or contractual relationships and the following transactions: (a) payments or offers of payment, directly or indirectly, to any domestic or foreign government official or employee in order to obtain business, retain business or direct business to another, or for the purpose of inducing such government official or employee to fail to perform or to perform improperly its official functions; (b) receipt, payment or offer of anything of value, directly or indirectly, from or to any private party in the form of a commercial bribe, influence payment or kickback for any such purpose; or (c) the use, directly or indirectly, of any funds or other assets of any Indemnitee for any unlawful purpose including, without limitation, political contributions in violation of applicable law.

7. **RIGHT TO RELOCATE.** In the event Licensor desires to use the Licensed Area for any other purpose, upon notifying Licensee in writing, Licensor shall have the right to relocate at Licensor's sole expense the Licensed Area and the terms and conditions of this Agreement shall remain in full force and effect.

8. **EXEMPTION OF INDEMNITEES FROM LIABILITY.** The Indemnities shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Licensee, Licensee's employees, contractors, licensees, invitees, customers, or any other person on, in or about the Licensed Area, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, rain, or from the breakage, leakage, obstruction or other defects of pipes, fire, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Licensed Area or upon other portions of the building(s) of which the Licensed Area is a part, from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Should damage occur to the Licensed Area during the term of the Agreement which is not related to Licensee's operations (for which such damage Licensee shall be responsible), the Licensor shall, within one hundred eighty (180) days, elect whether it shall restore the Licensed Area to substantially the same condition it was in prior to the damage or terminate the License. Any insurance proceeds shall be paid to Licensor. The Indemnities shall not be liable for any damages arising from any act or neglect of any other person or entity, whether or not related, nor from the failure by Licensor to enforce the provisions of any other license or any lease in the building(s). Notwithstanding Licensor's negligence or breach of this Agreement, the Indemnities shall under no circumstances be liable for injury to Licensee's business operations or for any special, incidental, or consequential damages, including without limitation loss of income or profit therefrom.

9. INSURANCE.

a. Licensee hereby agrees to indemnify, defend and hold Licensor and Hilton, their hotels, partners, subsidiaries, affiliates, franchisees, and allied companies, each of their officers, directors, agents, contractors, subcontractors, employees and the City of San Diego, their employees and agents (collectively, the "Indemnitees") harmless from and against any and all claims, liabilities, damages, fines, penalties or costs of whatsoever nature (including reasonable attorneys' fees), and whether or not occurring during the term hereof or occasioned or contributed to by the negligence of Licensor, a Hotel, or any agent or employee of the Indemnitees, or any of them (except as and to the extent otherwise prohibited by applicable law), arising out of or in any way connected with, and whether by reason of death of or injury to any person or loss of or damage to any property or otherwise, arising out of or in any way connected with actions or omissions of Licensee under this Agreement, Licensee's representations, warranties, covenants, agreements and licenses hereunder, the services provided by Licensee or any licensees or other subcontractors of Licensee hereunder or any related act or failure to act by Licensee, its agents, licensees, subcontractors, servants, employees or invitees, including without limitation the use of the Licensed Area or any part of them infringes any rights of any other person, including without limitation copyright, patent, trade secret, trade mark, artist rights, droit moral, privacy, publicity or other intellectual property laws, whether or not occurring during the term hereof or occasioned or contributed to by the negligence of an Indemnatee or any agent or employee of the Indemnitees, or any of them (except as and to the extent prohibited by applicable law). In the event that any claim is made or any action or proceeding is brought against the Indemnitees, or any of them, arising out of or connected with this Agreement, any such Indemnatee may, by notice to Licensee, elect to require Licensee, at Licensee's expense, to resist such claim or take over the defense of any such action or proceeding and employ counsel for such purpose, such counsel to be subject to the prior approval of such Indemnatee.

b. That Licensee shall maintain in force during the term of this License Agreement, at its own expense with responsible insurance companies that have an A.M. Best Company rating of "A VIII" or better, policies of public liability insurance, including commercial general and automobile liability insurance, insuring the TWO contractual liability of Licensee under Paragraph 9a hereof, in an amount not less than MILLION AND NO/100THS DOLLARS (\$2,000,000.00) per occurrence also licensee shall provide worker's compensation in an amount not less than the statutory requirements required by the State and employers liability coverage in the amount of ONE MILLION DOLLARS (\$1,000,000) per accident, per disease policy limit and per disease per employee covering all employees of Licensee.

All policies will name Hilton Hotels Corporation, San Diego Hilton Beach & Tennis Resort, Hilton San Diego Corporation and the City of San Diego as "Additional Insureds." All policies of insurance shall be considered primary of any existing similar insurance carried by Hotel or Licensee. Licensee shall provide the Hotel with Certificates of Insurance carried by Licensee. If requested by the Hotel, Licensee shall furnish certified copies of insurance carried. Copies of said Certificates of Insurance or certified policies of Insurance shall be delivered to the offices of the Hotel by Licensee and shall be kept on file during the term of this License Agreement. No Policy

of Insurance shall be canceled or materially changed without thirty (30) days prior written notice to the Hotel.

10. EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES. Licensee shall provide at its expense all equipment, materials and supplies required in performing its services hereunder. Any equipment, materials, supplies or other personal property of Licensee used, held or stored on the Licensed Area shall be at the sole risk of Licensee, and the Indemnitees shall not be liable for any loss thereof or damage thereto for any reason whatsoever. Upon termination of this Agreement for any reason, Licensee shall immediately remove all of its property from the Licensed Area and the Hotel and any property not so removed may be removed by Licensor or the Hotel at Licensee's expense. In the event of loss, damage or destruction of equipment, materials or supplies provided or paid for by Licensor (except for the normal consumption of consumable items by Licensee in performing its services), Licensee shall reimburse Licensor for the replacement thereof together with all incidental costs and expenses. Licensee shall request Hotel's prior consent before performing any such services, which shall be performed in a good and workmanlike manner and shall be fully licensed, certified and bonded as customary or required by applicable law, from time to time, subject to and in accordance with these terms and conditions.

11. EMPLOYEES. Licensor and the Hotel may, from time to time, establish rules and regulations relating to standards to be met by Licensee as to the appearance or conduct of employees or agents of Licensee employed in connection with providing the Services to Licensor and the Hotel. In any event, all agents, employees, or other persons employed in any manner by Licensee in connection with providing the Services to Licensor and the Hotel shall appear and conduct themselves at all times while on the Licensed Area of Licensor or the Hotel, or otherwise engaged in the performance of their duties hereunder, if not on the Licensed Area of Licensor or the Hotel, in a manner which is as unobtrusive as possible and consistent with the character and reputation of Licensor and the Hotel and in such a way as not to annoy or interfere with any guests, patrons or business of Licensor and the Hotel or bring any discredit upon the names of any of the Indemnitees, as defined below. Licensee shall be responsible at all times for the conduct of all such persons. Licensee, promptly after demand by Licensor, will cause to be removed from the Licensed Area of Licensor any of such persons to whom Licensor shall or may reasonably object and will undertake that any such person so removed shall not thereafter be employed by Licensee in connection with provision of services to Licensor hereunder.

12. NO ADVERTISING OR USE OF NAME. Licensee shall not display or distribute any advertising signs or notices of any kind whatsoever upon the Licensed Area of Licensor or the Hotel, except caution and work in progress signs, without the prior written permission of Licensor or the Hotel in each instance, any such permission to be revocable at any time thereafter without prior notice at the sole discretion of Licensor and the Hotel. Licensee hereby covenants and agrees not to use the name of Licensor or the Hotel, or any variation thereof, or the name "Hilton," or the stylized "H" or other logotypes now or hereafter used by any Indemnitee, in connection with any of Licensee's business or operations without the prior written approval of Licensor and, in the event of such approval, only in the manner and at such times as shall be prescribed in such approval.

13. **LIENS.** Licensee covenants and agrees to keep the equipment and property of Licensor and the Hotel and the Licensed Area of Licensor and the Hotel free and clear from any and all liens for work performed or materials furnished hereunder and Licensee agrees to indemnify the Indemnitees from and against any and all costs, expenses, losses and all damage resulting from the filing of any such liens against Licensor and the Hotel or the Licensed Area of Licensor and the Hotel. As a condition to payment hereunder, Licensee shall from time to time, upon request by Licensor or the Hotel, furnish waivers or releases of such liens or receipts in full for all claims for such work or materials and an affidavit that all such claims have been fully satisfied.

14. **TERMINATION.** This License Agreement shall terminate upon the occurrence of any of the following events:

a. If Licensee shall fail to pay the sums to Hilton called for in Paragraph 4 of this License or fails to pay sums discovered to be owing to Hilton as a result of an audit by Hilton as defined in Paragraph 4(iv) of the License and such failure continuing for three (3) days after written notice that the same is due;

b. If Licensee shall violate or breach any of the terms, conditions or covenants hereof and shall not remedy such violation or breach within ten (10) days after written notice by Hilton to Licensee of such violation or breach;

c. If Licensee shall at any time conduct the business or Services provided for hereunder in a manner not conforming to any reasonable rules, standards or practices established herein or as may be modified or supplemented by Hilton from time-to-time in writing to Licensee of such noncompliance within ten (10) days after written notice by Hilton to Licensee of such noncompliance (provided that if the nature of such noncompliance is curable but that the same cannot with due diligence be cured within ten (10) days Licensee shall not be deemed to be subject to termination, if it shall within such ten day period commence curing and thereafter diligently prosecutes the same to completion).

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

e. If any statute, ordinance, rule or regulation hereafter promulgated by any legislative body or agency having jurisdiction over the Licensee shall prohibit the furnishing of services or the transaction of business of the nature to be provided or transacted hereunder; or,

f. In the event that: (i) The premises upon which the Space is located should be sold; (ii) Hilton should assign its rights to the site to a third party, or (iii) Licensor proposes, or is required for any reason to renovate or demolish the Hotel or a substantial portion thereof which includes all or a portion of the Space; then Licensor and Hilton shall have the right, upon not less than one hundred eighty (180) days prior written notice to Licensee, to terminate this Agreement.

15. SUBLICENSING AND ASSIGNMENT. Licensee may not sublicense the Licensed Area or assign the Agreement or any rights and obligations hereunder without prior written consent of the Licensor given or withheld in its sole discretion. Subject to the foregoing, the conditions, covenants and agreements in the foregoing Agreement to be kept and performed by the parties hereto shall bind and inure to the benefit of their successors and assigns.

16. NONWAIVER. The right of the parties 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. Failure of either party to exercise its rights under the terms of this Agreement on any one occasion shall not be construed as a waiver of any requirement of this Agreement or a waiver of either party's right to take advantage of any subsequent or continued breach by the other party of any covenant contained in the License. All remedies herein provided shall be in addition to and not in substitution for any remedies otherwise available to the parties.

17. NOTICES. All notices to be given by either party shall be given in writing and by depositing the same in the United States mail, postage prepaid, certified, return receipt requested, and addressed to the parties at the following addresses:

Licensor's Address: San Diego Hilton Beach & Tennis Resort
1775 East Mission Bay Drive
San Diego, CA 92109
Attention: General Manager

With a copy to: Hilton Hotels Corporation
9336 Civic Center Drive
Beverly Hills, California 90210
(619) 276-4010
Attention: Senior Vice President and General Counsel

Licensee's Address: SCUBA San Diego
4564 Mississippi Street #6
San Diego, CA 92116-2855
(619) 260-1880
Attention: Rodney M. Watkins

Should the address of either party for the purposes herein change, such party shall give written notice to the other of the new address.

18. LEGAL CONSTRUCTION.

a. This Agreement shall be construed under the laws of the **State of California**. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

b. Any action sought to be brought by either party, except those claims required to be submitted to arbitration, shall be brought in the United States District Court or the Superior Court, whatever the case may be, for the State of California, and the parties do hereby waive all questions of personal jurisdiction or venue for the purposes of carrying out this provision. Both parties hereby waive trial by jury in any action brought on or with respect to this Agreement and any other agreements executed in connection herewith.

19. SOLE AGREEMENT. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the Licensed Area. If this Agreement conflicts in any way with the terms of any agreement between the Licensee and its licensees, the terms of this Agreement shall control.

20. AMENDMENT. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

21. ATTORNEYS', CONSULTANTS' AND OTHER FEES. In the event Licensor or Licensee breaches any of the terms of this Agreement whereby the party not in default employs attorneys, consultants and/or other agents to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party's reasonable attorneys', consultants' and/or other agents' fees, costs and disbursements so incurred by such other party.

22. AUTHORITY. Each of the parties hereto hereby represents and warrants to the other party hereto that it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf it is executing this Agreement to the terms hereto, and its authority is not inhibited by any private agreement or legal proceeding.

23. CITY OF SAN DIEGO LEASE: This Space License Agreement is specifically subject to and subordinate to the terms of the Lease by and between the City of San Diego as Lessor and Hilton San Diego Corporation as successor Lessee, on file in the office of City Clerk as Document No. 606775. The consent hereto by the City of San Diego is a condition precedent to the effectiveness of this License. Licensee is familiar with the terms and conditions of such City of San Diego lease and Licensee covenants and agrees to comply therewith to the extent such compliance is required. Licensee further agrees to abide by the rules and regulations

promulgated by the City of San Diego and all departments thereof having jurisdiction over the Space.

24. ADDITIONAL DOCUMENTATION; COOPERATION WITH FURTHER PROCEEDINGS. Each of the parties hereto hereby agrees to promptly execute such additional documentation and to cooperate in such further proceedings as are necessary to effectuate the terms of this Agreement without charge or other consideration. Further, without limiting the foregoing, Licensee agrees to promptly execute and deliver to Licensor, without charge or other consideration, such additional documentation as Licensor (or any of Licensor's current or future lenders or transferees) may require from time to time to clear title to Licensor's property and to evidence the subordinate, revocable, and non-possessory nature of this Agreement and Licensee's rights hereunder.

IN WITNESS WHEREOF, the Licensor and the Licensee have caused this Agreement to be signed on the day and year first above written.

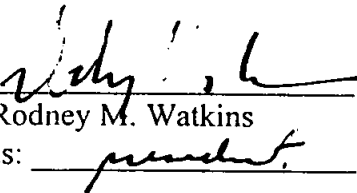
Hilton San Diego Corporation,
Hilton Hotels Corporation, Agent,

By: _____
Hilmar A. Rosenast
Its: Senior Vice President



SCUBA San Diego, Inc.,
a California corporation

By: _____
Rodney M. Watkins
Its: _____



Attest:

City of San Diego

By: _____
William Rees,
Its: Secretary

By: _____

Its: _____

MANAGEMENT AGREEMENT

between

LHO MISSION BAY ROSIE LESSEE, INC.

And

MISSION BAY MANAGEMENT, LLC

for the

HILTON SAN DIEGO RESORT

November 3, 2005

TABLE OF CONTENTS

	<u>Page</u>
RECITALS.....	1
ARTICLE I - DEFINITIONS.....	2
ARTICLE II - TERM OF AGREEMENT	3
ARTICLE III - DUTIES OF OPERATOR	4
Section 3.1 General.....	4
Section 3.2 Budgets	4
Section 3.3 Personnel	6
Section 3.4 Records	7
Section 3.5 Guests	7
Section 3.6 Advertising and Promotion.....	8
Section 3.7 Maintenance and Repairs	8
Section 3.8 Services and Purchases	9
Section 3.9 Central Office Services.....	9
Section 3.10 Permits	9
Section 3.11 Compliance with Law.....	10
Section 3.12 Payment of Taxes, Removal of Liens.....	10
Section 3.13 Payments on Encumbrances	11
Section 3.14 Notice to Lessee.....	11
Section 3.15 Transactions with Affiliates.....	12
Section 3.16 Central Marketing and Reservations	12
Section 3.17 Consultants.....	13
ARTICLE IV - OPERATING EXPENSES OF THE HOTEL.....	13
ARTICLE V - EXPENSES BORNE BY OPERATOR.....	13
ARTICLE VI - BANK ACCOUNT AND DISBURSEMENT OF FUNDS.....	14
Section 6.1 Accounts	14
Section 6.2 Working Capital	15
Section 6.3 Reserve Accounts	15
ARTICLE VII - BOOKS, RECORDS AND STATEMENTS.....	16
Section 7.1 Books and Records	16
Section 7.2 Monthly Statements and Reports.....	16
Section 7.3 Annual Statements.....	17
ARTICLE VIII - MANAGEMENT FEE	18

Section 8.1 Definitions	18
Section 8.2 Management Fee.....	19
ARTICLE IX - INSURANCE.....	20
Section 9.1 Insurance Carried by Lessee	20
Section 9.2 General.....	21
ARTICLE X - INDEMNIFICATION	22
Section 10.1 Indemnification by Operator	22
Section 10.2 Indemnification by Lessee.....	23
ARTICLE XI - TERMINATION OF AGREEMENT	23
Section 11.1 Termination by Lessee.....	23
Section 11.2 Termination by Operator	23
Section 11.3 Settlement Upon Termination	24
ARTICLE XII - DEFAULT BY OPERATOR	25
Section 12.1 Events of Default	25
Section 12.2 Lessee's Performance of Operator's Obligations.	27
ARTICLE XIII - MISCELLANEOUS.....	27
Section 13.1 Notices.....	27
Section 13.2 Non-Competition	28
Section 13.3 Lessee's Right to Inspect.....	28
Section 13.4 Partial Invalidity	28
Section 13.5 Time of the Essence.....	28
Section 13.6 Estoppel Certificate	28
Section 13.7 No Partnership	28
Section 13.8 Attorneys' Fees.....	28
Section 13.9 Successors.....	29
Section 13.10 No Third Party Beneficiaries.....	29
Section 13.11 Waiver, Entire Agreement.....	29
Section 13.12 Captions	29
Section 13.13 Interpretation	29
Section 13.14 Governing Law	29
Section 13.15 Further Assurances	29
Section 13.16 Confidentiality.....	29
Section 13.17 Subordination.....	30

MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of November 3, 2001, by and between LHO MISSION BAY ROSIE LESSEE, INC., a Delaware corporation ("Lessee"), and MISSION BAY MANAGEMENT, LLC, a Delaware limited liability company ("Operator").

RECITALS

A. LHO Mission Bay Rosie Hotel, L.P. (the "Owner") has subleased to Lessee certain real property located at 1775 E. Mission Bay Drive, San Diego, California 92109, which, together with associated improvements and personal property, is presently known as the Hilton San Diego Resort," and is defined herein as the "Hotel."

B. Operator is engaged in the business of managing and operating hotels.

C. Lessee and Operator desire to enter into an agreement for the management and operation of the Hotel on the terms and conditions set forth herein.

Intentionally Blank

(u)



ARTICLE I
DEFINITIONS

"Adjusted Gross Revenue" shall have the meaning set forth in Section 8.1.

"Affiliate" shall mean any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Operator or Lessee, as the case may be.

"Agency Account" shall mean a special account or accounts into which all monies received by Operator in the operation of the Hotel, including amounts necessary to maintain sufficient Working Capital as determined and furnished by Lessee, are deposited pursuant to Section 6.1 hereof.

"Annual Budget" shall have the meaning set forth in Section 3.2.

"Base Management Fee" shall have the meaning set forth in Section 8.2(a).

"Cash Available for Disbursement" shall mean the cash held in the Agency Account at the end of each quarter from operations of the Hotel or any other source, after payment of all expenses of the Hotel including amounts provided for in Article III, the Management Fee and amounts necessary to maintain sufficient Working Capital as determined by Lessee, including any deposits made by Lessee for such purpose.

"Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) (U.S. City Average), as published by the Bureau of Labor Statistics, Department of Labor.

"Fiscal Year" shall mean the 12 months ending December 31; provided, however, the first Fiscal Year shall begin on the date the Lessee acquires the Hotel and end on December 31, 2005.

"Governmental Impositions" shall have the meaning set forth in Section 3.12.

"Gross Operating Expenses" shall mean the sum of (i) all costs and expenses of any kind incurred which pursuant to the Uniform System are deducted from Gross Revenues to determine "Income before Management Fees and Fixed Charges", (ii) the Base Management Fee and (iii) all other amounts expressly designated herein to be included in Gross Operating Expenses. Gross Operating Expenses shall not include additions to or expenditures from the Reserve.

"Gross Operating Profit" for any period shall mean and refer to Gross Revenues of the Hotel less Gross Operating Expenses of the Hotel for such period.

"Gross Revenue" shall have the meaning set forth in Section 8.1.

"Incentive Management Fee" shall have the meaning set forth in Section 8.2(b).

"Law" shall have the meaning set forth in Section 3.11(a).

"Lien" shall have the meaning set forth in Section 3.12(b).

"Management Fee" shall mean collectively the Base Management Fee and Incentive Management Fee.

"Mortgage" shall have the meaning set forth in Section 3.13(a).

"Net Operating Income" shall mean Gross Operating Profit less: (i) real and personal property taxes and other governmental impositions, (ii) all insurance costs, including property insurance costs and liability insurance costs, (iii) rent or other payments due under any equipment leases or other leases, (iv) rent payable under any ground leases, and (v) an amount equal to four percent (4%) of Adjusted Gross Revenue for reserves, whether or not such amount is actually kept in reserve.

"Net Proceeds" shall mean the net proceeds from any sale, condemnation, or financing of the Hotel or any portion thereof, from any casualty loss insurance settlement, or from any other capital transaction, excluding (1) the proceeds of any condemnation, insurance settlement or loan to the extent the same are used for the reconstruction, refurbishment or replacement of the Hotel or for reserves, and (2) the proceeds of any sale, condemnation, insurance settlement or refinancing to the extent the same are used to discharge existing indebtedness.

"Reserve" shall mean the reserve cash account established pursuant to Section 6.3.

"Special Services" shall have the meaning set forth in Section 4.2(b).

"Termination Fee" shall have the meaning set forth in Section 8.2(c).

"Uniform System" shall mean the "Uniform System of Accounts for Hotels", ninth revised edition, 1996, published by the Hotel Association of New York City, Inc.

"Working Capital" shall mean the excess of current assets over current liabilities.

ARTICLE II TERM OF AGREEMENT

Lessee engages Operator as the exclusive operator of the Hotel, and Operator undertakes and agrees to perform all of the services and to comply with all of the provisions of this Agreement upon all of the terms and conditions hereinafter set forth for a term commencing on the

date the Hotel is leased by Lessee (the "Effective Date") and ending on December 31, 2010, unless sooner terminated pursuant to Article XI; provided, however, upon not less than one hundred twenty (120) days notice, Lessee may elect to renew this Agreement, on the same terms and conditions as set forth herein, for five additional (5) years or such shorter period as Lessee may elect, but no termination or other fees shall be payable hereunder as a result of the termination of this Agreement during any such renewal period. If the Owner does not acquire the Hotel within six (6) months from the date hereof, at Lessee's option this Agreement shall be null and void.

ARTICLE III DUTIES OF OPERATOR

Section 3.1 General.

(a) Subject to Lessee's performance of its obligations hereunder, including, without limitation, its obligations under Sections 3.2(b) and 6.2 below, Operator shall operate the Hotel and all of its facilities and activities in the best interests of Lessee, in accordance with the franchise agreement, if any, applicable to the Hotel and in accordance with the management standards of comparable hotels. Operator shall provide such facilities and services at the Hotel as are normally provided by operators of comparable hotels and consistent with the Hotel's facilities. Operator agrees to act in accordance with the best standards of managers managing comparable hotels; to apply prudent and reasonable business practice in renting and managing the Hotel; and to use due care and diligence in carrying out its responsibilities hereunder. Operator shall use all reasonable efforts to promote the maximum possible amount of trade, commerce and business for the Hotel.

(b) Operator is acting as Lessee's agent for the operation of the Hotel (except with respect to Operator's employees where no agency relationship exists). During the term of this Agreement, Operator agrees to supervise and direct the management and operation of the Hotel as a fiduciary on behalf of Lessee and for Lessee's account, in strict accordance with the standards set forth herein. Without limiting the generality of the foregoing, Operator shall do all of the acts indicated in this Article III.

Section 3.2 Budgets.

(a) Operator shall submit to Lessee, for its approval, at least 60 days before the beginning of each Fiscal Year during the term hereof:

(1) an estimated profit and loss statement in reasonable detail for each month and fiscal quarter of the ensuing Fiscal Year including schedules of (i) Hotel room rates, (ii) occupancy levels, (iii) gratuitous accommodations, (iv) sources of business, (v) sources and amounts of other income, (vi) all operating expenses to be incurred in operating the Hotel, including as separate line items amounts budgeted for Central Marketing Fee, Central Reservations Service Charge, repairs and maintenance, and expenditures for advertising and business promotions, (vii) other fixed costs and expenses

to be incurred in operating the Hotel, including all items included in taxes, rent, insurance, Mortgage payments and additions to the Reserve, and (viii) Cash Available for Disbursement.

(2) detailed estimates of quarterly capital expenditures for the ensuing Fiscal Year for (i) expenditures for operating equipment, (ii) expenditures for furnishings and equipment, and (iii) expenditures for revisions, alterations, rebuilding, replacements, additions and improvements in and to the Hotel and the furnishings and equipment;

(3) a narrative description of the Operator's plans and goals, including a marketing plan, for operating the Hotel for the ensuing Fiscal Year; and

(4) any other schedules reasonably requested by Lessee.

(b) Operator's submissions pursuant to Subsection (a) above shall constitute the "Annual Budget." At Lessee's election, within twenty-five (25) days after Lessee's receipt of the proposed Annual Budget for each year, Operator and Lessee shall meet at a location to be mutually agreed upon to review such proposed Annual Budget. The Annual Budget shall be deemed approved unless Lessee indicates its disapproval within 30 days after Lessee's receipt of the Annual Budget. If Lessee shall disapprove the Annual Budget or any portion thereof submitted by Operator in accordance with Subsection (a) above, Lessee shall specify with particularity the reasons for its disapproval and Operator shall, after consultation with Lessee, submit to Lessee a new proposed Annual Budget or appropriate portion thereof within 14 days after the date of Lessee's disapproval of the same, in form and content reasonably satisfactory to Lessee. The same procedure shall be followed until the Annual Budget is fully approved by Lessee, except that Lessee shall have 14 days to respond with particularity to Operator's resubmittal and Operator shall have 14 days to respond to Lessee's objection with a resubmittal. Until such time as the new proposed Annual Budget is fully approved by Lessee, the portion approved shall become effective and the Annual Budget for the previous Fiscal Year with such changes as Lessee shall designate, shall remain in effect with respect to the portion of the Annual Budget disapproved by Lessee, provided that the expenditures permitted under the previous Fiscal Year's Annual Budget for each line item and category of departmental expenses and undistributed expenses shall be subject to variations permitted in accordance with Subsection (c) below. In conjunction with the preparation and approval of the Annual Budget, Lessee and Operator shall cooperate to establish an Annual Budget that is appropriate for the required standard of operations of the Hotel and for the Hotel's level of occupancy.

(c) During the Fiscal Year covered by the Annual Budget, Operator, in the performance of its duties in accordance with this Agreement, shall use all reasonable efforts to comply with such Annual Budget as approved by Lessee and shall use all reasonable efforts not to deviate therefrom or change the manner of operation of the Hotel, without the prior written consent of Lessee. However, to the extent that revenues do not achieve budgeted levels, Operator shall use all reasonable efforts to decrease expenses accordingly. Notwithstanding the foregoing, Lessee and Operator acknowledge that the Annual Budget is an estimate of revenue and expense and Operator

shall not be required to obtain Lessee's prior approval for additional expenditures (1) which exceed the approved Annual Budget by not more than 10% on a line item basis, 5% for each department's total expenses, 5% for each category of undistributed expenses, and 5% overall, or (2) which exceed such variations but which are required to meet emergency conditions as provided in Sections 3.7(a). If Operator deems that additional expenditures are required because of revenues higher than that budgeted for in the Annual Budget, Lessee and Operator shall meet to revise the Annual Budget accordingly.

(d) At Lessee's election, Lessee and Operator shall meet quarterly or more frequently at a time and place as set by Lessee for the purpose of reviewing Hotel operations including profit and loss statements, Operator's performance, capital expenditures, and forecasts of Cash Available for Disbursement for the balance of the current Fiscal Year, and making any revisions to the Annual Budget reasonably required by Lessee in order to maintain or improve the departmental profits and margins as originally budgeted.

(e) Notwithstanding the foregoing, Operator shall not be required to prepare and submit to Lessee the Annual Budget for the first Fiscal Year prior to the date which is thirty (30) days after the Effective Date; and, if the second Fiscal Year is due to commence within ninety (90) days after the Effective Date, Operator shall also not be required to prepare and submit to Lessee the Annual Budget for the second Fiscal Year prior to the date which is thirty (30) days after the Effective Date. Lessee will have thirty (30) days to approve such Annual Budgets.

(f) Operator shall submit to Lessee along with the Annual Budget, at least 60 days before the beginning of each Fiscal Year during the term hereof:

(1) an annual summary of the estimated gross revenues and profit and loss for the ensuing Fiscal Year and the two Fiscal Years thereafter;

(2) an annual summary of the estimated capital expenditures for the ensuing Fiscal Year and the two Fiscal Years thereafter. Such summary shall include the estimates of (i) expenditures for operating equipment, (ii) expenditures for furnishings and equipment, and (iii) expenditures for revisions, alterations, rebuilding, additions and improvements in and to the Hotel and, the furnishings and equipment;

(3) a list of any proposed contracts and agreements with affiliates of Operator which contracts and agreements shall be subject to the approval of Lessee in its sole discretion; and

(4) a schedule of estimated corporate reimbursements for the ensuing Fiscal Year.

Section 3.3 Personnel.

(a) Operator shall employ, pay, supervise, promote and discharge all employees and personnel necessary for the operation of the Hotel, including, without limitation, the general manager of the Hotel. Operator shall use due care to select qualified, competent and trustworthy employees and personnel. Each person so hired by Operator shall be the employee of Operator and in no event shall be deemed an employee of Lessee.

(b) No management personnel of the Hotel may reside at the Hotel without the prior written consent of Lessee. It is understood that Lessee is very interested in the qualifications and performance of the person employed as General Manager of the Hotel. Accordingly, Operator shall obtain Lessee's approval before employing a General Manager, Assistant General Manager, Controller and Director of Sales/Marketing; and, if during the course of the General Manager's employment, Lessee become dissatisfied with the performance of the General Manager, Assistant General Manager, Controller or Director of Sales/Marketing, Lessee shall have the right to confer with the senior management of Operator in charge of operating the Hotel to resolve such dissatisfaction; and, if Lessee is not reasonably satisfied with the resolution thereof, Lessee may require Operator to replace such personnel.

(c) Operator shall make rooms, food and beverage available at the Hotel to Owner's employees at no charge while such employees are staying at the Hotel on Hotel business. Operator shall also make available to such employees free access to any health clubs or other facilities at the Hotel, free local telephone calls and free access to long distance telephone service at the Hotel; provided, however, such employees shall be responsible for the Hotel's out-of-pocket costs for such long distance service. In addition, and subject to availability at the time the request is made, Operator shall otherwise make rooms, food, beverage and other services and facilities available at the Hotel to Owner's employees and trustees and their relatives at rates established in accordance with Owner's policies in effect from time to time.

Section 3.4 Records.

(a) Operator shall supervise and maintain complete books and records, including, without limitation, the books of account, guest records, front office records and general records of the Hotel, pursuant to Articles VI and VII hereof. Operator shall manage the accounts payable and the accounts receivable for the Hotel in accordance with industry standards.

(b) Operator shall prepare for execution and filing by the Operator all forms, reports and returns required by all federal, state or local laws in connection with unemployment insurance, worker's compensation insurance, disability benefits, income tax withholding, and Social Security. Operator shall prepare for review, approval and, where appropriate, auditing by Lessee's independent accounting firm, all financial statements as they relate to the operation of the Hotel and information related to the operation of the Hotel for inclusion in Lessee's federal and state income tax returns and other governmental filings.

Section 3.5 Guests.

(a) Operator shall maintain business-like relations with guests of the Hotel whose service requests shall be received, considered and recorded in systematic fashion in order to show the action taken with respect to each and, after thorough investigation, report complaints of a serious nature to Lessee with appropriate recommendations.

(b) Operator shall collect with due diligence the rents and other income due from guests, tenants and concessionaires and enforce compliance with all terms of overnight occupancy rights by appropriate means; provided, however, that Lessee shall approve the institution of any legal proceedings, selection of legal counsel, and the settlement, compromise and release of any legal proceedings, prior to any such action being taken by Operator if the amount at issue is in excess of \$1,000, and provided further that any necessary legal fees or costs incurred in legal proceedings approved by Lessee or not requiring Lessee's approval shall be borne by Lessee, subject to Section 10.1 hereof.

Section 3.6 Advertising and Promotion. Operator shall arrange, contract and pay for all advertising and promotion which Operator deems necessary for the successful operation of the Hotel. Without limiting the foregoing, Operator shall provide marketing services and reservation services for the Hotel at least comparable to that being provided for similar hotels operated by the Operator.

Section 3.7 Maintenance and Repairs.

(a) Operator shall keep the Hotel and the fixtures, furniture and equipment therein in good order, repair and condition, including without limitation, making and paying for necessary replacements, improvements, additions, and substitutions to the end that the Hotel shall be maintained and furnished as an upscale four-star hotel, in compliance with all applicable laws, ordinances and regulations, provided that, except as provided in section 3.2(c), Operator shall not authorize any replacements, improvements, additions or substitutions not included in the Annual Budget without the prior written consent of Lessee. All such repairs, improvements or replacements shall be made with as little hindrance to the operation of the Hotel as reasonably possible. Whenever, by reason of circumstances beyond the reasonable control of Operator, emergency expenditures are required to be made to ensure that the standards specified in this Agreement are maintained, Operator may make such emergency expenditures not included in the Annual Budget, provided that the expenditure for any one occurrence may not exceed \$10,000 without the prior written consent of Lessee unless Lessee cannot be contacted through all available means for a decision within 24 hours of the emergency, in which event Operator shall have the right to make any such expenditures up to \$25,000 for any one such occurrence. The dollar amounts specified herein shall be subject to adjustment from time to time by written agreement of Lessee and Operator. Notwithstanding the foregoing, in the event that emergency expenditures not included in the Annual Budget are required to be made to protect against loss of life, personal injury, or substantial property damage, Operator shall have the right to make such expenditures, after making all reasonable attempts to contact Lessee, as shall be reasonably necessary under the circumstances.

(b) If any such repairs or maintenance shall be made necessary by any condition against the occurrence of which Lessee has received or is entitled to the benefit of the guarantee or warranty of any contractor or supplier, Operator may invoke said guaranties or warranties in Lessee's or Operator's name and Lessee will cooperate fully with Operator in the enforcement thereof.

(c) Operator shall also keep in effect an operations and maintenance program for any asbestos or hazardous materials existing at the Hotel which (i) Lessee has made Operator aware of or (ii) Operator has actual knowledge of.

Section 3.8 Services and Purchases.

(a) Operator shall negotiate, enter into, administer, pay and enforce service contracts required in the ordinary course of business in operating the Hotel, including without limitation, contracts for water, electricity, gas, telephone, security protection, vermin extermination, cleaning, elevator and boiler maintenance, air conditioning maintenance, laundry service, dry cleaning service and all other services which are provided in an upscale four-star hotel facility; provided, however, that no contract without a 30-day no-penalty cancellation clause shall be entered into by Operator without Lessee's prior written consent.

(b) Operator shall supervise and purchase or arrange for the purchase in the most economical manner of all inventories, provisions and supplies which in the normal course of business are necessary and proper for the maintenance and operation of the Hotel, and Operator shall maintain food, beverage and supply inventories at adequate levels and consistent with industry practices.

(c) Operator shall take whatever measures Operator feels, in the exercise of its prudent judgment, are necessary to provide for security in the Hotel. If Operator determines that such measures require an expenditure in excess of that authorized in the then current approved Annual Budget, Operator shall so advise Lessee.

(d) Operator shall make all payments on or before the applicable due dates required to maintain all insurance covering the Hotel in accordance with Article IX hereof.

Section 3.9 Central Office Services. In addition to Central Marketing Services and Central Reservation Services, Operator shall provide, without any separate charge, certain corporate executive and administrative services in support of the Hotel, including general and executive supervision, consultation, planning, policy making, personnel and employee relations, and the services of Operator's technical, operational and marketing experts making periodic inspections and consultation visits to the Hotel.

Section 3.10 Permits. Unless Lessee specifies otherwise, Operator shall apply for, obtain and maintain in the name of Lessee, all licenses and permits required in connection with the management and operation of the Hotel. At Lessee's election, to the extent permitted by law,

Operator shall maintain in its own name the Hotel's liquor license. Lessee shall execute and deliver any and all applications and other documents and otherwise cooperate to the fullest extent with Operator in applying for, obtaining and maintaining such licenses and permits including the Hotel's liquor license. At Lessee's request, Operator shall assign the liquor license for the Hotel to Lessee or its designee or shall otherwise cooperate with Lessee or its designee in obtaining a new liquor license for the Hotel. All costs of obtaining any such permits shall be paid by Lessee and shall be deemed an operating cost of the Hotel.

Section 3.11 Compliance with Law.

(a) Operator shall comply with and abide by all statutes, laws, rules, regulations, requirements, orders, notices, determinations and ordinances of any federal, state, county or municipal government and appropriate departments, commissions or boards having jurisdiction over the Hotel, including, without limiting the foregoing, the Board of Fire Underwriters and the requirements of any insurance companies covering any of the risks against which the Hotel is insured and of any governmental authorities regarding obligations to employees (all of the foregoing hereinafter referred to collectively as the "Law"). If the cost of compliance with the Law exceeds \$10,000 in any instance, Operator shall immediately seek Lessee's written consent before authorizing any such expenditure. In the event Lessee declines to give such consent, Lessee shall indemnify Operator in the same manner and to the same extent as provided in Subsection (b) below with respect to the contest of a violation of the Law.

(b) In the event Operator receives notice of or becomes aware of a violation or circumstances likely to result in a violation of the Law, Operator shall promptly deliver to Lessee written notice of such violation or circumstances and subject to Lessee's consent where required under Subsection (a) being given, take all remedial action necessary for compliance with the Law; provided, however, that Lessee may contest any such violation and, if Lessee elects to so contest such violation, Operator shall, upon written notice from Lessee of Lessee's intent to contest, postpone compliance pending the determination of such contest, if so permitted by Law. In the event Lessee contests such violation, Lessee shall hold Operator harmless from any loss, cost, damage or expense, including reasonable attorneys' fees, resulting from such contest, unless the contested violation resulted from an act or omission in contravention of this Agreement by Operator, its agents, employees or contractors or anyone for whose acts Operator is liable under Law or this Agreement.

Section 3.12 Payment of Taxes, Removal of Liens.

(a) Operator shall, except as provided in Subsection (c) below, pay when due all taxes, assessments and governmental charges or levies (collectively called "Governmental Impositions") imposed upon the Hotel or upon the income generated by the Hotel (other than Lessee's federal and state taxes on income from all sources) or upon any of Lessee's property, real, personal or mixed, or upon any part thereof under the Operator's management and control, including all interest and penalties thereon. As used herein Governmental Impositions shall include, but not be limited to, all social security taxes, unemployment insurance taxes, withholding

taxes and similar charges imposed on Operator in connection with any employees or personnel of the Operator.

(b) Operator shall, except as provided in Subsection (c) below, take all necessary steps to prevent the creation of any claim for lien of encumbrances or security interest (hereinafter collectively called a "Lien") against the Hotel or any part thereof other than one created or consented to by Lessee. In the event a Lien is asserted against the Hotel or any part thereof, Operator shall immediately give Lessee written notice thereof and shall, within 20 days after such notice is given, take all reasonable steps necessary for removal thereof unless Lessee notifies Operator in writing within such 20 day period that (1) Lessee wishes to contest such Lien or (2) Lessee has consented to such Lien.

(c) The foregoing notwithstanding, if Operator is notified by Lessee that Lessee intends to contest any Governmental Imposition or Lien upon the Hotel, Operator shall not pay such Governmental Imposition or Lien, but shall, at Lessee's election, set aside the amount necessary to pay such Governmental Imposition or Lien, plus interest and penalties, in an interest bearing reserve account (or shall deposit such amount with a third party if so directed by Lessee); provided, however, that if any such interest or penalty payment is imposed on Lessee by reason of (1) the failure of Operator to make a payment required to be made by Operator under this Agreement when the funds therefor were available, or (2) the funds therefor were not available and Operator failed to so notify Lessee (as required under Section 6.2), such interest or penalty payment shall be immediately paid to Lessee by Operator. In the event Lessee contests such Lien or Governmental Imposition, Lessee shall hold Operator harmless from any loss, cost, damage or expense, including reasonable attorneys' fees, resulting from such contest, unless the contested Lien or Governmental Imposition resulted from an act or omission in contravention of this Agreement by Operator, its agents or employees, or anyone for whose acts Operator is liable under Law.

Section 3.13 Payments on Encumbrances. Operator shall make all payments, as directed by Lessee, on or before the due date therefor required under any ground lease, loan, mortgage, trust deed, equipment or chattel lease or other security agreement relating to the Hotel that constitutes an obligation of Lessee (hereinafter collectively called an "Encumbrance"), provided a copy of any such Encumbrance has previously been delivered by Lessee to Operator; and provided further that funds adequate for such payments are in the Agency Account; deliver to Lessee, not later than due date, evidence that such Encumbrance payments have been made; perform all covenants which Operator has the authority hereunder to perform required to be performed or observed by Lessee under any such Encumbrance; and observe all other obligations under any such Encumbrance.

Section 3.14 Notice to Lessee. Operator shall promptly notify Lessee in writing:

(a) in the event that the condition of the Hotel or any part thereof fails (to the knowledge of Operator) to meet any Law, or the standards imposed hereunder, or to meet the standards as disclosed by Lessee in writing to Operator of the Mortgage or any other agreement relating to the Hotel;

(b) upon receipt by Operator of any notice, demand or similar communication with respect to the violation of any obligation of Lessee under the Law, Mortgage or other agreement involving Lessee, the Hotel, or any portion thereof;

(c) upon receipt by Operator of any summons, notice, demand or similar communication regarding any action at law or in equity or before any regulatory body in connection with or involving Lessee, the Hotel, or any portion thereof;

(d) upon receipt by Operator of a statement of the amount of any Governmental Impositions;

(e) upon receipt by Operator of any notice or communication from an insurance carrier regarding insurance coverages or the insurability of the Hotel;

(f) in the event Operator makes an emergency expenditure pursuant to Section 3.7(a);

(g) upon receipt of Operator of any notice or communication of any nature, written or oral, which, in the reasonable opinion of Operator may have a material adverse effect on the Lessee or the Hotel, except for notices relating to events happening in the ordinary course of running a hotel;

(h) Operator shall notify Lessee of any replacement which Operator intends to hire for the general manager, assistant general manager, controller or director of sales/marketing for the Hotel, which replacement shall be subject to Lessee's reasonable approval.

Section 3.15 Transactions with Affiliates. In its management and operation of the Hotel, Operator may purchase goods, supplies and services from or through any of its Affiliates so long as the prices and terms thereof are competitive with the prices and terms of goods, supplies and services of equal quality available from others and provided Operator obtains Lessee's prior written approval for any purchases which will be made from or through Affiliates. Unless approved as part of the Annual Budget, Operator shall not pay to any such Affiliates a fee for the negotiation of contracts for the direct purchase by Operator from independent suppliers of goods, supplies and services without Lessee's prior written approval.

Section 3.16 Central Marketing and Reservations. Operator will provide for the benefit of the Hotel Central Marketing Services and Central Reservation Services at no additional cost or expense to Lessee. Lessee, however, shall have the right at any time to enter into a franchise agreement for the Hotel, which may or may not include a reservation system; and the cost thereof shall be included in Gross Operating Expenses.

Section 3.17 Consultants. Operator shall reasonably cooperate with any consultants hired by Lessee to review the operations of the Hotel, and the cost of such consultants shall be included in the Gross Operating Expenses for the Hotel.

ARTICLE IV
OPERATING EXPENSES OF THE HOTEL

In performing its duties hereunder, Operator shall act solely for the account of Lessee and all expenses incurred by Operator in such performance shall be borne exclusively by Lessee, except as specifically provided elsewhere herein. To the extent funds necessary therefor are not generated by the operation of the Hotel, they shall be supplied by Lessee to Operator. Operator shall in no event be required to advance any of its own funds for the operation of the Hotel, nor to incur any liability in connection therewith unless Lessee shall have furnished Operator with the funds necessary for the discharge thereof. If Operator shall at any time advance any funds in payment of Gross Operating Expenses or any other expenditures, Lessee shall repay Operator within thirty (30) days after demand; provided Operator shall have the right, but not the obligation, to advance such funds and seek reimbursement only if Operator had the right to incur such expenditure under the terms of this Agreement and Lessee did not pay for such expenditures as provided herein. All debts and liabilities to third persons incurred by Operator in conformity with the provisions hereof shall be the debts and liabilities of Lessee only, and Operator shall not be liable for any such obligations by reason of its management, supervision, direction and operation of the Hotel for Lessee or for any other reason whatsoever; and Operator may so inform third parties with whom it deals on behalf of Lessee and may take any other steps to carry out the intent of this provision. Notwithstanding any of the foregoing, to the extent any debts or liabilities arise by reason of Operator's breach of this Agreement, such debts and liabilities shall be the obligations of Operator and not paid by Lessee. In no event shall Lessee be responsible for any expenses which have accrued with respect to the operation of the Hotel prior to the Effective Date except to the extent set forth in the Purchase and Sale Agreement pursuant to which the Lessee purchased the Hotel.

ARTICLE V
EXPENSES BORNE BY OPERATOR

The following shall be expenses of Operator and shall not be charged to or borne by Lessee:

- (a) All costs, expenses, salaries, wages or other compensation of any headquarters/corporate level employees of Operator.
- (b) Any expenses of Operator's principal or branch offices.
- (c) Any part of Operator's capital expenses.
- (d) Operator's overhead or general expenses.

(e) Any interest or penalty payment with respect to a Governmental Imposition or Lien upon the Hotel imposed on Lessee by reason of (i) the failure of Operator to make a payment required to be made by Operator under this Agreement when the funds therefor were available, or (ii) the funds therefor were not available and Operator failed to so notify Lessee (as required under Section 6.2). Notwithstanding the foregoing, Operator shall not be liable for any such interest or penalty payment relating to (i) ad valorem taxes paid into escrow pursuant to the Mortgage, (ii) Governmental Impositions or Liens contested pursuant to Subsections (b) and (c) of Section 3.12, or (iii) other matters beyond the control of Operator.

(f) Any costs for which Operator is liable under Section 10.1 hereof.

(g) All costs of providing Central Marketing Services to the Hotel.

(h) All costs of providing Central Reservation Services to the Hotel.

ARTICLE VI BANK ACCOUNT AND DISBURSEMENT OF FUNDS

Section 6.1 Accounts.

(a) All monies received by Operator in the operation of the Hotel, including amounts necessary to maintain sufficient Working Capital determined and furnished by Lessee, shall be received in trust by Operator for the benefit of Lessee and shall be deposited in an Agency Account in Lessee's name, designating Operator and Lessee as authorized signatories, in a bank or trust company selected by Lessee. Any funds received by Operator from (i) capital transactions, (ii) sources other than operations of the Hotel or (iii) deposits by Lessee, such as insurance and condemnation proceeds and proceeds from the mortgaging, refinancing, or sale of the Hotel, shall be paid promptly to Lessee. Such monies shall not be commingled with other funds belonging to Operator or Lessee and shall be held by Operator as a fiduciary for Lessee. Out of such Agency Account, Operator shall make all disbursements provided for in Article III and pay all other operating expenses of the Hotel including, to the extent payable, the Management Fee due pursuant to Section 8.2; provided, however, that no payment which, under the provisions of this Agreement, requires Lessee's consent and approval, or which is not authorized under the Annual Budget, shall be made without Lessee's prior written consent.

(b) For each Fiscal Year, subject to Lessee receiving any return of excess deposits of cash to maintain sufficient Working Capital pursuant to Section 6.2, Operator shall make monthly disbursements to Lessee of Cash Available for Disbursement within 20 days following the end of each month.

(c) Checks drawn on the Agency Account or other documents of withdrawal from the Agency Account shall be signed by two (2) designated representatives of Operator

approved by Lessee. The Agency Account shall provide that, upon Lessee's written direction, Operator and its representatives may be removed as authorized signatories of such account but only upon termination of this Agreement or Operator's default hereunder.

Section 6.2 Working Capital. It is the mutual intention of Lessee and Operator that Working Capital be maintained at all times which will be sufficient to make all disbursements provided for in Article III and for operating expenses so as to permit the uninterrupted and efficient operation of the Hotel in accordance with the Annual Budget. In the event, at any time during the term of this Agreement, the amount of cash in the Agency Account is determined to be insufficient by Operator, Operator shall give Lessee immediate written notice of the amount of such deficiency. Lessee shall deposit the amount requested by Operator in the Agency Account within 30 days of such notice, and if Lessee fails to do so, it shall indemnify and hold Operator harmless from any loss or expense Operator might incur from the date of such notice by reason of Lessee's failure to make such a deposit and Operator may exercise its right to terminate pursuant to Section 11.2. In the event of a dispute as to the amount of cash required for sufficient Working Capital pursuant to this Section 6.2, Lessee shall deposit in the Agency Account the amount reasonably believed to be necessary by Lessee and shall submit the dispute to Lessee's independent accounting firm for resolution, whose resolutions shall be determinative. Following resolution of the dispute, Lessee shall deposit into the Agency Account any additional funds which are determined by Lessee's independent accounting firm to have been required pursuant to this Section 6.2. If Lessee determines that there is insufficient cash in the Agency Account to make all disbursements provided for in Article III and for operating expenses or to maintain an uninterrupted and efficient operation of the Hotel in accordance with the Annual Budget as revised from time to time, Lessee shall instruct Operator not to make or to make only a certain amount of monthly disbursements of Cash Available for Disbursement to be made pursuant to Section 6.1(b). Notwithstanding the foregoing, at any time during the last seven (7) days of any calendar quarter, Lessee may require that Operator disburse funds from the Operating Account to Lessee which may result in a failure to maintain sufficient Working Capital; provided that on or before the second business day of the following calendar quarter, Lessee shall deposit funds into the Operating Account sufficient to maintain sufficient Working Capital.

Section 6.3 Reserve Accounts.

(a) Lessee, at its election, shall instruct Operator to deposit up to four percent (4%) of Adjusted Gross Revenue in a Capital Reserve Account (the "Reserve"), which sum shall be expended as provided in and in conformity with the Annual Budget. The Reserve shall be held by Lessee, but Lessee shall not be required to keep it in a separate account and shall not be obligated to spend it.

(b) Operator shall make all deposits required under the terms of any Encumbrances, including deposits for insurance premiums, real estate taxes and capital expenditures; and the requirements of any Encumbrances with respect to any deposits shall control over any provisions herein with respect to such deposits.

ARTICLE VII
BOOKS, RECORDS AND STATEMENTS

Section 7.1 Books and Records.

(a) Operator shall keep accurate, just and true books including, without limitation, books of account, guest records, front office records and other records (herein collectively called "books and records") in which shall be entered fully and adequately every transaction with respect to the operation of the Hotel, substantially in accordance with the Uniform System, with such exceptions as may be required by the provisions of this Agreement. Such books shall be kept on the basis of such accounting year (calendar or fiscal) as Lessee may direct, and on the accrual method of accounting.

(b) The books and records shall be kept at the Hotel; provided, however, that Lessee hereby grants approval for certain books and records, relating to the central billing system or other centralized services, to be kept in Operator's principal office.

(c) The books and records shall be available to Lessee and its representatives at all times for examination, audit, inspection and transcription. All of such books and records shall at all times be the property of Lessee. Upon any termination of this Agreement, all of such books and records forthwith shall be turned over to Lessee.

Section 7.2 Monthly Statements and Reports.

(a) Operator shall deliver to Lessee, on or prior to the 15th day of each calendar month the following:

- (1) a balance sheet for the Hotel as of the end of the preceding month;
- (2) a profit and loss statement showing the results of the operation of the Hotel for the immediately preceding month and Fiscal Year-to-date;
- (3) supporting schedules for such preceding month and Fiscal Year-to-date showing (i) the computation of the Management Fee due pursuant to Section 8.2, (ii) the detail of all gratuitous accommodations or services, and (iii) the detail for Central Reservation Services and Central Marketing Services charged pursuant to Section 3.9(b);
- (4) a variance report showing results of the operation of the Hotel for the preceding month and Fiscal Year-to-date as compared to the Annual Budget and the same time period of the previous Fiscal Year;

- (5) a schedule of computation, funding and uses of Reserve funds as compared to the Annual Budget for capital expenditures by month for the Fiscal Year-to-date;
- (6) a reforecast of gross revenues and profit and loss for the remainder of the year, broken down for each month, as compared to the Annual Budget;
- (7) a Manager's Report explaining variances, the basis for reforecasts, changes in competition and market conditions and other items as suggested in the Uniform System;
- (8) a monthly status report on occupancy rates and average daily room rates for local hotels which compete with the Hotel; provided, however, Lessee understands that this information has been supplied to Operator by such other hotels and Operator does not warrant the accuracy of such information; and
- (9) any other information reasonably requested by Lessee.

Such statements shall (1) be in a form satisfactory to Lessee, (2) be certified to Lessee by a financial officer of Operator, (3) be taken from the books and records maintained by Operator at the Hotel or at Operator's principal office, (4) follow the general form set forth in the requirements pursuant to the Uniform System, and (5) be accompanied by such supporting evidence as shall be reasonably required by Lessee. Upon request, Operator shall also furnish to Lessee a statement of changes in financial and cash position and a forecast of changes in financial and cash position.

(b) In the event Lessee wishes to dispute any statement or report as detailed in Section 7.2(a), Lessee shall give Operator written notice thereof, said notice to set out the specific items disputed by Lessee. In the event Operator and Lessee are not able to reach an agreement on the items disputed by Lessee, Lessee's independent certified public accounting firm shall be retained by Lessee and Operator to audit the books and records of the operation of the Hotel in connection with the items in dispute and to render a report of its findings to Operator and Lessee. Such findings shall be binding on both parties and any necessary adjustments shall be made. In the event such findings result in a variation in favor of Lessee of more than 3% between the total amount of profits or losses originally reported by Operator and the total amount of profits or losses adjusted pursuant to such findings, Operator shall pay all costs of the accounting firm in making its findings. In all other cases, Lessee shall pay for the services of the accounting firm. If Operator owes Lessee money as a result of such findings, Operator shall pay Lessee such money within five (5) days after such findings are received together with interest thereon at the prime rate of interest as published in The Wall Street Journal from time to time plus two percent (2%) per annum.

Section 7.3 Annual Statements. Within 45 days after the end of each Fiscal Year during the term of this Agreement, and within 45 days after the termination of this Agreement, Operator shall deliver to Lessee a balance sheet and related statement of change in financial

position, and profit and loss statement, including all supporting departmental schedules of revenues and expenses, certified, as true, correct and complete by a financial officer of Operator, showing (1) assets employed in the operation of the Hotel and the liabilities incurred in connection therewith during such Fiscal Year, (2) the results of operations of the Hotel during such Fiscal Year, (3) variances to the Annual Budget and prior Fiscal Year, (4) the Gross Revenue and Adjusted Gross Revenue of the Hotel during such Fiscal Year, and (5) a computation of the Management Fee for such Fiscal Year. The cost of all such balance sheets, statements of change in financial position and profit and loss statements, together with the cost of certification thereof, shall be an operating expense of the Hotel paid by Lessee. Operator shall cooperate with Lessee and its independent accounting firm in connection with the review and audit of the foregoing statements.

Section 7.4 SEC Requirements. Upon request from Lessee, Operator shall provide Lessee with certified information regarding the operation of the Hotel which is necessary for Lessee and its affiliates to comply with the rules and regulations of the United States Securities and Exchange Commission (the "SEC"). Operator shall also, upon request from Lessee, provide Lessee with satisfactory evidence that Operator has internal control procedures in effect which are sufficient to meet the requirements of the SEC and that Operator is following such internal control procedures; and Lessee shall have the right to conduct an audit of Operator's operations to confirm that Operator is complying with the foregoing requirements. Without limiting the foregoing, upon request by Lessee, Operator shall execute and deliver to Lessee a certificate in the form of Exhibit A attached hereto and a representation letter in the form of Exhibit B attached hereto. In addition, if Operator provides any centralized accounting functions in connection with the Hotel, Operator shall provide any reports required under Statement on Audit Standards 70.

ARTICLE VIII MANAGEMENT FEE

Section 8.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) "Gross Revenue" shall mean all income and revenue of every kind resulting from the operation of the Hotel and all of its facilities including, without limitation, all income and revenue received from transient guests, licensees, concessionaires and other persons occupying space at and/or rendering services to the guests of the Hotel (but not the gross receipts received by such licensees, concessionaires and other persons); provided, however, that Gross Revenue shall not include, or if included, shall be reduced by the amount of the proceeds of any loan to Lessee and any deposits received by Lessee.

(b) "Adjusted Gross Revenue" shall mean Gross Revenue in any Fiscal Year after deducting the following items (whether paid or unpaid) accruing during such Fiscal Year to the extent included in Gross Revenue:

(1) federal, state and municipal excise, sales and use taxes collected directly from patrons, guests or users of the Hotel or as a part of the sales prices of any

goods, services or displays, such as gross receipts, admission, cabaret or similar or equivalent taxes;

(2) any vending machine revenues from machines not owned by Lessee (other than sales commissions or other remuneration received by Lessee with respect to such machines);

(3) the proceeds payable to Lessee by reason of any hazard or business interruption insurance policies, title insurance policies or items of a similar nature; provided, however, proceeds from business interruption insurance shall be included in Gross Revenues to the extent such policies specifically include base management fees as long as Lessee and Owner are not adversely affected thereby;

(4) the proceeds of any permanent taking by condemnation or eminent domain by any public or quasi-public authority of all or any part of the Hotel;

(5) any reversal of any contingency or tax reserve;

(6) any cash or credit rebates or refunds paid to patrons, guests, lessees, concessionaires or other users of the Hotel, any correction of overcharges, the price of any merchandise given in exchange of other merchandise which does not result in additional income (or, if such exchanges result in additional income, that part of the price of such merchandise equal to the price of the returned merchandise), and any other items of the nature of those items set forth herein;

(7) any allowance for bad debts;

(8) the proceeds to Lessee from the sale, financing or other disposition of the Hotel or any part thereof or other assets of Lessee not sold in the ordinary course of business;

(9) any payments made directly to Lessee to induce it to enter into any lease, agreement or other transaction in connection with the Hotel;

(10) any proceeds from settlement of legal proceedings;

(11) interest on any reserve account; and

(12) interest on any working capital.

Section 8.2 Management Fee.

(a) Lessee shall pay Operator, as compensation for its services during the term of this Agreement, a Base Management Fee in an amount equal to the Base Management Fee

Percentage times the Adjusted Gross Revenue for each Fiscal Year or portion thereof, during the term of this Agreement. The Base Management Fee Percentage shall equal two percent (2%). The Base Management Fee shall be paid monthly within 20 days following the end of the month in which earned and shall be based on the monthly profit and loss statement for the preceding month and the schedule of the computation of the Base Management Fee submitted by Operator to Lessee pursuant to Section 7.2(a). The Base Management Fee may be withdrawn by Operator from the Agency Account, subject to adjustment if the Lessee objects to the profit and loss statements or the schedule upon which the Management Fee computation is based, in which case the dispute shall be settled in the manner set forth in Section 7.2(b). Any adjustment in the Base Management Fee for any Fiscal Year necessary after receipt by Lessee of the balance sheets and profit and loss statements provided for in Section 7.3 shall be made and paid within 5 days after the receipt thereof by both parties.

(b) Commencing on the later of the Effective Date or January 1, 2006, Lessee shall pay to Operator as additional compensation for its services during the term of this Agreement, an Incentive Management Fee each year equal to 10% of all Net Operating Income for such year after the Lessee has received a non-cumulative ten percent (10%) cash return for such year on any cash investment in the Hotel by either Lessee or Owner, including any cash to purchase the Hotel (including closing costs) and any cash invested in the Hotel or its operations after such purchase, excluding cash invested in the Hotel out of the Reserve. The Incentive Management Fee shall be calculated on an unleveraged basis, i.e, without regard to any debt that may be on the Hotel. (Attached as Exhibit C is an example of how such cash on cash return will be calculated.) The Incentive Management Fee shall be paid within thirty (30) days after the annual statement referred to in Section 7.3 is delivered to Lessee; provided, however, such Fee shall be subject to adjustment between Lessee and Operator upon completion of the annual audit for the Hotel. There shall be no Incentive Management Fee paid for the first Fiscal Year, ending December 31, 2005.

(c) If Lessee terminates this Agreement for any reason, except for an Event of Default described in Section 12.1 below, during the first twenty four months of this Agreement, Lessee shall pay to Operator, in addition to all Base and Incentive Management Fees that may be due to Operator through the date of termination, a Termination Fee equal to the average monthly Base Management Fee earned by the Operator under this Agreement multiplied by six (6), provided Operator complies with all Termination requirements of Section 11.3.

ARTICLE IX INSURANCE

Section 9.1 Insurance Carried by Lessee. Lessee has the option to elect its own insurance program, or provide any single policy with limits and coverages determined by Lessee and, if applicable, Owner's lenders; provided, however, at Lessee's election, Operator shall obtain from an issuing company approved by Lessee, as an operating expense of the Hotel, the following insurance coverages in the form of policies which shall name Owner, Lessee, Lessee's or Owner's

mortgagee and, with respect to any liability insurance, Operator, as additional named insured, as their interests may appear:

(a) An "all risk" policy (including, at Lessee's option, Difference in Conditions coverage which shall include quake, and flood) insuring all real and personal property, in an amount not less than the full replacement cost value, without coinsurance; such insurance to be written on a stipulated or agreed amount basis.

(b) Insurance on the Hotel against loss or damage from an accident to and/or caused by boilers, heating apparatus, pressure vessels, pressure pipes, electrical or air conditioning equipment, in an amount as Lessee shall deem advisable.

(c) Business interruption insurance against the perils enumerated in subsections (a) and (b) above, in amounts as determined by Lessee.

(d) Commercial liability insurance including personal injury and humiliation; products liability; innkeeper's legal liability; dram shop insurance; blanket contractual liability; professional liability (if available); advertising liability; automobile liability, including owned and non-owned vehicles; garage liability and garage keeper's legal liability, all with limits equal to Operator's customary limits on similar properties operated by them, or as designated by Lessee, but not less than \$20,000,000 for personal injury or death of any one person, for personal injury or death of two or more persons in any one occurrence, and for damage to property resulting from any one occurrence. These policies shall be specifically endorsed to provide that the insurance will be deemed primary and that any other insurance available to Lessee shall not be called upon by these policies to contribute to a loss.

(e) Worker's compensation, employer's liability and similar insurance as may be required by law or as Lessee and Operator shall deem advisable. Worker's compensation dividend, retention or retrospective rating plans on a more than a one location basis will be submitted in advance to Lessee with the allocation formula that is to be applied in advance or Lessee has a right to reject any penalty or surcharge resulting from such allocation formula.

(f) Fidelity and dishonesty insurance, and money and securities insurance in such reasonable amounts as Lessee and Operator shall deem advisable but not less than \$100,000, which policy shall specify that any loss involving funds of Lessee shall be payable to both Operator and Lessee. A contracting services endorsement or other endorsement to provide for coverage of employees of Operator taking money or property of Lessee or guest shall be attached to said policy.

(g) Such additional insurance as may be required by any mortgagee or lessor of the Hotel or any part thereof, together with insurance against such other risks as it is now, or hereafter may be, customary to insure against in the operation of similar properties, considering the nature of the business and the geographic and climatic nature of the Hotel's location.

Section 9.2 General.

(a) Certified copies of policies, containing all conditions applying to the Hotel, shall be delivered to Lessee not less than 30 days prior to the expiration date of all policies of insurance that must be maintained under the terms of this Agreement. All policies shall contain an endorsement providing a 30 day written notice of cancellation, material change, or non-renewal to Lessee and Operator.

(b) To the extent waivers of subrogation are acceptable to the carrier, each policy of insurance shall provide that the carrier shall have no right of subrogation against either party hereto, their agents or employees by separate endorsement.

(c) The limits provided for hereunder shall be increased from time to time to give effect to increases in current liability exposure and inflationary cost increases. Changes in the amounts and types of insurance provided for hereunder shall be made as part of the Annual Budget review process.

(d) Any deductibles applicable to any of the required insurance shall be acceptable to Lessee and Operator.

(e) All insurance shall be written with companies approved by Lessee, licensed in the state in which the Hotel is located and having a Best's Rating of not less than A-XI, unless otherwise approved by Lessee.

(f) At Lessee's request, Operator shall provide information pertaining to Operator's policies and procedures governing claims, emergency preparedness, and loss prevention. This is to include regular reports on claim and insurance litigation activity at the Hotel.

(g) Any insurance required to be provided pursuant to Section 9.1 may be provided under policies of blanket insurance which cover other properties and activities of Lessee. The cost of any blanket coverage shall be prorated among the properties and activities covered in a manner reasonably approved by Lessee, provided that the portion of such cost allocated to the Hotel shall be no greater than if the same insurance coverage were written separately.

ARTICLE X INDEMNIFICATION

Section 10.1 Indemnification by Operator. Operator agrees to indemnify and hold Lessee and Owner free and harmless from and against any liability, damage, loss, claim, cost or expense including attorneys' fees (collectively "Loss") incurred by Lessee by reason of:

(a) A breach by Operator of any obligation or undertaking to be performed by Operator under this Agreement or any action taken by Operator which is outside the scope of this Agreement;

(b) Any gross negligence or willful misconduct of Operator, or its directors, officers or employees; or

(c) Any breach by Operator or its directors, officers or employees of any labor or employment laws, including laws against harassment and discrimination, immigration laws and fair labor laws.

Section 10.2 Indemnification by Lessee.

(a) Lessee agrees to indemnify and hold Operator free and harmless from and against any liability, damage, loss, claim, cost or expense (including reasonable attorneys' fees) incurred by Operator by reason of a breach by Lessee of any obligation or undertaking to be performed by Lessee under this Agreement.

(b) Lessee shall indemnify, defend and hold Operator harmless from all costs, expenses, claims, damages and liabilities, including, without limitation, counsel fees and disbursements, arising out of, in connection with or resulting from the operation or use of the Hotel after the date of termination. The provisions of this subsection (b) shall survive any such termination or expiration.

ARTICLE XI TERMINATION OF AGREEMENT

Section 11.1 Termination by Lessee. Lessee shall have the right, in its sole discretion, to terminate this Agreement at any time, (i) upon a sale of the Hotel or all of the ownership interests in the Owner or LaSalle Hotel Properties provided Lessee gives Operator as much notice as reasonably possible of the date such sale will close, or (ii) upon ninety (90) days prior written notice to Operator; provided, however, Lessee may terminate this Agreement upon less than 90 days' notice as long as Lessee pays Operator the fees due hereunder for the time between the date of termination and the end of such 90 day period and any Termination Fee that may be due pursuant to Section 8.2(c), unless such termination was for the reasons set forth in Section 12.1 below in which event no such fees shall be due the Operator.

Section 11.2 Termination by Operator. Operator may terminate this Agreement upon 30 days written notice to Lessee (or such longer period as may be necessary in Lessee's reasonable opinion to effect an orderly transition of management responsibilities) if any of the following events occur:

(a) Lessee shall fail to provide Operator with the cash sufficient to maintain sufficient Working Capital requested by Operator, as set forth in Section 6.2 hereof;

(b) The appointment of a receiver, conservator, rehabilitator, or similar officer for Lessee or for any of its property, or the issuance of any warrant or attachment against any of its property by any State or agency thereof or by the United States Government of any agency thereof, or the filing of a petition in bankruptcy by or against Lessee, or the commencement of any proceeding by or against Lessee under a Bankruptcy or Debtor's Law (or similar analogous in purpose or effect) for the relief or reorganization of it or for the composition, extension, arrangement, or readjustment of any of its obligations, or the commencement of any proceedings supplementary to any execution relating to any judgment against Lessee unless, within 30 days after the happening of any such event, any such proceeding shall have been stayed, vacated or dismissed;

(c) Lessee fails to comply with any of its obligations hereunder and such failure continues for thirty (30) days after written notice to Lessee (provided, however, such cure period shall be extended for so long as is reasonably necessary, up to a maximum of 90 days, to effectuate such cure so long as Lessee commences to cure within such five day period and thereafter diligently prosecutes such curative measures to completion); or

(d) If Lessee sells the Hotel to a party who is not an Affiliate of Lessee and Lessee has not elected to terminate this Agreement, Operator shall have the right to terminate this Agreement effective as of the date the closing of the sale takes place provided Operator has given Lessee notice of its election to terminate this Agreement within thirty (30) days after Operator is notified that the sale will take place.

Section 11.3 Settlement Upon Termination.

(a) In the event this Agreement is terminated as herein provided, all obligations of the parties shall cease as of the termination date, provided, however, that (1) Operator shall be entitled to all Management Fees accruing to the date of termination; (2) Operator shall account to Lessee with respect to all matters outstanding as of the date of termination and assign to Lessee all rights under such agreements, contracts and leases as Lessee may designate; (3) Operator shall be liable to Lessee under this Agreement for all Operator's obligations accruing to such termination date; (4) Operator shall remove all its property from the Hotel; (5) Operator shall transfer to Lessee all books and records with respect to the Hotel in the custody or control of Operator; (6) Operator shall assign and transfer to Lessee or its designee all Operator's right, title and interest in and to all contracts for furnishing or services and materials to the Hotel which have been entered into in accordance with the terms hereof; (7) Operator shall cooperate with Lessee after termination to transfer to Lessee or its designee all its rights under contracts relating to employees of Operator who become employees of Lessee or its designee upon termination, together with all accrued and unpaid salaries, vacation pay, sick leave benefits, workers' compensation and unemployment insurance costs and reserves for bonuses, as well as Operator's workers' compensation and unemployment insurance ratings, and Lessee shall provide sufficient funds to pay to all employees of the Hotel who will not be continuing their employment as a result of such termination all such accrued and unpaid salaries, vacation pay, sick leave benefits, workers' compensation and

unemployment insurance costs and reserves for bonuses incurred in accordance with the terms of this Agreement; (8) Operator shall turn over to Lessee or its designee all accounts for the Hotel, together with all cash in such accounts; (9) Operator shall, if required by any purchaser at the time of termination, execute and deliver to the purchaser and its accountants such confirmations regarding the books and records of the Hotel as may be required for the purchaser to obtain audited financial statements; and (10) by terminating this Agreement in accordance with this Article XI, neither party shall be deemed to have waived any action it might have, in law or in equity, by reason of a breach of or default under this Agreement.

(b) To the extent assignable, Operator shall assign and transfer to Lessee all of Operator's right, title and interest in and to all licenses, permits, names, logos and signs with respect to the Hotel; and Operator shall have no further rights with respect thereto. Without limiting the foregoing, Operator shall cooperate with Lessee in the transfer of any liquor licenses for the Hotel held in Operator's name to Lessee or its designee, including, if necessary, entering into a lease for such liquor license on terms customarily used for such liquor licenses in the jurisdiction where the Hotel is located.

(c) Operator shall peacefully vacate and surrender the Hotel to Lessee.

(d) Operator's right to any fees hereunder shall be contingent on Operator's cooperation with the transition of the management of the Hotel's operations upon the termination of this Agreement, including, without limitation, the performance by Operator of its obligations set forth in this Article.

(e) All software used at the Hotel which is owned by Operator or by any of its Affiliates or any licensor to them shall in all events remain the exclusive property of Operator, its Affiliate or the licensor, as the case may be, and nothing contained in this Agreement shall confer on Lessee the right to use any of such software; provided, however, Operator shall (i) provide Lessee or its designee with the information contained in such software, either in machine-readable form or, if not possible, in paper form, so long as any license by which Operator has the right to use the software is not violated thereby and (ii) obtain Lessee's prior written consent before using any such software in connection with the Hotel. Except for software specially programmed or custom made for Operator or its Affiliates which shall require the prior written consent of Lessee for use at the Hotel, Operator shall endeavor to have the ownership of software used at the Hotel in the name of Lessee.

ARTICLE XII DEFAULT BY OPERATOR

Section 12.1 Events of Default. An Event of Default shall be deemed to have occurred under this Agreement if:

- (a) Operator fails to make payment when due hereunder and such failure continues for period of 10 days;
- (b) Operator fails to maintain insurance coverage, or fails to reimburse Lessee for payment of insurance coverage (if applicable) and such failure continues for ten (10) days;
- (c) Operator fails to perform any of Operator's other covenants or obligations contained herein and such failure continues for ten (10) days after notice from Lessee; provided, however, if such failure is capable of being cured but cannot by its nature be cured within ten (10) days, Operator shall have such longer period, not to exceed ninety (90) days, in which to cure such failure;
- (d) Operator fails to maintain any material license, permit, certification, or approval required for the lawful operation of the Hotel in accordance with its permitted use and such failure materially affects the operation of the Hotel;
- (e) Operator fails to pay its debts as they become due or makes a general assignment for the benefit of creditors;
- (f) Operator causes Lessee or Owner to be in default under any mortgage or lease on the Hotel, which failure is not cured within the applicable time period set forth therein;
- (g) the estate or interest of the Operator in the Hotel or any part thereof is levied upon or attached in any proceeding and the same is not be vacated or discharged within 120 days;
- (h) if Operator is no longer owned by Noble House Resorts and Hotels, Ltd. or if Noble House Hotels and Resorts, Ltd. is no longer owned or controlled by Patrick R. Colee or the Colee Family Trust.
- (i) Operator voluntarily cease operation of the Hotel for more than 3 days other than by reason of casualty, condemnation or force majeure;
- (j) the estate or interest of Operator in this Agreement is voluntarily or involuntarily transferred, assigned, conveyed, levied upon or attached;
- (k) there is a change in the operation of the Hotel without Lessee's prior written consent;
- (l) the Hotel receives unsatisfactory scores on any internal operational audit by the Lessee; or

- (m) bankruptcy or insolvency proceedings are instituted with respect to Operator, and in the case of involuntary proceedings not dismissed within sixty (60) days.

If an Event of Default occurs, Lessee may exercise any rights or remedies at law or equity, including the right to immediately terminate this Agreement. If Lessee terminates this Agreement, no additional Base Management Fee or Incentive Management Fee shall be due hereunder.

Section 12.2 Lessee's Performance of Operator's Obligations. In the event Operator fails to perform any of its obligations and undertakings hereunder, Lessee may, after giving Operator ten (10) days' written notice thereof (unless such default creates an emergency in Lessee's judgment, in which case no notice need be given by Lessee) perform any of Operator's obligations (including payment of any monies due) and Lessee shall be immediately reimbursed by Operator from the Agency Account for any monies so expended (to the extent there are funds in such Agency Account); provided, however, that any part of such monies expended by Lessee which represent penalties, interest or Lessee's expenses or costs (including reasonable attorneys' fees) incurred wholly or in part by reason of Operator's default under this Agreement shall not be charged to the Agency Account, but shall be paid by Operator to Lessee. Any performance by Lessee of any obligation of Operator hereunder shall not be deemed a waiver by Lessee of any other right or remedy Lessee has under this Agreement or in law or equity by reason of such default or a waiver of any such rights or remedies Lessee has by reason of a future default by Operator.

ARTICLE XIII MISCELLANEOUS

Section 13.1 Notices. All communications provided for hereunder shall be in writing, and shall be either (a) sent by facsimile, (b) delivered in person or (c) mailed, postage prepaid, by certified mail, return receipt requested, addressed to the parties at the following addresses:

Operator: Mission Bay Management, LLC
225 108th Ave. N.E.
Suite 300
Bellevue, Wa. 98004
Attn: John M. Donoghue

Lessee: c/o LaSalle Hotel Properties
3 Bethesda Metro Center
Suite 1200
Bethesda, Maryland 20814
Attn: Chief Operating Officer
Facsimile No. (301) 941-1553

with a copy to:

Hagan & Vidovic LLP

200 East Randolph Drive
Chicago, Illinois 60601
Attn: R.K. Hagan
Facsimile No. (312) 228-0982

or at such other address and with such other copies as any party may designate in writing to the others. Such notices shall be deemed given upon receipt.

Section 13.2 Non-Competition. Except for the continued operation by Operator of the San Diego Paradise Point Resort, as long as this Agreement is in effect, without the Lessee's prior written approval, the Operator or any of its Affiliates shall not directly or indirectly operate or manage another hotel in the San Diego, California metropolitan area.

Section 13.3 Lessee's Right to Inspect. Lessee or its agent shall have access to the Hotel at any and all reasonable times for the purpose of inspecting the Hotel, protecting same against fire or other casualty, prevention of damage to the Hotel, or showing the Hotel to prospective purchasers or mortgagees.

Section 13.4 Partial Invalidity. In the event that any portion of this Agreement shall be declared invalid by order, decree or judgment of a court, or governmental agency having jurisdiction, this Agreement shall be construed as if such portion had not been inserted herein, except when such construction would operate as an undue hardship on Operator or Lessee or constitute a substantial deviation from the general intent and purpose of said parties as reflected in this Agreement.

Section 13.5 Time of the Essence. It is expressly agreed that time is of the essence in this Agreement.

Section 13.6 Estoppel Certificate. Operator agrees that from time to time upon not less than 10 days' prior request by Lessee, Operator will deliver to Lessee a statement in recordable form certifying (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications that the Agreement as modified is in full force and effect and stating the modifications); (b) the dates to which the Management Fees and other charges have been paid; (c) that Lessee is not in default under any provision of this Agreement, or, if in default, the nature thereof in detail; and (d) such other items as Lessee may reasonably request.

Section 13.7 No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Lessee and Operator with respect to the management of the Hotel.

Section 13.8 Attorneys' Fees. In the event either party hereto institutes legal action against the other party to interpret or enforce this Agreement or to obtain damages for any alleged breach hereof, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees.

Section 13.9 Successors. Operator may not assign its interest under this Agreement or any rights or duties hereunder to any other entity or person without the prior written consent of Lessee, which consent Lessee may withhold in its sole discretion. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.

Section 13.10 No Third Party Beneficiaries. Lessee and Operator acknowledge that this Agreement is solely for their own benefit and, subject to Section 13.9, that of their successor and assigns, and that no third party shall have any rights or claims arising hereunder, nor is it intended that any third party shall be third party beneficiary of any provisions hereof; provided, however, Owner shall be deemed a third-party beneficiary of Lessee's rights hereunder.

Section 13.11 Waiver, Entire Agreement. No modification, amendment, discharge or change of this Agreement, except as otherwise provided herein, shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, amendment, discharge or change is sought. No waiver of any breach of any covenant, condition or agreement contained herein shall be construed to be a subsequent waiver of that covenant, condition or agreement or of any subsequent breach thereof or of this Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are merged herein.

Section 13.12 Captions. Titles or captions contained in this Agreement are inserted only as a matter of convenience, and for reference only, and in no way limit, define or extend the provisions of this Agreement.

Section 13.13 Interpretation. In interpreting this Agreement, the provisions in this Agreement shall not be construed against or in favor of either party on the basis of which party drafted this Agreement.

Section 13.14 Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the law of the state where the Hotel is located.

Section 13.15 Further Assurances. The parties hereto agree to execute, acknowledge, deliver and record such certificates, amendments, instruments, and documents, and to take such other action, as may be necessary to carry out the intent and purposes of this Agreement.

Section 13.16 Confidentiality. Except as required by law, including the rules and regulations of the Securities and Exchange Commission, the terms and provisions of this Agreement shall be confidential between Lessee and Operator and shall be released to third parties only in connection with carrying out their respective duties and obligations described herein, or as

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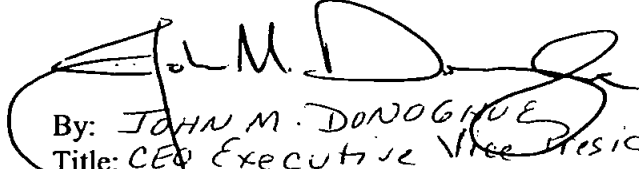
ordered by competent governmental authority, or in connection with a proposed sale or financing of the Hotel or investment in the Hotel.

Section 13.17 Subordination. This Agreement shall be subject and subordinate to any ground lease on the Hotel and the lien of any mortgage or deed of trust encumbering the Hotel; and, in the event of the termination of any such ground lease or the foreclosure or exercise of the power of sale under any such mortgage or deed of trust, this Agreement and the rights of Operator hereunder shall automatically terminate; and any party acquiring an interest in the Hotel as a result thereof shall have no obligation or liability to Operator.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

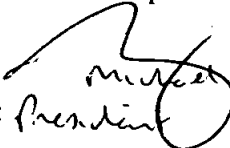
OPERATOR:

Mission Bay Management, LLC
A Delaware limited liability company


By: JOHN M. DONOGHUE
Title: CEO, Executive Vice President

LESSEE:

LHO MISSION BAY ROSIE LESSEE, INC.,
a Delaware corporation


By: Michael D. Barnell.
Title: President

EXHIBITS

Exhibit A – Disclosure Controls and Procedures Certification

Exhibit B – Representation Letter

Exhibit C – Example of Incentive Fee Calculation

EXHIBIT A

Form of Certificate for Hotel Operators

The undersigned, a duly appointed officer of [Hotel Operator] and the Controller of [name of the hotel], do hereby certify on behalf of [Hotel Operator] (the "Operator") to LaSalle Hotel Properties ("LaSalle"):

1. that we have established a system of Disclosure Controls and Procedures (as defined below) to ensure that Material Information (as defined below) relating to [property(s)] (the "Hotel(s))is made know to us and reported to you promptly on a quarterly basis;
2. that we have evaluated the effectiveness of our Disclosure Controls and Procedures as of a date within 90 days prior to the date hereof (the "Evaluation Date");
3. by executing this certificate, do hereby certify that the Disclosure Controls and Procedures as of the Evaluation Date are sufficient for the purposes for which they are intended and have either cured, or reported to the Chief Financial Officer of LaSalle in writing, of any deficiencies or material weaknesses in the design or operation of our internal controls which could adversely affect our ability to record, process, summarize and report financial data including any identified in our internal routine audit process
4. we have reported to you any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls referred to herein; and
5. we have informed the Chief Financial Officer of LaSalle in writing whether or not there were significant changes in our internal controls or in other factors that could significantly affect internal controls at or relating to the Hotel subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

For purposes of this Certification, "Material Information" means that information to which there is a substantial likelihood that a reasonable hotel owner would attach importance in the operation or ownership of its hotel; "Disclosure Controls and Procedures" means controls and other procedures of the undersigned that are designed to ensure that Material Information as to the Hotel is recorded, processed, summarized and reported to LaSalle within the time periods specified in the [lease][management agreement] for that Hotel. Disclosure Controls and Procedures include, without limitation, controls and procedures designed to ensure that information required to be delivered in its reports to LaSalle by the undersigned is accumulated and communicated to the appropriate members of management of the undersigned, to allow timely decisions by the undersigned for inclusion in the report provided to LaSalle.

Dated: _____

[Company Name]

By: _____

Title: _____

[Hotel Name]

By: _____

Title: Controller

EXHIBIT B
(Representation Letter from Operator)

KPMG LLP
303 East Wacker Drive
Chicago, IL 60601

Date

Ladies and Gentlemen:

We are providing this letter in connection with your audits of the balance sheets the _____ Hotel accounts maintained by _____ (the Hotel) as of December 31, 20____ and 20____, and the related statements of income, shareholders' equity, and cash flows for each of the years then ended, for the purpose of expressing an opinion as to whether these financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the Hotel in conformity with accounting principles generally accepted in the United States of America.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, the following representations made to you during your audits:

1. The financial statements referred to above are fairly presented in conformity with accounting principles generally accepted in the United States of America.
2. We have made available to you all financial records and related data.
3. Except as disclosed to you in writing, there have been no:
 - a. Facts or circumstances that have resulted in communications from the Hotel's external legal counsel to either the Hotel's chief legal counsel or chief executive officer reporting evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the Hotel or any agent thereof.
 - b. Communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.

- c. Violations or possible violations of laws or regulations, whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency.
4. There are no:
- a. Unasserted claims or assessments that our lawyer has advised us are probable of assertion and must be disclosed in accordance with Statement of Financial Accounting Standards (SFAS) No. 5, *Accounting for Contingencies*.
 - b. Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by SFAS No. 5.
 - c. Material transactions that have not been properly recorded in the accounting records underlying the financial statements.
 - d. Events that have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustment to or disclosure in the financial statements.
5. There are no significant deficiencies in the design or operation of internal controls which could adversely affect the Hotel's ability to record, process, summarize and report financial data, and we have identified no material weaknesses in internal controls. We interpret "significant deficiencies in the design or operation of internal controls" to be consistent with the concept of a "reportable condition," defined under standards established by the American Institute of Certified Public Accountants. Such standards define a "reportable condition" as a significant deficiency in the design or operation of internal control that could adversely affect the entity's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements. We understand that the term "material weakness in internal control" is a reportable condition for which the design or operation of one or more internal control components does not reduce to a relatively low level the risk that errors or fraud in amounts that could be material in relation to the financial statements may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.
6. We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud at the Hotel. We understand that the term "fraud" includes misstatements arising from fraudulent financial reporting and misstatements arising from misappropriation of assets. Misstatements arising from fraudulent financial reporting are intentional misstatements, or omissions of amounts or disclosures in financial statements to deceive financial statement users. Misstatements arising from misappropriation of assets involve the theft of an entity's assets where the effect of the theft causes the financial statements not to be presented in conformity with accounting principles generally accepted in the United States of America.

7. We have no knowledge of any fraud or suspected fraud affecting the entity involving:
 - a. Management,
 - b. Employees who have significant roles in internal control, or
 - c. Others where the fraud could have a material effect on the financial statements.
8. We have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators, short sellers, or others.
9. The Hotel has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
10. We believe that there are no material unrecoverable amounts classified as assets in the financial statements.
11. The Hotel has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral.
12. The Hotel has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
13. The following have been properly recorded or disclosed in the financial statements.
 - a. Related party transactions including sales, purchases, loans, transfers, leasing arrangements, guarantees, ongoing contractual commitments and amounts receivable from or payable to related parties. We understand that the term "related party" refers to affiliates of the enterprise; entities for which investments are accounted for by the equity method by the enterprise; trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management; principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Another party also is a related party if it can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.
 - b. Guarantees, whether written or oral, under which the Hotel is contingently liable, including guarantee contracts and indemnification agreements pursuant to FASB

Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*.

- c. Significant estimates and material concentrations known to management that are required to be disclosed in accordance with the AICPA's Statement of Position (SOP) 94-6, *Disclosure of Certain Significant Risks and Uncertainties*. Significant estimates are estimates at the balance sheet date, which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which it is reasonably possible that events could occur which would significantly disrupt normal finances within the next year. Concentrations include material sources of financing, including off-balance sheet arrangements and transactions with unconsolidated, limited purpose entities, and contingencies inherent in the arrangements, that are reasonably likely to affect the continued availability of liquidity and financing.
14. Receivables reported in the financial statements represent valid claims against debtors for sales or other charges arising on or before the balance-sheet date and have been appropriately reduced to their estimated net realizable value.

Further, we confirm that we are responsible for the fair presentation in the financial statements of financial position, results of operations, and cash flows in conformity with accounting principles generally accepted in the United States of America.

Very truly yours,

Name
General Manager

Name
Controller

Hilton San Diego Resort - San Diego, CA

EXHIBIT C- INCENTIVE FEE CALCULATION EXAMPLE

	in (\$000)	2006	2007	2008	2009	2010
Incentive Management Fee Calculation Example						
* NOI		\$ 6,000	\$ 8,000	\$ 11,000	\$ 12,000	\$ 13,000
Initial Return Threshold		\$ 9,400	\$ 9,940	\$ 10,753	\$ 11,075	\$ 11,408
growth by CPI**			3%	3%	3%	3%
*** Additional CapEx						
10% of Excess CapEx above FF&E Reserve		250	500	-	-	-
Return Threshold (End)		9,650	10,440	10,753	11,075	11,408
NOI > Return Threshold		-	-	247	925	1,592
x 10%		10%	10%	10%	10%	10%
Incentive Fee		-	-	24.7	92.5	159.2

* Net Operating Income (as defined per the contract) - (for example purposes only)

** CPI assumed to be 3%. The Initial Return Threshold for years 2007 onward is calculated by increasing the Return Threshold (End) for the previous year by CPI.

*** Capital in excess of reserve (for example purposes only) \$ 2,500 \$ 5,000

LEASE AGREEMENT

DATED AS OF _____, 20____,

BY AND BETWEEN

LHO MISSION BAY ROSIE HOTEL, L.P.

AS LANDLORD,

.. AND

LHO MISSION BAY ROSIE LESSEE, INC.

AS TENANT

11/10/2005 4:02 PM
ASO

PROPERTY:

Hilton San Diego Resort
1775 E. Mission Bay Drive
San Diego, California 92109

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS

1.1	"AAA.....	2
1.2	"Accounting Period	2
1.3	"Additional Charges	2
1.4	"Affiliate	3
1.5	"Agreement.....	3
1.6	"Annual Budget	3
1.7	"Annual Food and Beverage Sales Break Points.....	3
1.8	"Annual Other Income Break Points	3
1.9	"Annual Parking Income Break Points.....	Error! Bookmark not defined.
1.10	Intentionally Omitted.....	3
1.11	"Annual Room Revenues Break Points.....	4
1.12	"Annual Telephone Revenues Break Points.....	4
1.13	"Applicable Laws	4
1.14	"Approved Financial Institution	5
1.15	"Award.....	5
1.16	"Beverage Sales.....	5
1.17	"Business Day.....	6
1.18	"Capital Budget	6
1.19	"Capital Expenditure	6
1.20	"Capital Repair	6
1.21	"Cash	7
1.22	"Cash Equivalents.....	7
1.23	"Change of Control.....	7
1.24	"Change in Operations.....	8
1.25	"Claim.....	8
1.26	"Code.....	8
1.27	"Commencement Date.....	8
1.28	"Competitive Set.....	8
1.29	"Condemnation	8
1.30	"Condemnor.....	9
1.31	Intentionally Omitted.....	9
1.32	"CPI	9
1.33	"Current Market Value	9
1.34	"Date of Taking	9
1.35	"Default	10
1.36	"Distribution	10
1.37	"Dollars.....	10
1.38	"Emergency Repairs	10
1.39	"Encumbrance	10
1.40	"Entity.....	10

1.41	"Environment.....	11
1.42	"Environmental Obligation.....	11
1.43	"Environmental Notice	11
1.44	"Event of Default.....	11
1.45	"Expiration Date.....	11
1.46	"FF&E	11
1.47	"Factor	12
1.48	"Fair Market Value.....	12
1.49	"Financial Officer's Certificate	12
1.50	"Financials.....	13
1.51	"Fiscal Quarter.....	13
1.52	"Fiscal Year	13
1.53	"Fixed Term.....	13
1.54	"Fixtures	13
1.55	"Food Sales.....	14
1.56	"Force Majeure Event.....	15
1.57	"Franchise Agreement	15
1.58	"GAAP.....	15
1.59	"Government Agencies.....	15
1.60	"Gross Operating Expenses	16
1.61	"Gross Revenues.....	16
1.62	Intentionally Omitted.....	17
1.63	Intentionally Omitted.....	17
1.64	"Hazardous Substances.....	17
1.65	"Hotel.....	19
1.66	"Hotel Mortgage	19
1.67	"Hotel Mortgagee	19
1.68	"Hotel Standard	19
1.69	"Immediate Family	20
1.70	"Impositions.....	20
1.71	"Incidental Documents	21
1.72	"Indebtedness.....	22
1.73	"Initial Reserve Fund Payment.....	22
1.74	"Insurance Requirements.....	22
1.75	"Insured Casualty	22
1.76	"Interest Rate	22
1.77	"Inventory.....	22
1.78	"Key Employee.....	23
1.79	"Land	23
1.80	"Landlord.....	23
1.81	"Landlord Liens.....	23
1.82	"Landlord Operating Expenses.....	23
1.83	"Lease Year	24
1.84	"Leased Improvements.....	24
1.85	"Leased Intangible Property	24
1.86	"Leased Personal Property.....	24

1.87	"Leased Property	25
1.88	"Legal Requirements	25
1.89	"Licenses	25
1.90	"Lien	25
1.91	"Management Agreement.....	26
1.92	"Manager	26
1.93	"Material Franchise Change	26
1.94	"Measurement Date	26
1.95	"Minimum Inventory	26
1.96	"Minimum Operating Standards.....	26
1.97	"Minimum Rent.....	26
1.98	"Minimum Working Capital.....	27
1.99	"Net Operating Income.....	27
1.100	"Notice.....	27
1.101	"Officer's Certificate	27
1.102	"Operating Budget.....	27
1.103	"OP Units.....	27
1.104	"Other Income	27
1.105	"Overdue Rate	28
1.106	"Parent	28
1.107	"Parking Revenues	Error! Bookmark not defined.
1.108	"Participating Leases	28
1.109	"Participating Rent	28
1.110	"Permitted Encumbrances	28
1.111	"Permitted Liens	29
1.112	"Permitted Transfer	29
1.113	"Permitted Use.....	29
1.114	"Prohibited Casualty	29
1.115	"Person.....	29
1.116	"Personal Property Limitation.....	29
1.117	"Prohibited Taking	29
1.118	"Purchase.....	29
1.119	"Purchase Notice	29
1.120	"Records	30
1.121	"REIT.....	30
1.122	"REIT Shares.....	30
1.123	"Rent.....	30
1.124	"Replacement Cost	30
1.125	"Required Purchase	30
1.126	"Reserve Fund	30
1.127	Intentionally Omitted.....	30
1.128	"Revenue Computation.....	30
1.129	"Revenue Performance Shortfall.....	30
1.130	"RevPAR	30
1.131	"RevPAR Yield Index	31
1.132	"Room Revenues	31

1.133	"SEC	32
1.134	"Sale Notice	32
1.135	"Security Agreement	32
1.136	"Single Purpose Entity	32
1.137	"Solvent	34
1.138	"State	35
1.139	"Subordinated Creditor	35
1.140	"Subordination Agreement	35
1.141	"Subsidiary	35
1.142	"Successor Landlord	36
1.143	"Superior Landlord	36
1.144	"Superior Lease	36
1.145	"Superior Mortgage	36
1.146	"Superior Mortgagee	36
1.147	"Tax Law Change	36
1.148	"Telephone Revenues	36
1.149	"Tenant	37
1.150	"Tenant Cash Management Agreement	37
1.151	"Tenant's Assets	37
1.152	"Tenant's Personal Property	37
1.153	"Third Party	38
1.154	"Third Party Notice	38
1.155	"Transferor	38
1.156	"Uniform System of Accounts	38
1.157	"Unsuitable for Its Permitted Use	38
1.158	"Work	39

ARTICLE 2 LEASED PROPERTY AND TERM

2.1	Leased Property	39
2.2	Condition of Leased Property	42
2.3	Fixed Term	43

ARTICLE 3 RENT

3.1	Rent	43
3.2	Late Payment of Rent, Etc	55
3.3	Net Lease	56
3.4	No Termination, Abatement, Etc	56

ARTICLE 4 USE OF THE LEASED PROPERTY

4.1	Permitted Use	57
4.2	Compliance with Legal/Insurance Requirements, Etc	59

4.3	Environmental Matters	60
-----	-----------------------------	----

ARTICLE 5 MAINTENANCE AND REPAIRS

5.1	Maintenance and Repair	63
5.2	Tenant's Personal Property	67
5.3	Surrender	67
5.4	Management Agreement	68
5.5	Management Fees	69
5.6	Minimum Inventory	70

ARTICLE 6 IMPROVEMENTS, ETC.

6.1	Improvements to the Leased Property	70
6.2	Salvage	72
6.3	Reserve Fund	72

ARTICLE 7 LIENS

7.1	Liens	74
7.2	Landlord's Lien	75

ARTICLE 8 PERMITTED CONTESTS

8.1	Permitted Contests	76
-----	--------------------------	----

ARTICLE 9 INSURANCE AND INDEMNIFICATION

9.1	General Insurance Requirements	77
9.2	Replacement Cost	80
9.3	Waiver of Subrogation	80
9.4	Form Satisfactory, Etc	81
9.5	Blanket Policy	82
9.6	No Separate Insurance	82
9.7	Indemnification of Landlord	83
9.8	Increase in Limits.	84

ARTICLE 10 CASUALTY

10.1	Insurance Proceeds	84
10.2	Damage or Destruction	85
10.3	Damage Near End of Fixed Term	88

10.4	Tenant's Property	88
10.5	Restoration of Tenant's Property	88
10.6	Waiver	89
10.7	Casualty -- Conflicting Terms	89

ARTICLE 11 CONDEMNATION

11.1	Total Condemnation, Etc	89
11.2	Partial Taking	90
11.3	Tenant's Award	91
11.4	Condemnation -- Conflicting Terms	91

ARTICLE 12 DEFAULTS AND REMEDIES

12.1	Events of Default	91
12.2	Remedies	97
12.3	Tenant's Waiver	100
12.4	Application of Funds	101
12.5	Landlord's Right to Cure Tenant's Default	101

ARTICLE 13 HOLDING OVER

13.1	Holding Over	102
------	--------------------	-----

ARTICLE 14 LIMITATION ON LIABILITY

14.1	Limitation of Liability	102
------	-------------------------------	-----

ARTICLE 15 SECURITY FOR PERFORMANCE

15.1	Security for Performance	103
------	--------------------------------	-----

ARTICLE 16 SUBLETTING AND ASSIGNMENT

16.1	Subletting and Assignment	103
16.2	Required Sublease Provisions	104
16.3	Sublease Limitation	106

ARTICLE 17 ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS

17.1	Estoppel Certificates	107
------	-----------------------------	-----

17.2	Financial Statements.....	108
17.3	Annual Budget.....	110
17.4	General Operations.....	114

ARTICLE 18 LANDLORD'S RIGHT TO INSPECT

18.1	Right to Inspect.....	114
------	-----------------------	-----

ARTICLE 19 LIMITATIONS

19.1	Personal Property Limitation.....	115
19.2	Tenant Ownership Limitation.....	116
19.3	Director, Officer and Employee Limitation	116

ARTICLE 20 HOTEL MORTGAGES

20.1	Landlord May Grant Liens	117
20.2	Subordination of Lease.....	118
20.3	Notice to Mortgagee and Ground Landlord	120

ARTICLE 21 ADDITIONAL COVENANTS OF TENANT

21.1	Prompt Payment of Indebtedness	120
21.2	Intentionally Omitted.....	121
21.3	Notice of Litigation, Etc	121
21.4	Indebtedness of Tenant.....	122
21.5	Financial Condition of Tenant.....	122
21.6	Intentionally Omitted.....	122
21.7	Prohibited Transactions	122
21.8	Liens and Encumbrances	123
21.9	Merger, Sale of Assets, Etc	123
21.10	Compliance with Franchise Agreement	123
21.11	Termination Upon Revenue Performance Shortfall, Sale, Etc.....	125
21.12	Change in Operations	128
21.13	Use of the Leased Property.....	129
21.14	Continuing Covenants	129
21.15	Intentionally Omitted.....	132
21.16	Other Activities.....	132
21.17	Reservation System	133

ARTICLE 22 MISCELLANEOUS

22.1	Limitation on Payment of Rent	133
------	-------------------------------------	-----

22.2	No Waiver.....	133
22.3	Remedies Cumulative.....	134
22.4	Severability	134
22.5	Acceptance of Surrender	134
22.6	No Merger of Title.....	135
22.7	Conveyance by Landlord.....	135
22.8	Quiet Enjoyment.....	135
22.9	Memorandum of Lease.....	136
22.10	Notices.....	136
22.11	Construction.....	139
22.12	Counterparts, Headings	139
22.13	Applicable Law, Etc	140
22.14	Right to Make Agreement	140
22.15	Transition Procedures	141
22.16	Complimentary Rooms.....	142
22.17	Approval of Key Employees	143
22.18	Incorporation of Prior Agreements.....	143
22.19	Attorney's Fees.....	143
22.20	Intentionally Omitted.....	143
22.21	Governing Law	144
22.22	Change of Control of Tenant.....	144
22.23	Non-Competition	146

ARTICLE 23 ARBITRATION

23.1	Arbitration	147
23.2	Intentionally Omitted.....	147
23.3	Arbitration Procedures.....	147

EXHIBITS

- A - Miscellaneous Initial Requirements/Terms
- B - Intentionally Omitted
- C - Intentionally Omitted
- D - Minimum Working Capital
- E - The Land
- F - Intentionally Omitted

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of this ____ day of _____, 2006 (the "Commencement Date"), by and between LHO Mission Bay Rosie Hotel, L.P., a Delaware limited partnership ("Landlord"), and LHO Mission Bay Rosie Lessee, Inc., a Delaware corporation, as tenant ("Tenant").

WITNESSETH:

WHEREAS, Landlord owns leasehold title to the Leased Property (this and other capitalized terms used and not otherwise defined herein having the meanings ascribed to such terms in Article 1 hereof); and

WHEREAS, Landlord wishes to lease the Leased Property to Tenant and Tenant wishes to lease the Leased Property from Landlord, all subject to and upon the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE 1

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Article shall have the meanings assigned to them in this Article and include the plural as well as the singular, (ii) all accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with GAAP and the Uniform System of Accounts; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement, (iv) all cites to specific laws, rules, statutes, regulations, ordinances or codes shall be cites to the applicable laws, rules, statutes, regulations, ordinances or codes of the United States of America, and (v) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

1.1 "AAA" shall have the meaning given such term in Section 23.1.

1.2 "Accounting Period" shall mean each calendar month.

1.3 "Additional Charges" shall have the meaning given such term in Section 3.1.3.

1.4 "Affiliate" shall mean, with respect to any Person, (a) in the case of any such Person which is a partnership, any partner in such partnership, (b) in the case of any such Person which is a limited liability company, any member of such company, (c) any other Person or Entity which is a Parent, a Subsidiary, or a Subsidiary of a Parent with respect to such Person or company or to one or more of the Persons referred to in the preceding clauses (a) and (b), (d) any

other Person who is an officer, director, trustee or employee of, or partner in, such Person or any Person referred to in the preceding clauses (a), (b) and (c), and (e) any other Person who is a member of the Immediate Family of such Person or of any Person referred to in the preceding clauses (a) through (d).

1.5 “Agreement” shall mean this Lease Agreement, including all exhibits hereto, as it and they may be amended from time to time as herein provided.

1.6 “Annual Budget” shall have the meaning given such term in Section 17.3.

1.7 “Annual Food and Beverage Sales Break Points” shall have the meaning given such term in Section 3.1.4.

1.8 “Annual Other Operating Departments Revenues Break Points” shall have the meaning given such term in Section 3.1.4.

1.9 Intentionally Omitted

1.10 Intentionally Omitted.

1.11 “Annual Room Revenues Break Points” shall have the meaning given such term in Section 3.1.4.

1.12 “Annual Telephone Revenues Break Points” shall have the meaning given such term in Section 3.1.4.

1.13 “Applicable Laws” shall mean all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, international treaties, permits and orders, from time to time in existence, of all courts of competent jurisdiction and Government Agencies, and all applicable judicial and administrative and regulatory decrees, judgments and orders, including common law rulings and determinations, relating to injury to, or the protection of, real or personal property or human health (except those requirements which, by definition, are solely the responsibility of employers) or the Environment, including, without limitation, all valid and lawful requirements of courts and other Government Agencies pertaining to reporting, licensing, permitting, investigation, remediation and removal of underground improvements (including, without limitation, treatment or storage tanks, or water, gas or oil wells), or emissions, discharges, releases or threatened releases of Hazardous Substances, chemical substances, pesticides, petroleum or petroleum products, pollutants, contaminants or hazardous or toxic substances, materials or waste whether solid, liquid or gaseous in nature, into the Environment, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, underground improvements (including, without limitation, treatment or storage tanks, or water, gas or oil wells), or pollutants, contaminants or hazardous or toxic substances, material or wastes, whether solid, liquid or gaseous in nature.

1.14 “Approved Financial Institution” shall mean (a) any United States of America commercial bank which is FDIC insured and has a consolidated net worth, as of any pertinent date under the terms of this Agreement, of not less than \$250,000,000 (as adjusted by CPI) and is

otherwise reasonably satisfactory to Landlord or (b) any other substantial United States of America financial institution that is satisfactory to Landlord in its sole and absolute discretion.

1.15 "Award" shall mean all compensation, sums or other value awarded, paid or received by virtue of a total or partial Condemnation of the Leased Property (after deduction of all reasonable legal fees and other reasonable costs and expenses, including, without limitation, expert witness fees, incurred by Landlord, in connection with obtaining any such award).

1.16 "Beverage Sales" shall mean Gross Revenues from the sale of wine, beer, liquor or other alcoholic beverages, whether sold in a bar or lounge, delivered to or available in a guest room, sold at meetings or banquets or at any other location at the Hotel. Such revenue shall include sales by Tenant and its permitted subtenants, licensees and concessionaires if such permitted subtenant, licensees or concessionaires are Affiliates of Tenant. Such revenue shall be determined in a manner consistent with GAAP and the Uniform System of Accounts and shall include (a) the fair market value of goods or services which have been provided in exchange for beverages under bartering or trade arrangements, (b) the fair market value of beverages provided under frequent traveler programs, gift certificate programs or any other similar programs, and (c) the fair market value of any other allowances deducted from beverage revenues (items (a)-(c) being allocated to the respective revenues categories in accordance with the Uniform System of Accounts). Such revenue shall not include: (a) sales taxes or taxes of any other kind imposed on the sale of alcoholic or other beverages; or (b) the value of any beverages provided to employees of Landlord, Tenant, any franchisor under the Franchise Agreement or any guest on a complimentary basis. All credits, rebates, refunds and credit card chargebacks relating to Beverage Sales shall be deducted from Beverage Sales.

1.17 "Business Day" shall mean any day other than Saturday, Sunday, or any other day on which banking institutions in the State of New York, the State of Delaware, the State of Illinois, or the State are authorized by law or executive order to close.

1.18 "Capital Budget" shall have the meaning given such term in Section 17.3.

1.19 "Capital Expenditure" shall mean any expenditure treated as capital in nature in accordance with GAAP.

1.20 "Capital Repair" shall mean any renovation, replacement, or improvement to the Leased Property (or portion thereof) the cost of which constitutes a Capital Expenditure and any renovation, replacement, repair or improvement set forth and approved in the Capital Budget.

1.21 "Cash" shall mean cash or other immediately available funds.

1.22 "Cash Equivalents" shall mean (a) any debt instrument with a term of up to twelve (12) months that is issued by or backed by the full faith and credit of the United States of America, (b) any certificate of deposit with a term of up to twelve (12) months that is issued by an issuer that, on the date of issuance and on each date of any renewal or reissuance thereof, is an Approved Financial Institution, and which instrument and any applicable assignment thereof is in form and substance reasonably satisfactory to the Landlord and (c) any irrevocable, "clean" letter of credit issued by an issuer that, on the date of issuance and on each date of any renewal

or reissuance thereof, is an Approved Financial Institution, and which instrument is in form and substance reasonably satisfactory to the Landlord.

1.23 "Change of Control" shall mean the sale, conveyance, assignment, encumbering, pledging, hypothecation, granting a security interest in, granting of options with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration) of any class of partnership interests, stock or other equity interests in a Person (other than among existing holders of interests in such Person on the Commencement Date and/or family members of such holders and/or trusts for the benefit of any of the foregoing) that, upon a transfer of any portion thereof, will create in the transferee thereof, directly or indirectly, a majority of any class of partnership interest, stock or other equity interests of such Person.

1.24 "Change in Operations" shall have the meaning given such term in Section 21.12.

1.25 "Claim" shall have the meaning given such term in Section 8.1.

1.26 "Code" shall mean the Internal Revenue Code of 1986 and, to the extent applicable, the Treasury Regulations promulgated thereunder, each as from time to time amended.

1.27 "Commencement Date" shall mean the date of this Agreement.

1.28 "Competitive Set" shall mean a determination made by Landlord and Tenant annually, at the time of preparation and approval of the Annual Budget, of an appropriate reference group of hotels which are considered competitive with the Leased Property and which Tenant and Landlord shall agree shall constitute the Competitive Set for such Fiscal Year for the Hotel. If Landlord or Tenant fail to agree upon the Competitive Set, the matter shall be referred to arbitration as provided for in Article 23.

1.29 "Condemnation" shall mean (a) the exercise with respect to the Leased Property, whether by legal proceedings or otherwise, by a Condemnor of any power of condemnation, (b) a voluntary sale or transfer of the Leased Property by Landlord to a Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending, or (c) a taking or voluntary conveyance of all or part of the Leased Property, or any interest therein, or right accruing thereto or use thereof, as the result or in settlement of any Condemnation or other eminent domain proceeding affecting the Leased Property, whether or not the same shall have actually been commenced.

1.30 "Condemnor" shall mean any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

1.31 Intentionally Omitted.

1.32 "CPI" shall mean the "Consumer Price Index" published by the Bureau of Labor Statistics of the United States of America Department of Labor, U.S. City Average, All Items for Urban Wage Earners and Clerical Workers (1982-1984=100).

1.33 “Current Market Value” shall mean, as of any pertinent date: (a) as to Cash and Cash Equivalents, the face amount thereof; (b) as to co-investments in hotels by Tenant and Landlord, the value of such co-investment, based on the value placed on the corresponding investment by Landlord or the REIT in the most recent version of its own financial statements; and (c) as to Marketable Securities, the closing price of such securities, as reported in *The Wall Street Journal* for the trade date next preceding such pertinent date.

1.34 “Date of Taking” shall mean the date the Condemnor has the right to possession of the Leased Property, or any portion thereof, in connection with a Condemnation.

1.35 “Default” shall mean any event or condition which with the giving of notice and/or lapse of time may ripen into an Event of Default.

1.36 “Distribution” shall mean (a) any declaration or payment of any dividend (except dividends payable in common stock of Tenant) on or in respect of any shares of any class of capital stock of Tenant, (b) any purchase, redemption, retirement or other acquisition of any shares of any class of capital stock of a corporation, (c) any other distribution on or in respect of any shares of any class of capital stock of a corporation, or (d) any return of capital to shareholders.

1.37 “Dollars” or “\$” shall mean lawful money of the United States of America which shall be legal tender for the payment of public and private debts in the United States of America.

1.38 “Emergency Repairs” shall have the meaning given such term in Section 5.1.2(b).

1.39 “Encumbrance” shall have the meaning given such term in Section 20.1.

1.40 “Entity” shall mean any corporation, general or limited partnership, limited liability company or partnership, stock company or association, joint venture, association, company, trust, bank, trust company, land trust, business trust, cooperative, any government or agency or political subdivision thereof or any other entity.

1.41 “Environment” shall mean soil, surface waters, ground waters, land, stream, sediments, surface or subsurface strata and ambient air.

1.42 “Environmental Obligation” shall have the meaning given such term in Section 4.3.1.

1.43 “Environmental Notice” shall have the meaning given such term in Section 4.3.1.

1.44 “Event of Default” shall have the meaning given such term in Section 12.1.

1.45 “Expiration Date” shall mean the date set forth on Exhibit A attached hereto.

1.46 “FF&E” shall mean all furniture, furnishings and equipment (except equipment and fixtures attached to and forming a part of the Leased Improvements) required for the operation of the Leased Improvements as a hotel, including, without limitation, (a) office furnishings, decorations and equipment, (b) specialized or other hotel equipment necessary for

the operation of any portion of the Leased Improvements as a hotel, including motor vehicles, boats, equipment for kitchens, laundries, dry cleaning facilities, bars, restaurants, public rooms, commercial and parking spaces, and recreational facilities, (c) all other furnishings and equipment as necessary or desirable in the operation of the Leased Property in accordance with the terms and conditions set forth in this Agreement, and (d) all replacements, substitutions and additions of and to all of the foregoing.

1.47 “Factor” shall have the meaning given such term in Section 3.1.4.

1.48 “Fair Market Value” shall mean, as to a specific valuable asset, the purchase price which a seller would be able to obtain for such asset in an arms-length transaction with a buyer which is not an Affiliate of the seller, and taking into consideration all factors which might reasonably affect the sales price of the asset in question, including, without limitation, if and as appropriate, the existence of a control block or minority interest, the anticipated impact on current market prices of immediate sale, the lack of a market for such asset, and the impact on present value of factors such as length of time before any such sales may become possible and the cost and complexity of any such sales.

1.49 “Financial Officer’s Certificate” shall mean, as to any Person, a certificate of the chief financial officer or chief accounting officer (or such officer’s authorized designee) of such Person, duly authorized, accompanying the financial statements required to be delivered by such Person pursuant to Section 17.2, in which such officer shall certify on behalf of such Person (a) that such statements have been properly prepared in accordance with GAAP and the Uniform System of Accounts and are true, correct and complete in all material respects and fairly present the financial condition of such Person at and as of the dates thereof and the results of its and their operations for the periods covered thereby, and (b) certify that such officer has reviewed this Agreement and has no knowledge of any Default or Event of Default hereunder.

1.50 “Financials” shall mean, for any Fiscal Year or other accounting period of Tenant, statements of operations, partners’ capital and cash flow (or, in the case of a corporation, statements of operations, retained earnings and cash flow) for such period and for the period from the beginning of the respective Fiscal Year to the end of such period and the related balance sheet as of the end of such period, together with the notes to any such yearly statement, all in such detail as may be required by the SEC with respect to filings made by the REIT or Landlord or as may be reasonably required by Landlord, and setting forth in comparative form the corresponding figures for the corresponding period in the preceding Fiscal Year, and prepared in accordance with GAAP and the Uniform System of Accounts and audited annually (and quarterly if required by the SEC or if reasonably required by Landlord) by a nationally recognized firm of independent certified public accountants proposed by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed. Financials shall be prepared on the basis of a December 31 fiscal year of Tenant.

1.51 “Fiscal Quarter” shall mean each fiscal quarter of the Fiscal Year.

1.52 “Fiscal Year” shall mean each calendar year.

1.53 “Fixed Term” shall have the meaning given such term in Section 2.3.

1.54 "Fixtures" shall have the meaning given such term in Section 2.1(d).

1.55 "Food Sales" shall mean (a) Gross Revenues from the sale of food and non-alcoholic beverages that are prepared at the Hotel and sold or delivered on or off the Hotel by Tenant whether for cash or for credit, including in respect of guest rooms, banquet rooms, meeting rooms and other similar rooms, and (b) Gross Revenues from the rental of banquet, meeting and other similar rooms. Such revenue shall include sales by Tenant and its permitted subtenants, licensees and concessionaires, but as to subleases, licenses or similar arrangements for food and non-alcoholic beverage sales which were entered into by Landlord or any prior owner of the Leased Property with parties who are not Affiliates of Tenant and which are existing as of the date of this Agreement, such revenue shall only include rents received under such existing subleases, licenses or similar arrangements. Such revenue shall be determined in a manner consistent with GAAP and the Uniform System of Accounts and shall include (a) the fair market value of goods or services which have been provided in exchange for food under bartering or trade arrangements, (b) the fair market value of food provided under frequent traveler programs, gift certificate programs or any other similar programs and (c) the fair market value of any other allowances deducted from food revenues (items (a)-(c) being allocated to the respective revenues categories in accordance with the Uniform System of Accounts). Such revenue shall not include: (a) vending machine sales; (b) non-alcoholic beverages sold from a bar or lounge; or (c) sales taxes or taxes of any other kind imposed on the sale of food or non-alcoholic beverages; or (d) the value of food or non-alcoholic beverages provided to employees of Landlord, Tenant, the franchisor under the Franchise Agreement or any other guests on a complimentary basis. All credits, rebates, refunds and credit card chargebacks relating to Food Sales shall be deducted from Food Sales.

1.56 "Force Majeure Event" shall mean an interruption of the operation of the Hotel resulting from, or caused by, general strikes, wars (declared or undeclared), natural disasters such as fires, storms, floods or earthquakes, or other material extraordinary economic events not reasonably foreseeable by the parties hereto, and which such interruption causes a delay in the performance of any material obligation hereunder.

1.57 "Franchise Agreement" shall mean any franchise agreement or license agreement with a franchisor under which the Hotel is operated, but shall not be deemed to include the Management Agreement.

1.58 "GAAP" shall mean generally accepted accounting principles of the United States of America, consistently applied.

1.59 "Government Agencies" shall mean any court, agency, authority, board (including, without limitation, environmental protection, planning and zoning), bureau, commission, department, office or instrumentality of any nature whatsoever of any governmental or quasi-governmental unit of the country in which the Leased Property is located or the State or any county or any political subdivision of any of the foregoing, whether now or hereafter in existence, having jurisdiction over Tenant or the Leased Property or any portion thereof or the Hotel operated thereon.

1.60 “Gross Operating Expenses” shall mean all salaries and employee expense and payroll taxes (including salaries, wages, bonuses and other compensation of all employees of the Hotel, and benefits including life, medical and disability insurance and retirement benefits), operational supplies, utilities, insurance to be provided by Tenant under the terms of this Agreement, governmental fees and assessments, food, beverages, laundry service expense, the costs of Inventory, license fees, advertising, marketing, reservation systems and any and all other operating expenses as are reasonably necessary for the proper and efficient operation of the Hotel incurred by Tenant in accordance with the provisions hereof (excluding, however, (i) federal, state and municipal excise, sales and use taxes collected directly from patrons and guests or as a part of the sales price of any goods, services or displays, such as gross receipts, admissions, cabaret or similar or equivalent taxes paid over to federal, state or municipal governments, (ii) the cost of insurance to be provided by Landlord under Article 9, (iii) expenditures by Landlord, and (iv) payments on any Hotel Mortgage or other mortgage or security instrument on the Hotel); all determined in accordance with GAAP. No part of Tenant’s central office overhead or general or administrative expenses (as opposed to that of the Hotel) shall be deemed to be a part of Gross Operating Expenses, as herein provided.

1.61 “Gross Revenues” shall mean all revenues, receipts, and income of any kind derived directly or indirectly by Tenant from or in connection with the Hotel (including rentals or other payments from their tenants, lessees, licensees or concessionaires but not including their gross receipts) whether on a cash basis or credit, paid or collected, determined in accordance with GAAP and the Uniform System of Accounts, excluding, however: (a) funds furnished by Landlord, (b) federal, state and municipal excise, sales, and use taxes collected directly from patrons and guests or as a part of the sales price of any goods, services or displays, such as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments, (c) gratuities, (d) proceeds of insurance and Awards, (e) proceeds from sales of furnishings, fixtures and equipment which are permitted pursuant to the terms of this Agreement, (f) all loan proceeds from financing or refinancings of the Hotel or interests therein or components thereof, (g) interest earned on funds deposited into the Reserve Fund and (h) judgments and awards, except any portion thereof arising from normal business operations of the Hotel.

1.62 Intentionally Omitted.

1.63 Intentionally Omitted.

1.64 “Hazardous Substances” shall mean any substance:

(a) the presence of which requires or may hereafter require notification, investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action or policy; or

(b) which is or becomes defined as a “hazardous waste”, “hazardous material” or “hazardous substance”, or “pollutant” or “contaminant” under any present or future federal, state or local statute, regulation, rule, ordinance or international treaty or amendment thereto including, without limitation, the Comprehensive

Environmental Response; Compensation and Liability Act (42 U.S.C. et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or

(c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the country in which the Leased Property is located, any state of the country in which the Leased Property is located, or any political subdivision thereof; or

(d) the presence of which on the Leased Property causes or materially threatens to cause an unlawful nuisance upon the Leased Property or to adjacent properties or poses or materially threatens to pose a hazard to the Leased Property or to the health or safety of persons on or about the Leased Property; or

(e) without limitation, which contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds; or

(f) without limitation, which contains polychlorinated biphenyls (PCBs) or asbestos or urea formaldehyde foam insulation; or

(g) without limitation, which contains or emits radioactive particles, waves or material; or

(h) without limitation, constitutes materials which are now or may hereafter be subject to regulation pursuant to the Material Waste Tracking Act of 1988, or any Applicable Laws promulgated by any Government Agencies.

1.65 "Hotel" shall mean the hotel being operated on the Leased Property.

1.66 "Hotel Mortgage" shall mean any Encumbrance placed upon the Leased Property in accordance with Article 20.

1.67 "Hotel Mortgagee" shall mean the holder of any Hotel Mortgage.

1.68 "Hotel Standard" shall mean both the operational standards (for example, staffing, amenities offered to guests, advertising, etc.) and the physical standards (for example, the quality, condition and utility of the Fixtures and Leased Personal Property, etc.) such that the Hotel and all of its facilities and activities are operated in the same manner as is customary and usual in the operation of a first class hotel, and, in any event, such that will provide such facilities and services at the Hotel as are normally provided by operators of hotels of comparable class and standing consistent with the Hotel's facilities.

1.69 "Immediate Family" shall mean, with respect to any individual, such individual's spouse, parents, brothers, sisters, children (natural or adopted), stepchildren, grandchildren, grandparents, parents-in-law, brothers-in-law, sisters-in-law, nephews and nieces.

1.70 “Impositions” shall mean collectively, all taxes (including, without limitation, all taxes imposed under the laws of the State, as such laws may be amended from time to time, and all ad valorem, sales and use, value added, single business, gross receipts, transaction privilege, rent or similar taxes as the same relate to or are imposed upon Landlord, Tenant or the business conducted upon the Leased Property), sewer or other rents and charges, excises, tax levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Property or the business conducted thereon by Tenant (including all interest and penalties thereon due to any failure in payment by Tenant), which at any time prior to, during or in respect of the Fixed Term hereof may be assessed or imposed on or in respect of or be a lien upon (a) Landlord’s interest in the Leased Property, (b) the Leased Property or any part thereof or any rent therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Leased Property or the leasing or use of the Leased Property or any part thereof by Tenant; provided, however, that nothing contained herein shall be construed to require Tenant to pay (i) any real estate taxes with respect to the Leased Property (ii) any ground lease payments; (iii) any tax based on income imposed on Landlord, (iv) any revenue tax of Landlord, (v) any transfer fee or other tax imposed with respect to the sale, exchange or other disposition by Landlord of the Leased Property or the proceeds thereof (other than in connection with the sale, exchange or other disposition to, or in connection with a transaction involving, Tenant), (vi) any single business, gross receipts tax, transaction privilege, rent or similar taxes as the same relate to or are imposed upon Landlord, (vii) Landlord as a result of the failure of Landlord to file any return or report timely and in the form prescribed by law or to pay any tax or imposition, except to the extent such failure is a result of a breach by Tenant of its obligations pursuant to Section 3.1.3, (viii) any Impositions that are enacted or adopted by their express terms as a substitute for any tax that would not have been payable by Tenant pursuant to the terms of this Agreement, (ix) any Impositions imposed as a result of a breach of covenant or representation by Landlord in any agreement governing Landlord’s conduct or operation or as a result of the gross negligence or willful misconduct of Landlord, (x) any Impositions imposed on Landlord that are a result of Landlord not being considered a “United States person” as defined in Section 7701(a)(30) of the Code, or (xi) personal property taxes.

1.71 “Incidental Documents” shall mean all of the documents or agreements entered into in connection with this Agreement.

1.72 “Indebtedness” shall mean all obligations, contingent or otherwise, which in accordance with GAAP should be reflected on the obligor’s balance sheet as liabilities.

1.73 “Initial Reserve Fund Payment” shall mean the sum set forth on Exhibit A attached hereto.

1.74 “Insurance Requirements” shall mean all terms of any insurance policy required by this Agreement, or Hotel Mortgage, any ground lease, and all requirements of the issuer of any such policy and all orders, rules and regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon Landlord, Tenant or the Leased Property.

1.75 "Insured Casualty" shall have the meaning given such term in Section 10.2.1.

1.76 "Interest Rate" shall mean on any date, a per annum rate of interest equal to the lesser of (a) the rate of interest announced by Citibank, N.A. from time to time in New York City as its "prime" or "base" rate, as such "prime" or "base" rate may change from time to time plus three percent (3%) per annum and (b) the maximum rate then permitted under applicable law.

1.77 "Inventory" shall mean all food, beverages and other consumable items used in the operation of a hotel, such as fuel, soap, cleaning materials, matches, stationery, brochures, folios and all other similar items, together with unused reserve stock (as opposed to in-use operating supplies) of linens, towels, paper goods, china, glassware, silverware and miscellaneous guest supplies including but not limited to the items set forth in Exhibit C attached hereto, together with all substitutions and replacements thereof.

1.78 "Key Employee" shall have the meaning given such term in Section 22.17.

1.79 "Land" shall have the meaning given such term in Section 2.1(a).

1.80 "Landlord" shall have the meaning given such term in the preambles to this Agreement.

1.81 "Landlord Liens" shall mean liens on or against the Leased Property or any payment of Rent (including, without, any Hotel Mortgage) (a) which result from any act of, or any claim against, Landlord or any owner of a direct or indirect interest in the Leased Property, or which result from any violation by Landlord of any terms of this Agreement, or (b) which result from liens in favor of any taxing authority by reason of any tax owed by Landlord or any fee owner of a direct or indirect interest in the Leased Property; provided, however, that "Landlord Lien" shall not include any lien resulting from any tax for which Tenant is obligated to pay or indemnify Landlord against until such time as Tenant shall have already paid to or on behalf of Landlord the tax or the required indemnity with respect to the same.

1.82 "Landlord Operating Expenses" shall mean, in each Fiscal Year or portion thereof during the term hereof, all expenses for which Landlord is responsible pursuant to the terms of this Agreement directly attributable to the operation, repair and/or maintenance of the Leased Property including, without limitation, real estate taxes, insurance premiums and Capital Repairs.

1.83 "Lease Year" shall mean any Fiscal Year or portion thereof, commencing with the 2005 Fiscal Year, during the Fixed Term.

1.84 "Leased Improvements" shall have the meaning given such term in Section 2.1(b).

1.85 "Leased Intangible Property" shall mean all hotel licensing agreements and other service contracts, equipment leases, booking agreements and other arrangements or agreements affecting the ownership, repair, maintenance, management, leasing or operation of the Leased Property to which Landlord is a party; all books, records and files relating to the leasing, maintenance, management or operation of the Leased Property belonging to Landlord; all transferable or assignable permits, certificates of occupancy, operating permits, sign permits,

development rights and approvals, certificates, licenses, warranties and guarantees, rights to deposits, trade names, service marks, telephone exchange numbers identified with the Leased Property, and all other transferable intangible property, miscellaneous rights, benefits and privileges of any kind or character belonging to Landlord with respect to the Leased Property.

1.86 “Leased Personal Property” shall have the meaning given such term in Section 2.1(e).

1.87 “Leased Property” shall have the meaning given such term in Section 2.1.

1.88 “Legal Requirements” shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Leased Property or the maintenance, construction, alteration or operation thereof, whether now or hereafter enacted or in existence, including, without limitation, (a) all permits, licenses, authorizations, certificates and regulations necessary to operate the Leased Property for its Permitted Use, and (b) all covenants, agreements, restrictions and encumbrances contained in any instruments at any time in force affecting the Leased Property, including those which may (i) require material repairs, modifications or alterations in or to the Leased Property or (ii) in any way materially and adversely affect the use and enjoyment thereof, but excluding any requirements arising as a result of Landlord’s or Landlord’s Affiliates’, as applicable, status as a real estate investment trust.

1.89 “Licenses” shall have the meaning given such term in Section 22.15.

1.90 “Lien” shall mean any mortgage, security interest, pledge, collateral assignment, or other encumbrance, lien or charge of any kind, or any transfer of property or assets for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to payment of its general creditors.

1.91 “Management Agreement” shall mean the Management Agreement between Tenant and the Manager with respect to the Leased Premises, together with all amendments, modifications and supplements thereto.

1.92 “Manager” shall have the meaning set forth on Exhibit A.

1.93 “Material Franchise Change” shall mean that the franchisor under the Franchise Agreement, if any, or the name of the franchisor, is purchased, rebranded, repositioned, terminated, or otherwise subjected to a change in ownership or control.

1.94 “Measurement Date” shall have the meaning given such term in Section 3.1.4.

1.95 “Minimum Inventory” shall have the meaning given such term in Section 5.6.

1.96 “Minimum Operating Standards” shall mean the standards of operation of the Hotel by which Tenant shall operate the Hotel in conformance with a commercially practicable manner as a first class hotel and in such a fashion that Landlord’s valuable interest in the Hotel shall not decrease through such operations and such that the Hotel shall at no time be operated pursuant to a lower standard (i.e., quality and reputation) that exists at the Commencement Date.

1.97 "Minimum Rent" shall mean, with respect to each Accounting Period, the sum set forth on Exhibit A attached hereto as increased (but in no event decreased) by CPI pursuant to Section 3.1.4.

1.98 "Minimum Working Capital" shall mean the sum set forth on Exhibit D attached hereto.

1.99 "Net Operating Income" shall mean in each Fiscal Year or portion thereof during the term hereof, Rent less Operating Expenses.

1.100 "Notice" shall mean a notice given in accordance with Section 22.10.

1.101 "Officer's Certificate" shall mean a certificate signed by an officer of the certifying Entity duly authorized by the board of directors of the certifying Entity.

1.102 "Operating Budget" shall have the meaning given such term in Section 17.3.

1.103 "OP Units" shall mean limited partnership interests in Landlord.

1.104 "Other Income" shall mean all revenue, receipts and income, including, but not limited to, interest income of any kind derived directly or indirectly from or in connection with the Hotel and included in Gross Revenues other than Room Revenues, Food Sales, Beverage Sales, Telephone Revenues, and Other Operating Departments Revenues.

1.105 "Other Operating Departments Revenues" shall mean revenues from the Hotel's parking, business center, recreation facilities, health spa and other miscellaneous income from the Hotel's operating departments.

1.106 "Overdue Rate" shall mean, on any date, a per annum rate of interest equal to the lesser of the Interest Rate plus three percent (3%) per annum and the maximum rate then permitted under applicable law.

1.107 "Parent" shall mean, with respect to Tenant, any Person which owns directly, or indirectly through one or more Subsidiaries or Affiliates, five percent (5%) or more of the voting or beneficial interest in, or otherwise has the right or power (whether by contract, through ownership of securities or otherwise) to control, Tenant.

1.108 "Participating Leases" shall mean any and all other leases executed at any time prior to or during the Fixed Term between Tenant, or Affiliates of Tenant, and Landlord with regard to the operation and/or management of hotel properties owned by Landlord.

1.109 "Participating Rent" shall have the meaning given such term in Section 3.1.2(a).

1.110 "Permitted Encumbrances" shall mean all rights, restrictions, and easements of record set forth on the applicable owner's or leasehold title insurance policy issued to Landlord on the date hereof, plus any other such encumbrances as may have been consented to in writing by Landlord from time to time.

- 1.111 "Permitted Liens" shall mean any Liens granted in accordance with Section 21.8(a).
- 1.112 "Permitted Transfer" shall have the meaning given such term in Section 22.22.
- 1.113 "Permitted Use" shall mean any use of the Leased Property permitted pursuant to Section 4.1.1.
- 1.114 "Prohibited Casualty" shall have the meaning given such term in Section 10.2.1.
- 1.115 "Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.
- 1.116 "Personal Property Limitation" shall have the meaning given such term in Section 19.1.
- 1.117 "Prohibited Taking" shall have the meaning given such term in Section 11.1.
- 1.118 "Purchase" shall have the meaning given such term in Section 22.22.
- 1.119 "Purchase Notice" shall have the meaning given such term in Section 22.22.
- 1.120 "Records" shall have the meaning given such term in Section 7.2.
- 1.121 "REIT" shall mean LaSalle Hotel Properties.
- 1.122 "REIT Shares" shall mean shares of common stock issued by the REIT.
- 1.123 "Rent" shall mean, collectively, the Minimum Rent, Participating Rent and Additional Charges.
- 1.124 "Replacement Cost" shall have the meaning given such term in Section 9.2.
- 1.125 "Required Purchase" shall have the meaning given such term is Section 22.22.
- 1.126 "Reserve Fund" shall have the meaning set forth in Section 6.3.
- 1.127 Intentionally Omitted.
- 1.128 "Revenue Computation" shall have the meaning given such term in Exhibit A.
- 1.129 "Revenue Performance Shortfall" shall have the meaning given such term in Section 21.11.
- 1.130 "RevPAR" shall mean, with respect to a particular Hotel, the room revenue per available room and is determined by dividing Room Revenues by available rooms or by multiplying occupancy by average daily rate for the applicable period.

1.131 "RevPAR Yield Index" shall mean the percentage amount obtained by dividing the RevPAR of the Leased Property by the RevPAR of the Leased Property's Competitive Set.

1.132 "Room Revenues" shall mean Gross Revenues determined in a manner consistent with GAAP and the Uniform System of Accounts, from the rental of guest rooms whether to individuals, groups or transients, at the Hotel, including, but not limited to (a) the fair market value of goods or services which have been provided in exchange for rooms under bartering or trade arrangements, (b) the fair market value of rooms provided under frequent traveler programs, gift certificate programs or any other similar programs, (c) the fair market value of any other allowances or commissions deducted from room rates, including, but not limited to, discounts and travel agent commissions (items (a)-(c) being allocated to the respective revenues categories in accordance with the Uniform System of Accounts), and (d) other Gross Revenues received from cancellation of room reservations, retained deposits, and other income derived from reservation changes. Room Revenues shall not include: (a) all sales taxes or any other taxes imposed on the rental of such guest rooms, and (b) any fees collected for amenities including, but not limited to, telephone, laundry, movies or concessions and (c) the value of rooms provided to employees of Landlord, Tenant, the franchisor under the Franchise Agreement or guests on a complimentary basis ("Complimentary Rooms"); provided, however, to the extent the Complimentary Rooms exceed two (2%) percent of the aggregate room rentals for a Fiscal Year, the fair market value of such excess shall not be excluded from Room Revenues, and such amounts shall be added to Gross Revenues for the last Fiscal Quarter of the preceding Fiscal Year. All credits, rebates, refunds and credit card chargebacks, except to the extent that such Room Revenues were originally collected prior to the Commencement Date, shall be deducted from Room Revenues.

1.133 "SEC" shall mean the United States of America Securities and Exchange Commission or any successor agency.

1.134 "Sale Notice" shall have the meaning given such term in Section 22.22.

1.135 "Security Agreement" shall mean that certain Security Agreement dated as of the date hereof between Tenant and Landlord given as additional security for the performance of tenants obligations under the Lease.

1.136 "Single Purpose Entity" shall mean a corporation, limited partnership or limited liability company which at all times: (i) is organized solely for the purpose of, and will not engage in any business unrelated to, leasing and operating the Leased Property and transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing; (ii) does not have and will not have any assets other than its interest in the Lease and Tenant's Personal Property; (iii) has a limited partnership agreement and/or certificate of incorporation, as applicable, or articles that, in each case, provides that such entity will not: (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) engage in any other business activity, or amend its organizational documents with respect to the matters set forth herein without the consent of the Landlord, which consent (A) shall not be unreasonably withheld or delayed; or (4) without the affirmative vote of all directors of such entity, file, a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself; (iv) will not fail to correct any known misunderstanding regarding the separate identity of

such entity; (v) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns, except to the extent that it is required to file consolidated tax returns by law; (vi) has maintained and will maintain its own records, books, resolutions and agreements; (vii) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person; (viii) has held and will hold its assets in its own name; (ix) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations; (x) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable; (xi) has and will have no Indebtedness except as permitted in Section 21.4 hereof; (xii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person; (xiii) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an affiliate; (xiv) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name; (xv) has maintained and will maintain its assets in such manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person; (xvi) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity); (xvii) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person; (xviii) does not and will not have any of its obligations guaranteed by any Affiliate except as contemplated herein; and (xix) has complied and will comply with all of the terms and provisions contained in its organizational documents.

1.137 "Solvent" shall mean, as to any Person, that (a) the sum of the assets of such Person, at a fair valuation, exceeds its liabilities, including contingent liabilities, (b) such Person has sufficient capital with which to conduct its business as presently conducted and as proposed to be conducted and (c) such Person has not incurred debts, and does not intend to incur debts, beyond its ability to pay such debts as they mature. For purposes of this definition, "debt" means any liability on a claim, and "claim" means (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. With respect to any such contingent liabilities, such liabilities shall be computed in accordance with GAAP and the Uniform System of Accounts at the amount which, in light of all the facts and circumstances existing at the time, represents the amount which can reasonably be expected to become an actual or matured liability.

1.138 "State" shall mean the state or district in which the Leased Property is located.

1.139 "Subordinated Creditor" shall mean any creditor of Tenant which is a party to a Subordination Agreement in favor of Landlord.

1.140 "Subordination Agreement" shall mean any agreement executed by a Subordinated Creditor pursuant to which the payment and performance of Tenant's obligations to such Subordinated Creditor are subordinated to the payment and performance of Tenant's obligations to Landlord under this Agreement.

1.141 "Subsidiary" shall mean, with respect to any Person, any Entity (a) in which such Person owns directly, or indirectly through one or more Subsidiaries, fifty-one percent (51%) or more of the voting or beneficial interest or (b) which such Person otherwise has the right or power to control (whether by contract, through ownership of securities or otherwise).

1.142 "Successor Landlord" shall have the meaning given such term in Section 20.2.

1.143 "Superior Landlord" shall have the meaning given such term in Section 20.2.

1.144 "Superior Lease" shall have the meaning given such term in Section 20.2.

1.145 "Superior Mortgage" shall have the meaning given such term in Section 20.2.

1.146 "Superior Mortgagee" shall have the meaning given such term in Section 20.2.

1.147 "Tax Law Change" shall mean a change in the Code (including, without limitation, a change in the Treasury regulations promulgated thereunder) or in the judicial or administrative interpretations of the Code, which in the opinion of Landlord's counsel will permit Landlord or an Affiliate thereof to operate the Hotel as a hotel without adversely affecting the REIT's qualification for taxation as a real estate investment trust under the applicable provisions of the Code.

1.148 "Telephone Revenues" shall mean all revenues, receipts and income of any kind derived from the use of telephone facilities by guests of the hotel, including, without limitation, revenues from local and long distance calls, including access by modem or other telecommunication devices, service charges and commissions received from pay stations.

1.149 "Tenant" shall have the meaning given such term in the preambles to this Agreement.

1.150 "Tenant Cash Management Agreement" shall mean that certain Operating Tenant Cash Management Agreement together with that certain Operating Tenant Lockbox Agreement, each dated as of the date hereof between Tenant and Landlord.

1.151 "Tenant's Assets" shall mean, when calculating Tenant's "net worth" hereunder, the following items owned by Tenant free and clear of all liens, encumbrances, security interests and restrictions, except any security interest granted to Landlord pursuant to the terms of this Agreement, (a) working capital available for the day to day operations of the Hotel; (b) investment grade marketable securities; (c) REIT Shares; (d) OP Units; and (e) coinvestments made by the Tenant with the Landlord in other hotel projects.

1.152 "Tenant's Personal Property" shall mean (a) all consumables located at the Hotel and (b) all personal property of Tenant, if any, owned by Tenant and located at the Leased

Property or used in Tenant's business at the Leased Property and all modifications, replacements, alterations and additions to such personal property acquired at the expense of Tenant, other than any items included within the definition of Fixtures or Leased Personal Property.

1.153 "Third Party" shall have the meaning given such term in Section 22.22.

1.154 "Third Party Notice" shall have the meaning given such term in Section 22.22.

1.155 "Transferor" shall have the meaning given such term in Section 22.22.

1.156 "Uniform System of Accounts" shall mean A Uniform System of Accounts for Hotels, Ninth Revised Edition, 1996, as published by the Hotel Association of New York City, as same may be revised, amended or supplemented.

1.157 "Unsuitable for Its Permitted Use" shall mean a state or condition of the Hotel such that (a) following any damage or destruction involving the Hotel, the Hotel cannot be operated in the good faith judgment of Tenant or the Manager on a commercially practicable basis for its Permitted Use and it cannot reasonably be expected to be restored to substantially the same condition as existed immediately before such damage or destruction, and as otherwise required by Section 10.2.4, within six (6) months following such damage or destruction or such shorter period of time as to which business interruption insurance is available to cover Rent and other costs related to the Leased Property following such damage or destruction, or (b) as the result of a partial taking by Condemnation, the Hotel cannot be operated, in the good faith judgment of Tenant or the Manager on a commercially practicable basis for its Permitted Use.

1.158 "Work" shall have the meaning given such term in Section 10.2.2.

ARTICLE 2

LEASED PROPERTY AND TERM

2.1 Leased Property. Upon and subject to the terms and conditions hereinafter set forth, Landlord leases to Tenant and Tenant leases from Landlord all of Landlord's right, title and interest to use all of the following (collectively, the "Leased Property");

(a) those certain tracts, pieces and parcels of land, as more particularly described in Exhibit E, attached hereto and made a part hereof (the "Land");

(b) all buildings, structures and other improvements of every kind including, but not limited to, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site), parking garages, parking areas and roadways appurtenant to such buildings and structures presently situated upon the Land (collectively, the "Leased Improvements");

(c) all easements, rights and appurtenances relating to the Land and the Leased Improvements;

(d) all equipment, machinery, fixtures, and other items of property, now or hereafter permanently affixed to or incorporated into the Leased Improvements, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, all of which, to the maximum extent permitted by law, are hereby deemed by the parties hereto to constitute real estate, together with all replacements, modifications, alterations and additions thereto, but specifically excluding all items included within the category of Tenant's Personal Property (collectively, the "Fixtures");

(e) all machinery, equipment, furniture, furnishings, moveable walls or partitions, trade fixtures or other personal property of any kind or description used or useful in Tenant's business on or in the Leased Improvements, and located on or in the Leased Improvements, (including, but not limited to, computers, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, bedspreads, shower curtains, linens, towels, facecloths, bathmats, napkins, tablecloths, chinaware, glassware, flatware, uniforms, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, pillows, blankets, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, video machines, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, communication equipment, medical equipment, umbrellas and other shade equipment, barbecues, potted plants, plants, laundry machines, tools, machinery, switchboards, vacuum cleaning systems, floor brackets, electrical signs, bulbs, bells, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, boats, motor scooters, bicycles, vehicles, exercise machines, sporting goods and other recreational equipment, other customary hotel equipment and other tangible property of every kind and nature whatsoever) and all modifications, replacements, alterations and additions to such personal property, except items, if any, included within the category of Fixtures together with any interests Landlord may have in leases with respect to all of the foregoing (collectively, the "Leased Personal Property");

(f) all of the Leased Intangible Property; and

(g) any and all leases of space (including any security deposits held by Tenant or the Manager pursuant thereto) in the Leased Improvements to tenants thereof.

2.2 Condition of Leased Property. Tenant acknowledges receipt and delivery of possession of the Leased Property and Tenant accepts the Leased Property in its "as is" condition, subject to the rights of parties in possession, the existing state of title, including all covenants, conditions, restrictions, reservations, mineral leases, concessions, easements and other matters of record or that are visible or apparent on the Leased Property, all applicable Legal Requirements, the lien of any financing instruments, mortgages and deeds of trust existing

prior to the Commencement Date or permitted by the terms of this Agreement, and such other matters which would be disclosed by an inspection of the Leased Property and the record title thereto or by an accurate survey thereof. TENANT REPRESENTS THAT IT HAS INSPECTED THE LEASED PROPERTY AND ALL OF THE FOREGOING AND HAS FOUND THE CONDITION THEREOF SATISFACTORY AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF LANDLORD OR LANDLORD'S AGENTS OR EMPLOYEES WITH RESPECT THERETO AND TENANT WAIVES ANY CLAIM OR ACTION AGAINST LANDLORD IN RESPECT OF THE CONDITION OF THE LEASED PROPERTY. LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PROPERTY OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY TENANT.

2.3 Fixed Term. The term of this Agreement (the "Fixed Term") shall commence on the Commencement Date and shall expire on the Expiration Date.

ARTICLE 3

RENT

3.1 Rent. Tenant shall pay, in Dollars without offset, abatement, demand or deduction (unless otherwise expressly provided in this Agreement), Minimum Rent and Participating Rent to Landlord and Additional Charges to the party to whom such Additional Charges are payable, during the Fixed Term. All payments to Landlord shall be made by wire transfer of immediately available federal funds or by other means acceptable to Landlord in its sole discretion. Rent for any partial Accounting Period shall be prorated on a per diem basis. Minimum Rent and Participating Rent shall be adjusted (by amendment to this Agreement) upon (i) the expansion of the number of rooms operated at the Hotel, (ii) the increase in area of any meeting rooms or similar facilities located at the Hotel, (iii) a material increase in the facilities available at the Hotel, (iv) significant renovation of the Hotel, (v) a Material Franchise Change, or (vi) a significant repositioning of the Hotel.

3.1.1 Minimum Rent. For each Accounting Period or portion thereof, Tenant shall pay Minimum Rent in arrears prior to 11:00 a.m. New York time on the first Business Day of the next Accounting Period.

3.1.2 Participating Rent.

(a) Amount. For each Fiscal Quarter or portion thereof, Tenant shall pay in arrears prior to 11:00 a.m. New York time on or before the twentieth (20th) day of each Fiscal Quarter additional rent ("Participating Rent") with respect to such prior Fiscal Quarter or portion thereof, pursuant to this Agreement, in an amount, not less than zero, as set forth on Exhibit A. In calculating Participating Rent, Gross Revenues attributable to hotel packages or certificates including, but not limited to, frequent traveler programs, gift certificate programs, all inclusive

packages or certificates, or other similar programs or packages, shall be allocated to the respective revenues categories in accordance with the Uniform System of Accounts. The obligation to pay Participating Rent shall survive the expiration or earlier termination of the Lease, and a final reconciliation, taking into account, among other relevant adjustments, any adjustments which are accrued after such expiration or termination date but which related to Participating Rent accrued prior to such termination date, shall be made not later than sixty (60) days after such expiration or termination date.

(b) Officers Certificate. An Officer's Certificate, in form and substance reasonably acceptable to Landlord, setting forth the calculation of Participating Rent due and payable for the applicable Fiscal Quarter shall be delivered to Landlord with each payment of Participating Rent.

(c) Reconciliation of Participating Rent. On or before March 31, of each year, commencing March 31, 2006, Tenant shall deliver to Landlord an Officer's Certificate, in form and substance reasonably acceptable to Landlord, setting forth the Gross Revenues for the Leased Property for such preceding Lease Year, together with an audit of Tenant's revenues for the preceding Lease Year, conducted by a nationally recognized firm of independent certified public accountants proposed by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed. If any quarterly Participating Rent for such preceding Lease Year as shown in the Officer's Certificate exceeds the amount previously paid with respect thereto by Tenant, Tenant shall pay such excess to Landlord at such time as the Officer's Certificate is delivered, together with interest at the Interest Rate, which interest shall accrue from the date that such payment was due until the date that such certificate is required to be delivered and, thereafter, such interest shall accrue at the Overdue Rate, until the amount of such difference shall be paid or otherwise discharged. If any quarterly Participating Rent for such preceding Lease Year as shown in the Officer's Certificate is less than the amount previously paid with respect thereto by Tenant, provided that no Event of Default shall have occurred and be continuing, Landlord shall grant Tenant a credit against Participating Rent next coming due in the amount of such difference plus interest at the Interest Rate, which interest shall accrue from the date of payment by Tenant until the date such credit is applied or paid, as the case may be. If such credit cannot be made because the Fixed Term has expired prior to application in full thereof, provided no Event of Default has occurred and is continuing, Landlord shall pay, within fifteen (15) Business Days of the date of determination that such credit is due to Tenant, the unapplied balance of such credit to Tenant.

(d) Confirmation of Participating Rent. Tenant shall utilize, or cause to be utilized, an accounting system for the Leased Property in accordance with its usual and customary practices and in accordance with GAAP and the Uniform System of Accounts, which will accurately record all Gross Revenues and revenue categories specified in Exhibit A and Tenant shall retain, for at least seven (7) years after the expiration of each Lease Year, or such longer period as

may be required by Applicable Laws, reasonably adequate records conforming to such accounting system showing all Gross Revenues for such Lease Year. Landlord, at its own expense except as provided hereinbelow, shall have the right, exercisable by Notice to Tenant within seven (7) years after receipt of the applicable Officer's Certificate, by its accountants or representatives to audit the information set forth in the Officer's Certificate referred to in subparagraph (c) above and, in connection with such audits, to examine Tenant's and the Manager's books and records with respect thereto (including supporting data and sales and excise tax returns). If any such audit discloses a deficiency in the payment of Participating Rent, Tenant shall forthwith pay to Landlord the amount of the deficiency, together with interest at the Interest Rate, from the date such payment should have been made to the date of payment thereof. If Landlord did not receive at least ninety-five percent (95%) of the Participating Rent payable with respect to such Lease Year, Tenant shall pay the reasonable cost of such audit and examination. If any such audit discloses that Tenant paid more Participating Rent for any Lease Year than was due hereunder, provided no Event of Default has occurred and is continuing, Landlord shall grant Tenant a credit as provided in subparagraph (c) above. Any proprietary information obtained by Landlord with respect to Tenant or the Manager pursuant to the provisions of this Agreement shall be treated as confidential, except that such information may be used, subject to appropriate confidentiality safeguards, in any litigation between the parties and except further that Landlord may disclose such information to its prospective lenders, provided that Landlord shall direct and obtain the agreement of such lenders to maintain such information as confidential. The obligations of Tenant and Landlord contained in this Section 3.1.2 shall survive the expiration or earlier termination of this Agreement.

3.1.3 Additional Charges. In addition to the Minimum Rent and Participating Rent payable hereunder, Tenant shall pay to the appropriate parties and discharge as and when due and payable the following (collectively, "Additional Charges"):

(a) **Impositions.** Subject to Article 8 relating to permitted contests, Tenant shall pay, or cause to be paid, all Impositions before any fine, penalty, interest or cost (other than any opportunity cost as a result of a failure to take advantage of any discount for early payment) may be added for non-payment, such payments to be made directly to the taxing authorities where feasible, and shall promptly, upon request, furnish to Landlord copies of official receipts or other reasonably satisfactory proof evidencing such payments. If any such Imposition may, at the option of the taxpayer, lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments during the Fixed Term as the same become due and before any fine, penalty, premium, further interest or cost may be added thereto. Landlord, at its expense, shall, to the extent required or permitted by Applicable Law, prepare and file all tax returns and pay all taxes due in respect of real estate taxes on the Leased Property, and all taxes due in respect of Landlord's income, gross receipts, sales and use,

single business, transaction privilege, rent, ad valorem, franchise taxes, taxes on its capital stock and personal property taxes, and Tenant, at its expense, shall, to the extent required or permitted by Applicable Laws and regulations, prepare and file all other tax returns and reports in respect of any Imposition as may be required by Government Agencies. Provided no Event of Default shall have occurred and be continuing, if any refund shall be due from any taxing authority in respect of any Imposition paid by Tenant, the same shall be paid over to or retained by Tenant. Landlord and Tenant shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Property as may be necessary to prepare any required returns and reports. In the event Government Agencies classify any property covered by this Agreement as personal property, Tenant shall file all personal property tax returns in such jurisdictions where it may legally so file; however, Landlord shall be required to pay any such personal property taxes. Each party shall, to the extent it possesses the same, provide the other, upon request, with cost and depreciation records necessary for filing returns for any property so classified as personal property. Where Landlord is legally required to file personal property tax returns for property covered by this Agreement, Landlord shall provide Tenant with copies of assessment notices in sufficient time for Tenant to file a protest. All Impositions assessed against such personal property shall be (irrespective of whether Landlord or Tenant shall file the relevant return) paid by Landlord not later than the last date on which the same may be made without interest or penalty. Landlord shall give prompt Notice to Tenant of all Impositions payable by Tenant hereunder of which Landlord at any time has knowledge; provided, however, that Landlord's failure to give any such notice shall in no way diminish Tenant's obligation hereunder to pay such Impositions (except that Landlord shall be responsible for any interest or penalties incurred as a result of Landlord's failure promptly to forward the same).

(b) Utility Charges. Tenant shall pay or cause to be paid all charges for electricity, power, gas, oil, water and other utilities used in connection with the Leased Property.

(c) Intentionally Omitted.

(d) Other Charges. Tenant shall pay or cause to be paid all other amounts, liabilities and obligations and all amounts payable under or with respect to the Management Agreement and all agreements to indemnify Landlord under Sections 4.3.2 and 9.7.

(e) Gross Operating Expenses. Tenant shall pay or cause to be paid all Gross Operating Expenses in connection with the Leased Property.

If Tenant shall fail to pay any of the amounts payable under paragraphs (a) through (e), above, Landlord may, upon ten (10) days Notice to Tenant (which notice may be oral), pay such charges, together with interest and penalties due with respect thereto, and Tenant shall reimburse

Landlord therefor together with interest at the Interest Rate, upon demand, as Additional Charges.

3.1.4 CPI Adjustments. For each Lease Year during the Fixed Term beginning with the Lease Year commencing in January 2007 the Minimum Rent then in effect, the Annual Room Revenues First Break Point, the Annual Room Revenues Second Break Point (each as defined in Exhibit A and together, the "Annual Room Revenues Break Points"), the Annual Food and Beverage Sales First Break Point, the Annual Food and Beverage Sales Second Break Point (each as defined in Exhibit A and together, the "Annual Food and Beverage Sales Break Points"), the Annual Telephone Revenues First Break Point, the Annual Telephone Revenues Second Break Point (each as defined in Exhibit A and together, the "Annual Telephone Revenues Break Points"), the Annual Other Operating Departments Revenues First Break Point, the Annual Other Operating Departments Revenues Second Break Point (each as defined in Exhibit A and together, the "Annual Other Operating Departments Revenues Break Points"), then included in the Revenues Computation shall be increased as follows:

- (a) For the Lease Year commencing January 1, 2007, and for each Lease Year thereafter during the Fixed Term, the average CPI for the immediately preceding twelve (12) months immediately preceding the new Lease Year (the "Measurement Date") shall be divided by the average CPI for the twelve (12) months in the prior calendar year and such number shall be expressed as a percentage (the "Factor");
- (b) The new Minimum Rent for the Lease Year commencing in January 1, 2007 and for each Lease Year thereafter shall be the product of (x) the Minimum Rent in effect in the most recently ended Lease Year and (y) the Factor;
- (c) The new Annual Room Revenues Break Points in the Revenues Computation for the Lease Year commencing in January 1, 2007 and for each Lease Year thereafter shall be the product of (x) the Annual Room Revenues Break Points in effect in the most recently ended Lease Year and (y) the Factor;
- (d) The new Annual Food and Beverage Sales Break Points in the Revenues Computation for the Lease Year commencing in January 1, 2007 and for each Lease Year thereafter shall be the product of (x) the Annual Food and Beverage Sales Break Points in effect in the most recently ended Lease Year and (y) the Factor;
- (e) The new Annual Telephone Revenues Break Points in the Revenues Computation for the Lease Year commencing in January 1, 2007 shall be the product of (x) the Annual Telephone Revenues Break Points in effect for the most recently ended Lease Year and (y) the Factor;
- (f) The new Annual Other Operating Departments Revenues Break Points in the Revenues Computation for the Lease Year commencing in January 1, 2007 and for each Lease Year thereafter shall be the product of (x) the Annual Other

Operating Departments Revenues Break Points in effect in the most recently ended Lease Year and (y) the Factor...

Adjustments calculated as set forth above in the Minimum Rent, the Annual Room Revenues Break Points, the Annual Food and Beverage Sales Break Points, the Annual Telephone Revenues Break Points, and the Annual Other Operating Departments Revenues Break Points shall be effective on the first day of each Lease Year to which such adjusted amounts apply. If Rent is paid prior to the determination of the amount of any adjustment to Minimum Rent, the Annual Room Revenues Break Points, the Annual Food and Beverage Sales Break Points, the Annual Telephone Revenues Break Points, or the Annual Other Operating Departments Revenues Break Points applicable for such period, whether because of a delay in the publication of the CPI for the Measurement Date or because of any other reason, payment adjustments for any shortfall in or overpayment of Rent paid shall be made with the first Minimum Rent and Participating Rent payments due after the amount of the adjustments are determined. If (1) a significant change is made in the number or nature (or both) of items used in determining the CPI, or (2) the CPI shall be discontinued for any reason, the Bureau of Labor Statistics shall be requested to furnish a new index comparable to the CPI, together with information which will make possible a conversion to the new index in computing the adjusted Minimum Rent, the Annual Room Revenues Break Points, the Annual Food and Beverage Sales Break Points, the Annual Telephone Revenues Break Points and the Annual Other Operating Departments Revenues Break Points. If for any reason the Bureau of Labor Statistics does not furnish such an index and such information, the parties will instead mutually select, accept and use such other index or comparable statistics on the cost of living in various cities that is computed and published by an agency of the United States of America or a responsible financial periodical of recognized authority. In no event shall the Minimum Rent, the Annual Room Revenues Break Points, the Annual Food and Beverage Sales Break Points, the Annual Telephone Revenues Break Points or the Annual Other Operating Departments Revenues Break Points be reduced as a result of any changes in the CPI or changes to the calculation of CPI.

3.2 Late Payment of Rent, Etc. If any installment of Minimum Rent, Participating Rent or Additional Charges (but only as to those Additional Charges which are payable directly to Landlord) shall not be paid when due, Tenant shall pay Landlord, on demand, as Additional Charges, a late charge (to the extent permitted by law) computed at the Overdue Rate on the amount of such installment, from the due date of such installment to the date of payment thereof. To the extent that Tenant pays any Additional Charges directly to Landlord or any Hotel Mortgagee pursuant to any requirement of this Agreement, Tenant shall be relieved of its obligation to pay such Additional Charges to the Entity to which they would otherwise be due.

In the event of any failure by Tenant to pay any Additional Charges when due, except as expressly provided in Section 3.1.3(a), Tenant shall promptly pay and discharge, as Additional Charges, every fine, penalty, interest and cost which may be added for non-payment or late payment of such items. Landlord shall have all legal, equitable and contractual rights, powers and remedies provided either in this Agreement or by statute or otherwise in the case of non-payment of the Additional Charges as in the case of non-payment of the Minimum Rent and Participating Rent.

3.3 Net Lease. The Rent shall be absolutely net to Landlord so that this Agreement shall yield to Landlord the full amount of the installments or amounts of the Rent throughout the Fixed Term, subject to any other provisions of this Agreement which expressly provide otherwise, including those provisions for adjustment or abatement of such Rent.

3.4 No Termination, Abatement, Etc. Except as otherwise specifically provided in this Agreement, each of Landlord and Tenant, to the maximum extent permitted by law, shall remain bound by this Agreement in accordance with its terms and shall not take any action without the consent of the other to modify, surrender or terminate this Agreement. In addition, except as otherwise expressly provided in this Agreement, Tenant shall not seek, or be entitled to, any abatement, deduction, deferment or reduction of the Rent, or set-off against the Rent, nor shall the respective obligations of Landlord and Tenant be otherwise affected by reason of (a) any damage to or destruction of the Leased Property or any portion thereof from whatever cause or any Condemnation; (b) any claim which Tenant may have against Landlord by reason of any default (other than a monetary default) or breach of any warranty by Landlord under this Agreement or any other agreement between Landlord and Tenant, or to which Landlord and Tenant are parties; (c) any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceedings affecting Landlord or any assignee or transferee of Landlord; or (d) for any other cause whether similar or dissimilar to any of the foregoing (other than a monetary default by Landlord) provided, however, that the foregoing shall not apply or be construed to restrict Tenant's rights in the event of any act or omission by Landlord constituting gross negligence or willful misconduct. Except as otherwise specifically provided in this Agreement, Tenant hereby waives all rights arising from any occurrence whatsoever, which may now or hereafter be conferred upon it by law, to (a) modify, surrender or terminate this Agreement or quit or surrender the Leased Property or any portion thereof or (b) entitle Tenant to any abatement, reduction, suspension or deferment of the Rent or other sums payable or other obligations to be performed by Tenant hereunder. The obligations of each party hereunder shall be separate and independent covenants and agreements, and the Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Agreement. In any instance where, after the occurrence of an Event of Default, Landlord retains funds which, but for the occurrence of such Event of Default, would be payable to Tenant, Landlord shall refund such funds to Tenant to the extent the amount thereof exceeds the amount necessary to compensate Landlord for any cost, loss or damage incurred in connection with such Event of Default.

ARTICLE 4

USE OF THE LEASED PROPERTY

4.1 Permitted Use.

4.1.1 Permitted Use. Tenant shall, at all times during the term and at any other time that Tenant shall be in possession of the Leased Property, continuously use and operate, and cause the Manager to use and operate, the Leased Property as a commercial hotel which meets or exceeds the Hotel Standard and any uses incidental thereto. Subject to Section 16.3, Tenant shall not use (and shall cause the Manager not to use) the Leased Property or any portion thereof for

any other use without the prior written consent of Landlord which may be withheld or granted in Landlord's sole and absolute discretion. No use shall be made or permitted to be made of the Leased Property and no acts shall be done thereon which will cause the cancellation of any insurance policy covering the Leased Property or any part thereof (unless another adequate policy is available), nor shall Tenant sell or otherwise provide or permit to be kept, used or sold in or about the Leased Property any article which may be prohibited by law or by the standard form of fire insurance policies, or any other insurance policies required to be carried hereunder, or fire underwriters' regulations. Tenant shall, at its sole cost (except as expressly provided in Section 5.1.2(b), comply (or cause the Manager to comply) with all Insurance Requirements for which Tenant is responsible pursuant to Article 9 hereof. Tenant shall not take or omit to take (and Tenant shall cause the Manager not to take or omit to take) any action, the taking or omission of which materially impairs the value or the usefulness of the Leased Property or any part thereof for its Permitted Use in accordance with the Franchise Agreement and the Hotel Standard.

4.1.2 Necessary Approvals. Tenant shall proceed with all due diligence and exercise best efforts to obtain and maintain, and shall cause the Manager to obtain and maintain, all approvals and Licenses necessary to use and operate, for its Permitted Use, the Leased Property and the Hotel located thereon under applicable law, and, if requested by Landlord and permitted by Applicable Laws, shall obtain, in Tenant's name, any liquor licenses required for the use and operation of the Hotel.

4.1.3 Lawful Use, Etc. Tenant shall not, and shall cause the Manager not to, use or suffer or permit the use of the Leased Property or Tenant's Personal Property, if any, for any unlawful purpose. Tenant shall not, and shall cause the Manager not to, commit or suffer to be committed any waste on the Leased Property, or in the Hotel, nor shall Tenant cause or permit any unlawful nuisance thereon or therein. Tenant shall not, and shall cause the Manager not to, suffer nor permit the Leased Property, or any portion thereof, to be used in such a manner as (a) might reasonably impair Landlord's title thereto or to any portion thereof, or (b) may reasonably allow a claim or claims for adverse usage or adverse possession by the public, as such, or of implied dedication of the Leased Property or any portion thereof.

4.2 Compliance with Legal/Insurance Requirements, Etc. Subject to the provisions of Article 9, Tenant, at its sole expense, shall (or shall cause the Manager to) comply with Legal Requirements and Insurance Requirements in respect of the use, operation, maintenance, repair, alteration and restoration of the Leased Property and with the terms and conditions of any ground lease affecting the Leased Property, and procure, maintain and comply with all appropriate licenses, and other authorizations and agreements required for any use of the Leased Property and Tenant's Personal Property, if any, then being made, and for the proper erection, installation, operation and maintenance of the Leased Property or any part thereof.

4.3 Environmental Matters.

4.3.1 Restriction on Use, Etc. During the Fixed Term and any other time that Tenant shall be in possession of the Leased Property, Tenant shall not (and shall cause the Manager not to) store, spill upon, dispose of or transfer to or from the Leased Property any Hazardous Substance, except in compliance with all Applicable Laws. During the Fixed Term

and any other time that Tenant shall be in possession of the Leased Property, Tenant shall maintain (and shall cause the Manager to maintain) the Leased Property at all times free of any Hazardous Substance (except in compliance with all Applicable Laws) and shall maintain an operations and maintenance (O&M) plan, reasonably acceptable to Landlord, with respect to any asbestos containing materials located at the Hotel. Tenant shall promptly: (a) upon receipt of notice or knowledge and shall cause the Manager upon receipt of notice or knowledge promptly to, notify Landlord in writing of any material change in the nature or extent of Hazardous Substances at the Leased Property, (b) transmit to Landlord a copy of any "Community Right to Know" report which is required to be filed by Tenant or the Manager with respect to the Leased Property pursuant to any Applicable Law, (c) transmit to Landlord copies of any citations, orders, notices or other governmental communications received by Tenant or the Manager or their respective agents or representatives with respect thereto (collectively, "Environmental Notice"), which Environmental Notice requires a written response or any action to be taken and/or if such Environmental Notice gives notice of and/or presents a material risk of any material violation of any Applicable Law and/or presents a material risk of any material cost, expense, loss or damage (an "Environmental Obligation"), (d) observe and comply (and cause the Manager to observe and comply) with all Applicable Laws relating to the use, maintenance and disposal of Hazardous Substances and all orders or directives from any official, court or agency of competent jurisdiction relating to the use or maintenance or requiring the removal, treatment, containment or other disposition thereof, and (e) pay or otherwise dispose of any fine, charge or Imposition related thereto, unless Tenant or the Manager shall contest the same in good faith and by appropriate proceedings and the right to use and the value of the Leased Property is not materially and adversely affected thereby. If, at any time prior to the termination of this Agreement, Hazardous Substances (other than those maintained in accordance with Applicable Laws) are discovered on the Leased Property for which Tenant is responsible pursuant to section 4.3 hereof, subject to Tenant's and the Manager's right to contest any Claim with respect to the same in accordance with Article 8, Tenant shall take (and shall cause the Manager to take) all actions and incur any and all expenses, as may be reasonably necessary and as may be required by any Government Agency, (i) to clean up and remove from and about the Leased Property all Hazardous Substances thereon, (ii) to contain and prevent any further release or threat of release of Hazardous Substances on or about the Leased Property and (iii) to use good faith efforts to eliminate any further release or threat of release of Hazardous Substances on or about the Leased Property.

4.3.2 Indemnification of Landlord. Tenant shall protect, indemnify and hold harmless Landlord, the REIT, and each Hotel Mortgagee, their trustees, officers, agents, employees and beneficiaries, and any of their respective successors or assigns with respect to this Agreement (collectively, the "Indemnitees" and, individually, an "Indemnitee") for, from and against any and all debts, liens, claims, causes of action, administrative orders or notices, costs, fines, penalties or expenses (including, without limitation, reasonable attorney's fees and expenses) imposed upon, incurred by or asserted against any Indemnitee resulting from, either directly or indirectly, the presence during the Fixed Term (or any other time Tenant shall be in possession of the Leased Property) in, upon or under the soil or ground water of the Leased Property or any properties surrounding the Leased Property of any Hazardous Substances in violation of any Applicable Law or otherwise, provided that any of the foregoing arises by reason of any failure by Tenant, the Manager or any person claiming by, through or under Tenant or the Manager to perform or comply with any of the terms of this Section 4.3 except to the

extent the same arise (i) from the gross negligence or willful misconduct of Landlord or any other Indemnitee or (ii) the existence thereof on the Leased Property prior to the Commencement Date. Tenant's duty herein includes, but is not limited to, costs associated with personal injury or property damage claims as a result of the presence prior to the expiration or sooner termination of this Agreement and the surrender of the Leased Property to Landlord in accordance with the terms of this Agreement of Hazardous Substances in, upon or under the soil or ground water of the Leased Property in violation of any Applicable Law. Upon Notice from Landlord and any other of the Indemnitees, Tenant shall undertake the defense (with counsel reasonably acceptable to Landlord), at Tenant's sole cost and expense, of any indemnification duties set forth herein in which Tenant shall not be liable for payment of any duplication attorneys' fees incurred by any Indemnitee. Tenant shall, upon demand, pay to Landlord, as an Additional Charge, any cost, expense, loss or damage (including, without limitation, reasonable attorneys' fees) incurred by Landlord and arising from a failure of Tenant strictly to observe and perform the requirements of this Section 4.3, which amounts shall bear interest from the date ten (10) days after written demand therefor is given to Tenant until paid by Tenant to Landlord at the Overdue Rate.

4.3.3 Survival. The provisions of this Section 4.3 shall survive the expiration or sooner termination of this Agreement.

ARTICLE 5

MAINTENANCE AND REPAIRS

5.1 Maintenance and Repair.

5.1.1 Tenant's Obligations. Tenant shall, at its sole cost and expense, or shall cause the Manager to, keep the Leased Property and all private roadways, sidewalks and curbs appurtenant thereto (and Tenant's Personal Property, if any) in good order and repair, subject to ordinary wear and tear (whether or not the need for such repairs occurs as a result of Tenant's or the Manager's use, any prior use, the elements or the age of the Leased Property or Tenant's Personal Property, if any, or any portion thereof), and shall promptly make (or cause the Manager to make) all necessary and appropriate repairs and replacements thereto of every kind and nature, whether interior or exterior, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Term (concealed or otherwise); provided, however, Tenant shall not be obligated to make Capital Expenditures with respect to the Leased Property. All repairs shall be made in a good, workmanlike manner, consistent with the Manager's and industry standards for like hotels in like locales, in accordance with all Applicable Laws relating to any such work. Tenant shall not take or omit to take (and shall cause the Manager not to take or omit to take) any action, the taking or omission of which would materially and adversely impair the value or the usefulness of the Leased Property or any part thereof for its Permitted Use in accordance with the Franchise Agreement, and the Hotel Standard. Tenant's obligations under this Section 5.1.1 shall be limited in the event of any casualty or Condemnation as set forth in Sections 10.2 and 11.2 and also set forth in Section 5.1.2 and Tenant's obligations with respect to Hazardous Substances are as set forth in Section 4.3.

5.1.2 Landlord's Obligations.

(a) Except as otherwise expressly provided in Sections 5.1.2(b) and 10.2.1, of this Agreement, Landlord shall not, under any circumstances, be required to build or rebuild any improvement on the Leased Property, or to make any repairs (except for structural repairs), replacements, alterations, restorations or renewals of any nature or description to the Leased Property, whether ordinary or extraordinary, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto, or to maintain the Leased Property in any way. Tenant hereby waives, to the maximum extent permitted by law, the right to make repairs at the expense of Landlord pursuant to any law in effect on the date hereof or hereafter enacted. Landlord shall have the right to give, record and post, as appropriate, notices of nonresponsibility under any mechanic's lien laws now or hereafter existing.

(b) If Tenant is required to make any expenditure in connection with any Capital Repair which is required as a result of a fire, any other casualty or any other events, circumstances or conditions which threaten the safety or physical well-being of the Hotel's guests or employees or which involve the risk of material property damage or material loss to the Hotel or which are required to prevent a material and detrimental economic loss to the Hotel (collectively, "Emergency Repairs") and the amount of such expenditures exceeds the amount on deposit in the Reserve Fund, Tenant may, at its election give Landlord Notice thereof, which Notice shall set forth, in reasonable detail, the nature of the required Emergency Repair, the estimated cost thereof and such other information with respect thereto as Landlord may reasonably require. Provided that no Event of Default shall have occurred and be continuing and Tenant shall otherwise comply with the applicable provisions of Article 6, Landlord shall, within five (5) Business Days after such Notice, subject to and in accordance with the applicable provisions of Article 6, disburse or, if costs for Emergency Repairs have already been incurred by Tenant, reimburse any funds necessary to complete Emergency Repairs which are in excess of the amount on deposit in the Reserve Fund to Tenant (or, if Tenant shall so elect, directly to the Manager or any other Person performing the required work).

5.1.3 Nonresponsibility of Landlord, Etc. All materialmen, contractors, artisans, mechanics and laborers and other persons contracting with Tenant with respect to the Leased Property, or any part thereof, are hereby charged with notice that liens on the Leased Property or on Landlord's interest therein are expressly prohibited and that they must look solely to Tenant to secure payment for any work done or material furnished by Tenant, the Manager or for any other purpose during the term of this Agreement. Nothing contained in this Agreement shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialmen for the performance of any labor or the furnishing of any materials for any alteration, addition, improvement or repair to the Leased Property or any part thereof or as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the Leased

Property or any part thereof nor to subject Landlord's estate in the Leased Property or any part thereof to liability under any mechanic's lien law in any way, it being expressly understood that Landlord's estate shall not be subject to any such liability.

5.2 Tenant's Personal Property. Tenant shall provide and maintain throughout the Term all such Tenant's Personal Property as shall be necessary in order to operate in compliance with applicable Legal Requirements and Insurance Requirements and otherwise in accordance with customary practice in the industry for the Permitted Use and all of such Personal Property shall, upon the expiration or earlier termination of this Agreement, become the property of Landlord. If, from and after the Commencement Date, Tenant acquires an interest in any item of tangible personal property on, or in connection with, the Leased Property which belongs to any Person other than Tenant, Tenant shall require the agreements, permitting such use to provide that Landlord or its designee may assume Tenant's rights and obligations under such agreement upon the termination of this Agreement and the assumption of management or operation of the Hotel by Landlord or its designee. Upon termination of this Agreement, Tenant shall deliver all of Tenant's Personal Property free of all liens and/or encumbrances to Landlord.

5.3 Surrender. Upon the expiration or sooner termination of this Agreement, Tenant shall vacate, surrender, and deliver to Landlord the following: (i) the Leased Property, (ii) the Tenant's Personal Property, (iii) the Leased Personal Property, (iv) the Minimum Inventory, and (v) the Minimum Working Capital. Items (i) through (iv) shall be delivered in substantially the same condition as such items were in on the Commencement Date, subject to ordinary wear and tear and except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Agreement (and casualty and Condemnation, in the event that this Agreement is terminated following a casualty or total Condemnation in accordance with Article 10 or Article 11). In addition, upon the expiration or earlier termination of this Agreement, Tenant shall, at Landlord's sole cost and expense, use its good faith efforts to transfer to and cooperate with Landlord or Landlord's nominee in connection with the processing of all applications for licenses, operating permits and other governmental authorizations and all contracts, including contracts with governmental or quasi-governmental Entities which may be necessary for the use and operation of the Hotel as then operated. After the Expiration Date or the earlier termination of this Agreement, Landlord agrees to honor all reservations and bookings made by Tenant in accordance with the Hotel Standard and reasonable commercial practice.

5.4 Management Agreement. Landlord shall have the right to approve the initial Manager and the form of the Management Agreement, in its sole and absolute discretion. Tenant shall, at its sole cost and expense, perform all of the obligations of "Owner" under the Management Agreement. Tenant or Manager shall be the employer with respect to any and all employees located at the Leased Property, and at the termination of this Agreement, shall be solely responsible for any and all obligations as "Owner" for financial obligations to such employees, including, without limitation, pension, accrued vacation and sick pay. Tenant shall, at all times, direct the Manager to perform all of the Manager's obligations under the Management Agreement. Tenant shall not amend or modify the Management Agreement without Landlord's prior written consent, which consent shall not unreasonably be withheld, delayed or conditioned. Tenant shall not take any action, grant any consent, or, except as provided in the Management Agreement, permit any action under the Management Agreement without the prior written consent of Landlord, which consent will not be unreasonably withheld.

Except as provided in the Management Agreement, Tenant shall not, without the Landlord's written approval, which approval may be withheld or granted in Landlord's sole and absolute discretion, agree to: (i) any change in the Manager; (ii) any change in the Management Agreement; (iii) terminate the Management Agreement; or (iv) permit the Manager to assign the Management Agreement. If Landlord shall perform any obligations of "Owner" under the Management Agreement (which Landlord may do subject to Section 12.5), the cost of such performance shall be payable, upon demand, by Tenant to Landlord with interest accruing from the date which is ten (10) days after the demand date at the Overdue Rate and Landlord shall have the same rights and remedies for failure to pay such costs on demand as for Tenant's failure to pay Minimum Rent.

5.5 Management Fees. Each Management Agreement shall provide that all management fees payable thereunder shall (i) not exceed three (3%) percent of Gross Revenues and (ii) shall be subordinate to Tenant's obligation to pay Rent hereunder.

5.6 Minimum Inventory. On the Commencement Date Landlord shall deliver the Inventory currently maintained at the Hotel to Tenant (as replaced and/or supplemented, the "Minimum Inventory") and thereafter during the Fixed Term, Tenant shall, at its sole cost and expense, furnish and maintain at the Leased Property all Inventory necessary or desirable for the operation of the Leased Property in accordance with the provisions of this Agreement, the Franchise Agreement, the Hotel Standard and reasonable commercial practice for a hotel of the type and in the market in which the Hotel is located. On the Commencement Date and at the commencement of each calendar year, Tenant shall submit to Landlord a detailed list of all Inventory. Tenant, at its sole cost and expense, shall repair, maintain and replace the Inventory so that the greater of (x) the Minimum Inventory, or (y) the remaining Inventory, is delivered to Landlord on the date of expiration or the earlier termination of this Agreement.

ARTICLE 6

IMPROVEMENTS, ETC.

6.1 Improvements to the Leased Property. Tenant shall not make, construct or install (and shall cause the Manager not to construct or install) any Capital Repairs without, in each instance, obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned provided that (a) construction or installation of the same would not adversely affect or violate any Legal Requirement, Insurance Requirement, the ground lease or the Franchise Agreement applicable to the Leased Property; (b) such Capital Repairs will not affect the structural integrity of the Leased Improvements or adversely affect any of the mechanical or electrical systems of the Leased Improvements; (c) such Capital Repairs are to be completed prior to the expiration of the Fixed Term in a good and workmanlike manner; (d) such Capital Repairs do not reduce the value of the Leased Improvements; (e) no Event of Default has occurred and is existing; and (f) Landlord shall have received an Officer's Certificate certifying as to the satisfaction of the conditions set out in clauses (a) through (e) above; provided, however, that no such consent shall be required in the event an Emergency Repair is required. Prior to commencing construction of any Capital Repair, Tenant shall submit, or shall cause the Manager to submit, to Landlord, in writing, a proposal setting forth, in reasonable detail, any such proposed improvement (including a detailed cost analysis of such proposed improvements)

and shall provide to Landlord such plans and specifications, and such permits, licenses, contracts and such other information concerning the same as Landlord may reasonably request. Landlord shall have thirty (30) days to review all materials submitted to Landlord in connection with any such proposal including, without limitation, necessary bids for such Capital Repairs. Landlord shall have the right to approve any contracts with Tenant's Parents or Affiliates in its sole and absolute discretion. Without limiting the generality of the foregoing, such proposal shall indicate (a) the approximate projected cost of constructing such proposed improvement and the use or uses to which it will be put and (b) the financial feasibility of such proposed improvement (including, without limitation, the projected return of such proposed improvements and the schedule for development of such proposed improvements). No Capital Repair shall be made which would tie in or connect any Leased Improvement with any other improvements on property adjacent to the Leased Property (and not part of the Land) including, without limitation, tie-ins of buildings or other structures or utilities without Landlord's prior written consent, which consent may be withheld or granted in Landlord's sole and absolute discretion. Tenant shall not finance, and shall cause the Manager not to finance, the cost of any construction of such improvement by the granting of a lien on or security interest in the Leased Property or such improvement, or Tenant's interest therein, without the prior written consent of Landlord, which consent may be withheld by Landlord in Landlord's sole and absolute discretion. Any such improvements shall, upon the expiration or sooner termination of this Agreement, remain or pass to and become the property of Landlord, free and clear of all encumbrances other than Permitted Encumbrances.

6.2 Salvage. Any sums received from the sale of any and all materials or property, real or personal, scrapped or removed in connection with the making of Capital Repairs or repairs required by Article 5 (collectively "Salvage"), shall be deposited into the Reserve Fund.

6.3 Reserve Fund. Landlord shall establish and maintain a reserve account (the "Reserve Fund"). Landlord shall credit an amount equal to the Initial Reserve Fund Payment to the Reserve Fund on the Commencement Date. The Initial Reserve Fund Payment shall be equal to the remaining balance in any FF&E reserve fund existing at the Commencement Date, such amount being set forth on Exhibit A. Thereafter, Landlord, after receipt of the Rent from Tenant, shall credit to the Reserve Fund an amount equal to four (4%) percent (the "Reserve Payment") of Gross Revenues for each Accounting Period. Interest, if any, payable on account of the Reserve Fund, plus the amount of any Salvage, shall be credited against the Reserve Payment due for the next succeeding Accounting Period. Not more than two times per Accounting Period, upon the written request by Tenant to Landlord stating the specific use to be made and subject to the reasonable approval thereof by Landlord, such funds shall be made available by Landlord for Capital Expenditures set forth in the Annual Budget, Emergency Repairs, to fund the replacement or refurbishment of FF&E, and to fund any deductible amounts under insurance policies providing all-risk property insurance up to the maximum permitted deductible amounts set forth in Section 9.4; provided, however, that Tenant shall not use any sums in the Reserve Fund to purchase property (other than "real property" within the meaning of Treasury Regulations Section 1.856-3(d)) to the extent that doing so would cause the Landlord to recognize income other than "rents from real property" as defined in Section 856(d) of the Code. Tenant shall, upon the request of Landlord, promptly deliver to Landlord plans and specifications and such other materials and information as Landlord may reasonably request regarding any proposed Capital Expenditures or Capital Repairs. Tenant's obligations shall be cumulative, but

not compounded and any amounts that have accrued hereunder shall be payable in future periods for such uses and in accordance with the procedure set forth herein. All Capital Repairs shall be located on the Land and shall be owned by Landlord subject to the provisions of this Agreement. Tenant may not make any Capital Repair which will increase the gross square footage of the Leased Improvements without the prior written consent of Landlord, which consent may be withheld or granted in Landlord's sole and absolute discretion. The implementation of all Capital Repairs shall be subject to the approval of Landlord and Tenant. Such approval shall extend both to the plans and specifications (including matters of design and decor) and to the contracting and purchasing of all labor, services and materials. In the event that Landlord and Tenant are unable to agree on any aspect of the implementation of Capital Repairs to be made pursuant to the Annual Budget, such matters shall be referred to arbitration as provided in Article 23. Upon the Expiration Date or earlier termination of this Agreement, any funds remaining in the Reserve Fund shall remain the property of Landlord.

ARTICLE 7

LIENS

7.1 Liens. Subject to Article 8, Tenant shall not, directly or indirectly, create or allow to remain and shall promptly discharge, at its expense, any lien, encumbrance, attachment, title retention agreement or claim upon the Leased Property or Tenant's leasehold interest therein or any attachment, levy, claim or encumbrance in respect of the Rent, other than (a) Permitted Encumbrances, (b) restrictions, liens and other encumbrances which are consented to in writing by Landlord, (c) liens for those taxes of Landlord which Tenant is not required to pay hereunder, (d) subleases permitted by Article 16, (e) liens for Impositions or for sums resulting from noncompliance with Legal Requirements so long as (i) the same are not yet due and payable, or (ii) are being contested in accordance with Article 8, (f) liens of mechanics, laborers, materialmen, suppliers or vendors incurred in the ordinary course of business that are not yet due and payable or are for sums that are being contested in accordance with Article 8, and (g) Landlord Liens.

7.2 Landlord's Lien. In addition to any statutory landlord's lien and in order to secure payment of the Rent and all other sums payable hereunder by Tenant, and to secure payment of any loss, cost or damage which Landlord may suffer by reason of Tenant's breach of this Agreement, Tenant hereby grants unto Landlord a security interest in and an express contractual lien upon Tenant's Personal Property, and all ledger sheets, files, records, documents and instruments (including, without limitation, computer programs, tapes and related electronic data processing) relating to the operation of the Leased Property (the "Records") and all proceeds therefrom, subject to any Permitted Encumbrances; and such Tenant's Personal Property shall not be removed from the Leased Property at any time when a Default or an Event of Default has occurred and is continuing. Upon Landlord's request, Tenant shall execute and deliver to Landlord financing statements in form sufficient to perfect the security interest of Landlord in Tenant's Personal Property and the proceeds thereof in accordance with the provisions of Applicable Laws. Tenant hereby grants Landlord an irrevocable limited power of attorney, coupled with an interest, to execute all such financing statements in Tenant's name, place and stead. The security interest herein granted is in addition to any statutory lien for the Rent.

ARTICLE 8

PERMITTED CONTESTS

8.1 Permitted Contests. Subject to and in accordance with the requirements of any Hotel Mortgage, Tenant shall have the right to contest the amount or validity of any Imposition, Legal Requirement, Insurance Requirement, Environmental Obligation, lien, attachment, levy, encumbrance, charge or claim (collectively, "Claims") as to the Leased Property, by appropriate legal proceedings, conducted in good faith and with due diligence, provided that (a) the foregoing shall in no way be construed as relieving, modifying or extending Tenant's obligation to pay any Claims as finally determined, (b) such contest shall not cause Landlord or Tenant to be in default under any mortgage, deed of trust, or ground lease encumbering the Leased Property or any interest therein or result in or reasonably be expected to result in a lien attaching to the Leased Property, (c) no part of the Leased Property nor any Rent therefrom shall be in any immediate danger of sale, forfeiture, attachment or loss, and (d) Tenant shall indemnify and hold harmless Landlord from and against any cost, claim, damage, penalty or reasonable expense, including, without limitation, reasonable attorneys' fees, incurred by Landlord in connection therewith) or as a result thereof. Landlord agrees to join in any such proceedings if required legally to prosecute such contest, provided that Landlord shall not thereby be subjected to any liability therefor (including, without limitation, for the payment of any costs or expenses in connection therewith) unless Tenant agrees by agreement in form and substance reasonably satisfactory to Landlord, to assume and indemnify Landlord with respect to the same. Tenant shall be entitled to any refund of any Claims and such charges and penalties or interest thereon which have been paid by Tenant or paid by Landlord to the extent that Landlord has been fully reimbursed by Tenant. If Tenant shall fail (x) to pay or cause to be paid any Claims when finally determined, (y) to provide reasonable security therefor, or (z) to prosecute or cause to be prosecuted any such contest diligently and in good faith, Landlord may, upon reasonable notice to Tenant (which notice may be oral), pay such charges, together with interest and penalties due with respect thereto, and Tenant shall reimburse Landlord therefor, upon demand, as Additional Charges.

ARTICLE 9

INSURANCE AND INDEMNIFICATION

9.1 General Insurance Requirements. (i) Landlord shall, at Tenant's sole cost and expense, at all times during the Fixed Term keep the Leased Property and all property located therein or thereon, insured against the risks and in the amounts as follows and shall maintain the following insurance:

- (a) Commercial general liability insurance, including bodily injury and property damage (on an occurrence basis and on a 1994 or later ISO CGL form or on a form otherwise maintained by similarly situated tenants, including, without limitation, broad form contractual liability, liquor liability exposure, independent contractor's hazard and completed operations coverage) in an amount not less than Fifty Million Dollars (\$50,000,000.00) per occurrence which limit can be obtained through a combination of primary and umbrella coverage;

(b) Innkeeper's legal liability insurance covering property of guests while on the Leased Property for which Landlord is legally responsible with a limit of not less than \$1,000 in any one occurrence or \$25,000 annual aggregate; and

(c) Safe deposit box legal liability insurance covering property of guests while in a safe deposit box on the Leased Property for which Landlord is legally responsible with a limit of not less than \$25,000 in any one occurrence.

(ii) Landlord shall, at Landlord's sole cost and expense, at all times during the Fixed Term keep the Leased Property and all property located therein or thereon, insured against the risks and in the amounts as follows and shall maintain the following insurance:

(a) "All-risk" property insurance, including insurance against loss or damage by fire, vandalism and malicious mischief, explosion of steamboilers, earthquake and hurricane damage, pressure vessels or other similar apparatus, now or hereafter installed in the Hotel located at the Leased Property, with equivalent coverage as that provided by the usual extended coverage endorsements, in an amount equal to one hundred (100%) percent of the then full Replacement Cost thereof;

(b) Business interruption and blanket earnings plus extra expense under a rental value insurance policy or endorsement covering risk of loss by reason of any hazard covered under the insurance required under this Section 9.1 in such amounts as may be customary for comparable properties in the area and in an amount sufficient to prevent Landlord or Tenant from becoming a co-insurer but in any event for not less than twelve (12) months of Gross Revenues; and

(c) Flood (if the Leased Property is located in a federally designated flood zone) and such other hazards and in such amounts as may be customary for comparable properties in the area;

(d) Such additional insurance as may be reasonably required, from time to time, by Landlord, or any Hotel Mortgagee, which is customarily carried by comparable lodging properties in the area;

(iii) Landlord shall, at Tenant's sole cost and expense, at all times during the Fixed Term keep (a) comprehensive form vehicle liability insurance for owned, non-owned, and hired vehicles, in the amount of \$10,000,000.00, (b) worker's compensation insurance or other similar insurance which may be required by Government Agencies or Legal Requirements.

9.2 Replacement Cost. "Replacement Cost" as used herein, shall mean the actual replacement cost of the property requiring replacement from time to time, including an increased cost of construction endorsement, less exclusions provided in the standard form of fire insurance policy. In the event either party believes that the then full Replacement Cost has increased or decreased at any time during the Term, such party, at its own cost, shall have the right to have such full Replacement Cost redetermined by an independent accredited MAI appraiser approved by the other party, which approval shall not be unreasonably withheld or delayed. The party desiring to have the full Replacement Cost so redetermined shall forthwith, on receipt of such

determination by such appraiser, give Notice thereof to the other party. The determination of such appraiser shall be final and binding on the parties hereto until any subsequent determination under this Section 9.2, and Tenant shall forthwith conform the amount of the insurance carried to the amount so determined by the appraiser.

9.3 Waiver of Subrogation. Landlord and Tenant agree that (insofar as and to the extent that such agreement may be effective without invalidating or making it impossible to secure insurance coverage from responsible insurance companies doing business in the State) with respect to any property loss which is covered by insurance then being carried by Landlord or Tenant, respectively, the party carrying such insurance and suffering said loss releases the other of and from any and all claims with respect to such loss; and they further agree that their respective insurance companies shall have no right of subrogation against the other on account thereof, even though extra premium may result therefrom. In the event that any extra premium is payable by Tenant as a result of this provision, Landlord shall not be liable for reimbursement to Tenant for such extra premium.

9.4 Form Satisfactory, Etc. All insurance policies and endorsements required pursuant to this Article 9 shall be fully paid for, nonassessable and, except for umbrella and flood coverage, be issued by insurance carriers authorized to do business in the State, having a rating of no less than A-:XI in Best's latest rating guide and otherwise satisfactory under any Hotel Mortgage. No policy described in Sections 9.1(i)(a), (ii)(a)-(c) and (iii) shall include a deductible in excess of One Thousand Dollars (\$1,000) (provided, however, that insurance for earthquake and hurricane damage may include such reasonable deductibles as are consistent with normal industry practice and which are otherwise acceptable to Landlord) and, with the exception of the insurance described in Section 9.1(i)(b), shall name Landlord and any Hotel Mortgagee as additional insureds, as their interests may appear. All loss adjustments shall be payable as provided in Article 10. Tenant shall cause all insurance premiums to be paid and shall deliver policies or certificates thereof to Landlord prior to their effective date (and, with respect to any renewal policy, prior to the expiration of the existing policy). All such policies shall provide Landlord (and any Hotel Mortgagee if required by the same) thirty (30) days prior written notice of any material change or cancellation of such policy. In the event Tenant shall fail to effect such insurance as herein required, to pay the premiums therefor or to deliver such policies or certificates to Landlord or any Hotel Mortgagee at the times required, Landlord shall have the right, but not the obligation, subject to the provisions of Section 12.5, to acquire such insurance and pay the premiums therefor, which amounts shall be payable to Landlord, upon demand, as Additional Charges, together with interest accrued thereon at the Overdue Rate from the date such payment is made until (but excluding) the date repaid.

9.5 Blanket Policy. Notwithstanding anything to the contrary contained in this Article 9, Landlord's, or Tenant's, obligation to maintain the insurance herein required may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Landlord, Tenant or the Manager, as applicable, provided that (a) the coverage thereby afforded will not be reduced or diminished from that which would exist under a separate policy meeting all other requirements of this Agreement, and (b) the requirements of this Article 9 are otherwise satisfied.

9.6 No Separate Insurance. Tenant shall not take out separate insurance, concurrent in form or contributing in the event of loss with that required by this Article 9, or increase the amount of any existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of such insurance, including Landlord and all Hotel Mortgagees, are included therein as additional insureds and the loss is payable under such insurance in the same manner as losses are payable under this Agreement. In the event Tenant shall take out any such separate insurance or increase any of the amounts of the then existing insurance, Tenant shall give Landlord prompt Notice thereof.

9.7 Indemnification of Landlord. Notwithstanding the existence of any insurance provided for herein and without regard to the policy limits of any such insurance, Tenant, shall protect, indemnify and hold harmless Landlord, the REIT, for, from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and reasonable expenses (including, without limitation, reasonable attorneys' fees), to the maximum extent permitted by law, imposed upon or incurred by or asserted against Landlord or the REIT, by reason of: (a) any accident, injury to or death of persons or loss of or damage to property occurring during the term of this Agreement on or about the Leased Property or adjoining sidewalks or rights of way; (b) any use, misuse, non-use, management, maintenance or repair by Tenant or anyone claiming under Tenant of the Leased Property or Tenant's Personal Property or any litigation, proceeding or claim by governmental entities or other third parties to which Landlord or the REIT is made a party or participant relating to the Leased Property, or Tenant's Personal Property or such use, misuse, non-use, condition, management, maintenance, or repair thereof including failure to perform obligations (other than Condemnation proceedings) to which Landlord, the REIT or Advisors, is made a party; (c) any Impositions that are the obligations of Tenant to pay pursuant to the applicable provisions of this Agreement; (d) the imposition of any "dram act" or similar law relating to liability resulting from the service of wine, beer, liquor or other alcoholic beverages during the term of this Agreement; and (e) any failure on the part of Tenant or anyone claiming under Tenant to perform or comply with any of the terms of this Agreement or the Participating Leases unless any such liability, obligation, claim, damage, penalty, cause of action, cost or reasonable attorneys' fees were incurred as a result of Landlord's, or the REIT's, gross negligence or willful misconduct. Tenant, at its expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or the REIT, with counsel reasonably acceptable to Landlord, the REIT or Advisors, or may compromise or otherwise dispose of the same, with Landlord's or the REIT's, prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned) in which Event Tenant shall not be liable for payment of any duplicative attorneys' fees incurred by Landlord or the REIT. The obligations of Tenant under this Section 9.7 are in addition to the obligations set forth in Section 4.3 and shall survive the termination of this Agreement.

9.8 Increase in Limits. If Landlord at any time reasonably deems the limits of the personal injury or property damage under the commercial public liability insurance then carried by Tenant to be insufficient, Landlord and Tenant shall endeavor in good faith to agree on the proper and reasonable limits for such insurance to be carried and such insurance shall thereafter be carried with the limits thus agreed on until further change pursuant to the provisions of this Section 9.8. If the parties fail to agree on such limits, the matter shall be referred to arbitration as provided for in Article 23.

ARTICLE 10

CASUALTY

10.1 Insurance Proceeds. Except as provided in the last clause of this sentence, all proceeds payable by reason of any loss or damage to the Leased Property, or any portion thereof, and insured under any policy of insurance required by Article 9 shall be paid directly to Landlord. If Tenant is required to reconstruct or repair the Leased Property as provided herein, such proceeds as are made available by any Hotel Mortgagee shall be paid out by Landlord from time to time for the costs of reconstruction or repair of the Leased Property necessitated by such damage or destruction subject to and in accordance with the provisions of Section 10.2.2. In the event that the provisions of Section 10.2.1 are applicable, the insurance proceeds shall be retained by the party entitled thereto pursuant to Section 10.2.1. Subject to the provisions of Section 6.2, all salvage resulting from any risk covered by insurance shall belong to Landlord, provided any rights to the same have been waived by the insurer.

10.2 Damage or Destruction.

10.2.1 Damage or Destruction of Leased Property. In the event (a) the Leased Property is damaged by fire, explosion or other casualty insured under the fire and extended coverage insurance policy required hereunder (an "Insured Casualty") to the extent of twenty-five percent (25%) or more of the insurable value thereof immediately preceding the casualty, (b) the Leased Property is damaged by a casualty or occurrence other than an Insured Casualty, (c) such damage occurs at anytime within the last six (6) months of the Fixed Term, (d) the Leased Property or any portion thereof is damaged by fire, explosion or other casualty and the Leased Property cannot be repaired, rebuilt or restored to the same condition under the terms of the Franchise Agreement, under any Legal Requirements or other governmental order or under any other agreement to which the Leased Property is subject, or (e) a casualty occurs to a portion of the Hotel which renders the Hotel Unsuitable for Its Permitted Use, (a "Prohibited Casualty"), then in such event Landlord may terminate this Agreement by giving Tenant written notice of termination within thirty (30) days after the happening of the event causing the damage. In the event the damage is not extensive enough to give rise to Landlord's option to terminate this Agreement, a Prohibited Casualty has not occurred, or Landlord does not elect to terminate this Agreement, Landlord, at Landlord's sole cost and expense shall promptly repair and replace the Leased Property to the condition existing immediately preceding such fire, explosion or other casualty. During any period of reconstruction or repair of the Leased Property, (i) Landlord shall make any business interruption insurance proceeds available to Tenant to pay necessary operating expenses and Rent with respect to the Leased Property (ii) Tenant shall operate its business in the Leased Property to the extent practicable, and (iii) Minimum Rent payable under this Agreement by Tenant shall be abated during the period of such repair and restoration to the extent the Leased Property is not tenantable.

10.2.2 Disbursement of Proceeds. In the event Tenant undertakes to restore the Leased Property on behalf of Landlord after an Insured Casualty or, if this Agreement has not been terminated, a Prohibited Casualty, Tenant shall (or shall cause the Manager to) commence promptly and continue diligently to perform the repair and restoration of the Leased Property (hereinafter called the "Work"), so as to restore the Leased Property in compliance with all Legal

Requirements and so that the Leased Property shall be, to the extent practicable, substantially equivalent in value and general utility to its general utility and value immediately prior to such damage or destruction. Subject to the terms hereof, Landlord shall advance the insurance proceeds to Tenant regularly during the repair and restoration period so as to permit payment for the cost of any such restoration and repair. Any such advances shall be made not more than monthly within ten (10) Business Days after Tenant submits to Landlord a written requisition and substantiation therefor containing such information and in such form as may be reasonably required by Landlord. Landlord may, at its option, condition advancement of said insurance proceeds and other amounts on (a) the absence of any Event of Default, (b) its approval of plans and specifications of an architect satisfactory to Landlord (which approval shall not be unreasonably withheld or delayed), (c) general contractors' estimates, (d) architect's certificates, (e) unconditional lien waivers of general contractors, if available, (f) evidence of approval by all governmental authorities and other regulatory bodies whose approval is required and (g) such other certificates as Landlord may, from time to time, reasonably require. Landlord's obligation to disburse insurance proceeds under this Article 10 shall be subject to the release of such proceeds by any Hotel Mortgagee to Landlord. Notwithstanding anything contained in this Agreement, in the event that any Hotel Mortgagee does not release insurance proceeds to Landlord, unless Landlord determines, in its sole and absolute discretion, to make monies in the amount of such proceeds available to Tenant for repair or restoration of the Leased Property, Tenant shall have no obligation to repair or restore the Leased Property. If a Hotel Mortgagee or Landlord releases only a portion of insurance proceeds to Tenant and Landlord does not, in its sole and absolute discretion, make any shortfall in the amount of insurance proceeds released by a Hotel Mortgagee available to Tenant for repair or restoration of the Leased Property, Tenant shall only be obligated to repair and restore the Leased Property to the extent of moneys released by Hotel Mortgagee or Landlord, plus any sums made available by Landlord for repairs and restoration.

10.3 Damage Near End of Fixed Term. Notwithstanding any provisions of Section 10.1 or 10.2 to the contrary, if damage to or destruction of the Leased Property occurs during the last twelve (12) months of the Fixed Term and if such damage or destruction cannot reasonably be expected to be fully repaired and restored prior to the date that is six (6) months prior to the end of the Fixed Term, the provisions of Section 10.2.1 shall apply as if the Leased Property had been totally or partially destroyed and the Hotel rendered Unsuitable for its Permitted Use.

10.4 Tenant's Property. All insurance proceeds payable by reason of any loss of or damage to any of Tenant's Personal Property shall be paid to Tenant and, to the extent necessary to repair or replace Tenant's Personal Property in accordance with Section 10.5, Tenant shall hold such proceeds to pay the cost of repairing or replacing damaged Tenant's Personal Property.

10.5 Restoration of Tenant's Property. If Tenant is required to restore the Leased Property as hereinabove provided, Tenant shall either (a) restore all alterations and improvements made by Tenant and Tenant's Personal Property, if any, or (b) replace such alterations and improvements and Tenant's Personal Property, if any, with improvements or items of the same or better quality and utility to the operation of the Leased Property.

10.6 Waiver. Tenant hereby waives any statutory rights of termination which may arise by reason of any damage or destruction of the Leased Property.

10.7 Casualty -- Conflicting Terms. Notwithstanding any provision of this Article 10 to the contrary, if any Hotel Mortgage contains provisions which apply in the event of a casualty and which are in conflict with the terms of this Article 10, then such Hotel Mortgage shall control to the extent of such conflict.

ARTICLE 11

CONDEMNATION

11.1 Total Condemnation, Etc. In the event (a) the whole of the Leased Property shall be taken or condemned for a public or quasi-public use or purpose by a Condemnor or sold by Landlord in lieu thereof, (b) such a portion of the Leased Property shall be taken, condemned or sold in lieu thereof so that the balance cannot be used for the same purpose and with substantially the same utility to Tenant as immediately prior to such taking, or (c) the Leased Property or any portion thereof shall be taken or condemned for a public or quasi-public use or purpose by a Condemnor or sold by Landlord in lieu thereof and Landlord is unable to repair, rebuild or restore the same under the terms of any agreement to which it is a party, under the Franchise Agreement or under any Legal Requirements or other governmental order to which Landlord or the Leased Property is subject, (a "Prohibited Taking"), this Agreement shall terminate upon delivery of possession to the Condemnor or its assignee, and any Award shall be paid to and be the sole property of Landlord whether the Award shall be made as compensation for diminution of the value of the leasehold estate or the fee of the Land or otherwise, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all of the Award. Tenant shall have no claim against Landlord by reason of such taking or termination and shall not have any claim or right to any portion of the Award to be paid to Landlord and, in such event, Rent and other charges hereunder shall be apportioned as of the date of this Agreement is terminated.

11.2 Partial Taking. In the event (a) only a part of the Leased Property is taken or condemned but the Leased Property or the part remaining can still be used for the same purpose and with substantially the same utility to Tenant as immediately prior to such taking, or (b) a Prohibited Taking has not occurred, this Agreement shall not terminate and Landlord, at Landlord's sole cost and expense, shall repair and restore the remaining Leased Improvements provided the cost and expense of such repair and restoration does not exceed the amount of the Award. If the cost of such repair and restoration exceeds the amount of the Award, Landlord may terminate this Agreement by giving written notice of termination to Tenant within thirty (30) days of the delivery of possession to the Condemnor. If Landlord is obligated to repair and restore the remaining Leased Improvements as herein provided, there shall be no abatement or reduction in any Rent or other charges payable by Tenant under this Agreement because of such taking or condemnation; provided, however, Minimum Rent shall be abated (i) to the extent of any net proceeds of loss of rents insurance received by Landlord if and to the extent that the Leased Property is not tenantable by Tenant during the period of restoration or (ii) following the completion of the restoration, to the extent the Leased Improvements are not tenantable.

11.3 Tenant's Award. Tenant shall have no right to claim and recover from the Condemnor or from Landlord such compensation as may otherwise be separately awarded to Tenant for any damage to Tenant's business by reason of such condemnation and for any cost or

loss incurred by Tenant in removing or relocating Tenant's merchandise, fixtures and furnishings, to the extent same would diminish Landlord's Award.

11.4 Condemnation -- Conflicting Terms. Notwithstanding any provision of this Article 11 to the contrary, if any Hotel Mortgage contains provisions which apply in the event of a condemnation and which are in conflict with the Terms of this Article 11, then such Hotel Mortgage shall control to the extent of such conflict.

ARTICLE 12

DEFAULTS AND REMEDIES

12.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

- (a) should Tenant fail to make any payment of the Rent or any other sum when due and such failure shall continue for a period of ten (10) days; or
- (b) should Tenant fail to reimburse Landlord for the costs of insurance maintained under Article 9, or should Tenant fail to maintain any insurance coverages required under Article 9, and such failure shall continue for ten (10) days after Notice thereof (except that no Notice shall be required if any such insurance coverages shall have lapsed); or
- (c) should Tenant default in the due observance or performance of any of the terms, covenants or agreements contained herein to be performed or observed by it (other than as specified in clauses (a) and (b) above and (d) through (s) below) such default shall continue for a period of thirty (30) days after Notice thereof from Landlord to Tenant; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with due diligence within such period of time and if, in addition, Tenant commences to cure or cause to be cured such default within fifteen (15) days after Notice thereof from Landlord and thereafter prosecutes the curing of such default with all due diligence, such period of time shall be extended to such period of time as may be reasonably and commercially necessary to cure such default with all due diligence; or
- (d) should an event of default occur and be continuing beyond the expiration of any applicable cure period under any of the Incidental Documents; or
- (e) should there occur a final unappealable determination by a Government Agency of the revocation or limitation of any material license, permit, certification or approval required for the lawful operation of the Hotel in accordance with its Permitted Use or the loss or material limitation of any material license, permit, certification or approval under any other circumstances under which Tenant is required to cease its operation of the Hotel in accordance with its Permitted Use at the time of such loss or limitation if such revocation or limitation was a result of any act or failure to act by Tenant; or

- (f) should Tenant generally not be paying its debts as they become due or should Tenant make a general assignment for the benefit of creditors; or
- (g) should Tenant file a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or consent to the appointment of a custodian, receiver, trustee or other similar office with respect to it or any substantial part of its assets, or take corporate action for the purpose of any of the foregoing; or if a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Tenant, a custodian, receiver, trustee or other similar officer with respect to Tenant or any substantial part of its assets, or if an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of Tenant, or if any petition for any such relief shall be filed against Tenant and such petition shall not be dismissed within one hundred twenty (120) days; or
- (h) should Tenant cause or institute any proceeding for its dissolution or termination; or
- (i) should Tenant cause an event of default to occur and be continuing under the Hotel Mortgage, or any mortgage or deed of trust or other similar security document which is secured by Tenant's leasehold interest hereunder or should the mortgagee or beneficiary, as applicable, under any such mortgage or deed of trust or other similar security document accelerate the indebtedness secured thereby or commence a foreclosure action in connection with said mortgage; or
- (j) should the estate or interest of Tenant in the Leased Property or any part thereof be levied upon or attached in any proceeding and the same shall not be vacated or discharged within the later of (i) one hundred twenty (120) days after commencement thereof, unless the amount in dispute is less than \$50,000.00, in which case Tenant shall give notice to Landlord of the dispute but Tenant may defend in any suitable way, and (ii) thirty (30) days after receipt by Tenant of Notice thereof from Landlord (unless Tenant shall be contesting such lien or attachment in good faith in accordance with Article 8); or
- (k) should any default by Tenant as "Owner" under the Management Agreement occur and be continuing beyond the expiration of any applicable cure period under the Management Agreement; or
- (l) should a Change of Control of Tenant occur other than as provided in Sections 22.22 or 5.4, respectively; or
- (m) should Tenant be, or cause Landlord to be, in default beyond applicable grace periods, if any, under any Franchise Agreement relating to the Leased

Property including any Termination of the Franchise Agreement without Landlord's prior written consent; or

(n) should Tenant voluntarily cease operations of the Leased Property for more than three (3) days other than by reason of casualty, Condemnation or Force Majeure; or

(o) should the estate or interest of Tenant in this Agreement voluntarily or involuntarily, be transferred, assigned, conveyed, levied upon or attached; or

(p) should Tenant fail to observe or perform any other term of any Participating Leases and the continuation of such failure for a period of thirty (30) days after receipt by Tenant of notice from the Landlord thereof, unless Tenant is diligently proceeding to cure, in which case the cure period will be extended to one hundred eighty (180) days; provided, however, if such failure cannot be cured within the one hundred eighty (180) day period and the Tenant continues to act, with diligence, to correct such failure within said one hundred eighty (180) days, then Tenant will be afforded up to an additional ninety (90) days to cure such failure; or

(q) should an Event of Default occur under a Participating Lease; or

(r) Should Tenant fail to comply with the Minimum Operating Standards for a period of thirty (30) days after written notice of such failure; or

(s) Should there be a Change in Operation without Landlord's prior written consent; or

(t) Should Tenant incur any Indebtedness except as expressly provided in Section 21.4;

then, and in any such event, Landlord, in addition to all other remedies available to it, may terminate this Agreement by giving Notice thereof to Tenant and upon the expiration of the time, if any, fixed in such Notice, this Agreement shall terminate and all rights of Tenant under this Agreement shall cease. Landlord shall have and may exercise all rights and remedies available at law and in equity to Landlord as a result of Tenant's breach of this Agreement.

12.2 Remedies. None of (a) the termination of this Agreement pursuant to Section 12.1, (b) the repossession of the Leased Property or any portion thereof, (c) the failure of Landlord to re-let the Leased Property or any portion thereof, nor (d) the re-letting of all or any portion of the Leased Property, shall relieve Tenant of its liability and obligations hereunder, all of which shall survive any such termination, repossession or re-letting. In the event of any such termination, Tenant shall forthwith pay to Landlord all Rent due and payable with respect to the Leased Property through and including the date of such termination. Thereafter, Tenant, until the end of what would have been the Fixed Term of this Agreement in the absence of such termination, and whether or not the Leased Property or any portion thereof shall have been re-let, shall be liable to Landlord for, and shall pay to Landlord, as current damages, the Rent and other charges which would be payable hereunder for the remainder of the Fixed Term had such

termination not occurred, less the net proceeds, if any, of any re-letting of the Leased Property, after deducting all reasonable expenses in connection with such re-letting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, advertising, expenses of employees, alteration costs and expenses of preparation for such re-letting. Tenant shall pay such current damages to Landlord monthly on the days on which the Minimum Rent would have been payable hereunder if this Agreement had not been so terminated. At any time after such termination, as liquidated final damages beyond the date of such termination, at Landlord's election, Tenant shall pay to Landlord an amount equal to the present value (discounted at the Interest Rate) of the excess, if any, of the Rent and other charges which would be payable hereunder from the date of such termination (assuming that, for the purposes of this Section 12.2, annual payments by Tenant on account of Additional Charges and Participating Rent would be the same as payments required for the immediately preceding twelve (12) calendar months, or if less than twelve (12) calendar months have expired since the Commencement Date, the payments required for such lesser period adjusted to an annual amount) for what would be the then unexpired term of this Agreement if the same remained in effect, over the fair market rental for the same period, less any current damages already paid by Tenant. Nothing contained in this Agreement shall, however, limit or prejudice the right of Landlord to prove and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to, or less than the amount of the loss or damages referred to above. In case of any Event of Default, re-entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (a) re-let the Leased Property or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option, be equal to, less than or exceed the period which would otherwise have constituted the balance of the Fixed Term and may grant concessions or free rent to the extent that Landlord considers advisable and necessary to re-let the same, and (b) may make such reasonable alterations, repairs and decorations in the Leased Property or any portion thereof as Landlord in its sole and absolute discretion, considers advisable and necessary for the purpose of re-letting the Leased Property; and the making of such alterations, repairs and decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for any failure to re-let all or any portion of the Leased Property, or, in the event that the Leased Property is re-let, for failure to collect the rent under such re-letting. To the maximum extent permitted by law, Tenant hereby expressly waives any and all rights of redemption granted under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Leased Property, by reason of the occurrence and continuation of an Event of Default hereunder. Additionally, upon the occurrence of an Event of Default, Landlord may, in addition to any other remedies provided herein or available at law or in equity, enter upon the Leased Property or any portion thereof and take possession of any and all of Tenant's Personal Property, if any, and the Records, without liability for trespass or conversion (Tenant hereby waiving any right to notice or hearing prior to such taking of possession by Landlord) and sell the same at public or private sale, after giving Tenant reasonable Notice of the time and place of any public or private sale, at which sale Landlord or its assigns may purchase all or any portion of Tenant's Personal Property, if any, unless otherwise prohibited by law. Unless otherwise provided by law and without intending to exclude any other manner of giving Tenant reasonable notice, the requirement of reasonable Notice shall

be met if such Notice is given at least ten (10) days before the date of sale. The proceeds from any such disposition, less all expenses incurred in connection with the taking of possession, holding and selling of such property (including, without limitation, reasonable attorneys' fees) shall be applied as a credit against the indebtedness which is secured by the security interest granted in Section 7.2. Any surplus shall be paid to Tenant or as otherwise required by law and Tenant shall pay any deficiency to Landlord, as Additional Charges, upon demand. Notwithstanding anything herein contained to the contrary, Tenant shall not be liable to Landlord for consequential, punitive or exemplary damages.

12.3 Tenant's Waiver. IF THIS AGREEMENT IS TERMINATED PURSUANT TO SECTION 12.1 OR 12.2, TENANT WAIVES, TO THE EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN THE EVENT OF SUMMARY PROCEEDINGS TO ENFORCE THE REMEDIES SET FORTH IN THIS ARTICLE 12, AND THE BENEFIT OF ANY LAWS NOW OR HEREAFTER IN FORCE EXEMPTING PROPERTY FROM LIABILITY FOR RENT OR FOR DEBT.

12.4 Application of Funds. Any payments received by Landlord under any of the provisions of this Agreement during the existence or continuance of any Event of Default (and any payment made to Landlord rather than Tenant due to the existence of any Event of Default) shall be applied to Tenant's current and past due obligations under this Agreement in such order as Landlord may determine or as may be prescribed by the laws of the State.

12.5 Landlord's Right to Cure Tenant's Default. If an Event of Default shall have occurred and be continuing, Landlord, after Notice to Tenant (which Notice shall not be required if Landlord shall reasonably determine immediate action is necessary to protect person or property), without waiving or releasing any obligation of Tenant and without waiving or releasing any Event of Default, may (but shall not be obligated to), at any time thereafter, make such payment or perform such act for the account and at the expense of Tenant, and may, to the maximum extent permitted by law, enter upon the Leased Property or any portion thereof for such purpose and take all such action thereon as, in Landlord's sole and absolute discretion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Tenant. All reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection therewith, together with interest thereon (to the extent permitted by law) at the Overdue Rate from the date such sums are paid by Landlord until repaid, shall be paid by Tenant to Landlord, on demand.

ARTICLE 13

HOLDING OVER

13.1 Holding Over. Any holding over by Tenant after the expiration or sooner termination of this Agreement shall be treated as a daily tenancy at sufferance at a rate equal to one and one-half (1.5) times the Rent and other charges herein provided (prorated on a daily basis). Tenant shall also pay to Landlord all damages (direct or indirect) sustained by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Agreement, to the extent applicable. Nothing contained herein shall constitute the

consent, express or implied, of Landlord to the holding over of Tenant after the expiration or earlier termination of this Agreement.

ARTICLE 14

LIMITATION ON LIABILITY

14.1 Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, there shall be absolutely no personal liability on the part of Landlord or the REIT or their Affiliates, shareholders, directors, trustees, partners, advisors, agents, employees, or their respective successors or assigns or any mortgagee in possession, with respect to any of the terms, covenants, or conditions of this Agreement with respect to any act, omission or negligence of Landlord. Tenant shall look solely to Landlord's estate and property in the Leased Property and the proceeds thereof for the satisfaction of Tenant's remedies whether for the collection of any judgment or other judicial process requiring the payment of money by Landlord in the event of any default by Landlord hereunder or otherwise, and no other property or assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Agreement, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Leased Property.

ARTICLE 15

SECURITY FOR PERFORMANCE

15.1 Security for Performance. To further secure performance of Tenant's obligations hereunder, Tenant shall execute and deliver to Landlord the Tenant Cash Management Agreement and the Security Agreement.

ARTICLE 16

SUBLETTING AND ASSIGNMENT

16.1 Subletting and Assignment. Tenant shall not, without Landlord's prior written consent (which consent may be given or withheld in Landlord's sole and absolute discretion), assign, mortgage, pledge, hypothecate, encumber or otherwise transfer this Agreement or sublease (which term shall be deemed to include the granting of concessions, licenses and the like), all or any part of the Leased Property or suffer or permit this Agreement or the leasehold estate created hereby or any other rights arising under this Agreement to be assigned, transferred, mortgaged, pledged, hypothecated or encumbered, in whole or in part, whether voluntarily, involuntarily or by operation of law, or permit the use or operation of the Leased Property by any Person other than Tenant and the Manager, on behalf of Tenant pursuant to the express terms of the Management Agreement, or the Leased Property to be offered or advertised for assignment or subletting. For purposes of this Section 16.1, an assignment of this Agreement shall be deemed to include any transaction pursuant to which Tenant is merged or consolidated with another Person or pursuant to which all or substantially all of Tenant's assets are transferred to any other Entity, as if such Change in Control or transaction were an assignment of this Agreement. No subletting or assignment shall in any way impair the continuing primary liability

of Tenant hereunder (unless Landlord and Tenant expressly otherwise agree that Tenant shall be released from all obligations hereunder), and no consent to any subletting or assignment in a particular instance shall be deemed to be a waiver of the prohibition set forth in this Section 16.1. No assignment, subletting or occupancy shall affect any Permitted Use. Any subletting, assignment or other transfer of Tenant's interest under this Agreement in contravention of this Section 16.1 shall be voidable at Landlord's option.

16.2 Required Sublease Provisions. Any sublease of all or any portion of the Leased Property entered into on or after the date hereof shall be consistent with any applicable terms and conditions of the Management Agreement and shall provide: (a) that it is subject and subordinate to this Agreement and to the matters to which this Agreement is or shall be subject or subordinate; (b) that in the event of termination of this Agreement or reentry or dispossession of Tenant by Landlord under this Agreement, Landlord may, at its option, terminate such sublease or take over all of the right, title and interest of Tenant, as sublessor under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that neither Landlord nor any Hotel Mortgagee, as holder of a mortgage or as Landlord under this Agreement, if such mortgagee succeeds to that position, shall (i) be liable for any act or omission of Tenant under such sublease, (ii) be subject to any credit, counterclaim, offset or defense which theretofore accrued to such subtenant against Tenant, (iii) be bound by any previous modification of such sublease not consented to in writing by Landlord or by any previous prepayment of more than one (1) month's Rent, (iv) be bound by any covenant of Tenant to undertake or complete any construction of the Leased Property or any portion thereof, (v) be required to account for any security deposit of the subtenant other than any security deposit actually delivered to Landlord by Tenant, (vi) be bound by any obligation to make any payment to such subtenant or grant any credits, except for services, repairs, maintenance and restoration provided for under the sublease that are performed after the date of such attornment, (vii) be responsible for any monies owing by Tenant to the credit of such subtenant, or (viii) be required to remove any Person occupying any portion of the Leased Property; and (c) in the event that such subtenant receives a written Notice from Landlord or any Hotel Mortgagee stating that an Event of Default has occurred and is continuing, such subtenant shall thereafter be obligated to pay all rentals accruing under such sublease directly to the party giving such Notice or as such party may direct for so long as such Event of Default remains uncured. All rentals received from such subtenant by Landlord or the Hotel Mortgagee, as the case may be, shall be credited against the amounts owing by Tenant under this Agreement and such sublease shall provide that the subtenant thereunder shall, at the request of Landlord, execute a suitable instrument in confirmation of such agreement to attorn. An original counterpart of each such sublease and assignment and assumption, duly executed by Tenant and such subtenant or assignee, as the case may be, in form and substance reasonably satisfactory to Landlord, shall be delivered promptly to Landlord and (a) in the case of an assignment, the assignee shall assume in writing and agree to keep and perform all of the terms of this Agreement on the part of Tenant to be kept and performed and shall be, and become, jointly and severally liable with Tenant for the performance thereof and (b) in case of either an assignment or subletting, Tenant shall remain primarily liable, as principal rather than as surety, for the prompt payment of the Rent and for the performance and observance of all of the covenants and conditions to be performed by Tenant hereunder. The provisions of this Section 16.2 shall not be deemed a waiver of the provisions set forth in Section 16.1.

16.3 Sublease Limitation. For so long as the REIT shall seek to qualify as a real estate investment trust, anything contained in this Agreement to the contrary notwithstanding, Tenant shall not sublet the leased Property on any basis such that the rental to be paid by any sublessee thereunder would be based, in whole or in part, on either (a) the net income or profits derived by the business activities of such sublessee, or (b) any other formula such that any portion of such sublease rental, if it were paid as rent directly to the REIT, would fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto nor shall Tenant sublease the Leased Property to, or enter into any similar arrangement with, any Person in which the REIT owns, directly or indirectly, a 10% or more interest, within the meaning of Section 856(d) of the Code or any similar or successor provisions thereto.

ARTICLE 17

ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS

17.1 Estoppel Certificates. At any time and from time to time, but in no event more than four (4) times per Fiscal Year, upon not less than ten (10) Business Days prior Notice by either party, the party receiving such Notice shall furnish to the other an Officer's Certificate certifying that this Agreement is unmodified and in full force and effect (or that this Agreement is in full force and effect as modified and setting forth the modifications), the date to which the Rent has been paid, that no Default or an Event of Default has occurred and is continuing or, if a Default or an Event of Default shall exist, specifying in reasonable detail the nature thereof, and the steps being taken to remedy the same, and such additional information as the requesting party may reasonably request. Any such certificate furnished pursuant to this Section 17.1 may be relied upon by the requesting party, its lenders and any prospective purchaser or mortgagee of the Leased Property or the leasehold estate created hereby.

17.2 Financial Statements. Tenant shall keep true records and books of account of Tenant in which full, true and correct entries will be made of dealings and transactions in relation to the business and affairs of Tenant in accordance with GAAP, where applicable. All records and books of account of Tenant shall be maintained by Tenant for a period of not less than seven (7) years after the termination of this Agreement. Tenant shall apply accounting principles in the preparation of the financial statements of Tenant which, in the judgment of and the opinion of its independent public accountants, are in accordance with GAAP and the Uniform System of Accounts, where applicable, except for changes approved by such independent public accountants. Tenant shall provide to Landlord either in a footnote to the financial statements delivered under this Section 17.2 which relate to the period in which such change occurs, or in separate schedules to such financial statements, information sufficient to show the effect of any such changes on such financial statements. Tenant shall furnish the following statements to Landlord:

- (a) within twenty (20) days after each of the first three quarters of any Fiscal Year, the most recent Financials, accompanied by a Financial Officers Certificate.
- (a) within forty-five (45) days after the end of each Fiscal Year, the most recent Financials for such year, certified by an independent certified public

accountant reasonably satisfactory to Landlord, and accompanied by a Financial Officer's Certificate;

- (b) (i) within twenty (20) days after the end of each Accounting Period, an unaudited operating statement prepared for the Leased Property, including occupancy percentages and average rate, accompanied by a Financial Officer's Certificate and an Officer's Certificate prepared by the Manager containing an explanation of the performance of the Leased Property and containing (i) a Schedule of profit and loss for such Accounting Period, (ii) a Schedule of the Capital Expenditures for the year to date together with a restatement of the Capital Expenditures for the remainder of the Fiscal Year, including cash flow, and (iv) a balance sheet, comparison of operations, variance report and anything else reasonably requested by Landlord;
- (c) promptly after the sending or filing thereof, copies of all reports which Tenant or Manager sends to its security holders generally, and copies of all periodic reports which Tenant or Manager files with the SEC or any stock exchange on which its shares are listed or traded;
- (d) promptly after the delivery thereof to Tenant, a copy of any management letter or written report prepared by the certified public accountants with respect to the financial condition, operations, business or prospects of Tenant;
- (e) at any time and from time to time upon not less than twenty (20) days Notice from Landlord, any Financials or any other financial reporting information required to be filed by Landlord with any securities and exchange commission, the SEC or any successor agency, or any other governmental authority, or required pursuant to any order issued by any court, Government Agency or arbitrator in any litigation to which Landlord is a party, for purposes of compliance therewith; and
- (f) promptly, upon Notice from Landlord, such other information concerning the business, financial condition and affairs of Tenant as Landlord reasonably may request from time to time.

Landlord may at any time, and from time to time, provide any Hotel Mortgagee with copies of any of the foregoing statements. In addition, Landlord shall have the right, from time to time at Landlord's sole cost and expense, upon reasonable Notice, during Tenant's customary business hours, to cause Tenant's books and records with respect to the Leased Property to be audited by auditors selected by Landlord at the place where such books and records are customarily kept.

17.3 Annual Budget. Not later than sixty (60) days prior to the commencement of each Lease Year, Tenant shall prepare and submit to Landlord an operating budget (the "Operating Budget") and a capital budget (the "Capital Budget") prepared in accordance with the requirements of this Section 17.3. The Operating Budget and the Capital Budget (together, the "Annual Budget") shall be prepared in accordance with GAAP and the Uniform System of Accounts, to the extent applicable, and show by month and quarter and for the year as a whole in

the degree of detail specified by the Uniform System of Accounts for monthly statements, and in accordance with the detail level of monthly financial statements, the following:

- (a) Tenant's reasonable estimate of Gross Revenues (including room rates and Room Revenues, Food Sales, Telephone Revenues, Beverage Sales, Other Income, Other Operating Departments Revenues, or Additional Charges) for the forthcoming Lease Year itemized on schedules on a monthly and quarterly basis as approved by Landlord and Tenant, together with the assumptions, in narrative form, forming the basis of such schedules;
- (b) A cash flow projection, by calendar month, quarter and year;
- (c) A marketing plan including a narrative description of the program for advertising and marketing the Hotel for the forthcoming Lease Year containing a detailed budget itemization of the proposed advertising expenditure by category and the assumptions in narrative form, forming the basis of such budget itemization;
- (d) Tenant's reasonable estimate for each month of the Lease Year of Participating Rent including Room Revenues, Food Sales, Telephone Revenues Beverage Sales, Other Income, and Other Operating Departments Revenues;
- (e) A schedule of all Capital Expenditures and Capital Repairs planned for the forthcoming Lease Year;
- (f) An operating budget including line item detail of all revenues and expenses for the forthcoming Lease Year;
- (g) A five (5) year plan of operations and anticipated Capital Expenditures and Capital Repairs and an accounting of the Reserve Fund Account and balances for such periods;
- (h) A schedule of all preventative maintenance to be performed during the forthcoming Lease Year;
- (i) Tenant's proposal for the Competitive Set; and
- (j) Any other schedules reasonably requested by Landlord.

Landlord shall have thirty (30) days after the date on which it receives the Annual Budget to review, approve or disapprove the entries and information appearing in the Annual Budget including all of the schedules included therewith. If the parties are not able to reach agreement on the Annual Budget for any Lease Year during Landlord's thirty (30) day review period, the parties shall attempt in good faith during the subsequent thirty (30) day period to resolve any disputes, which attempt shall include, if requested by either party, at least one (1) meeting of executive-level officers of Landlord and Tenant. In the event the parties are still not able to reach agreement on the Annual Budget for any particular Lease Year after complying with the foregoing requirements of this Section 17.3, the parties shall adopt such portions of the

Operating Budget and the Capital Budget as they may have agreed upon, and any matters not agreed upon (except with respect to item (h) above) shall be referred to arbitration as provided for in Article 23. Pending the results of such arbitration or the earlier agreement of the parties, (i) if the Operating Budget has not been agreed upon, for the first ninety (90) days of the new Lease Year the Leased Property will be operated in a manner reflecting the prior Lease Year's actual revenues, and thereafter the Leased Property will be operated for the full Lease Year (including the first ninety (90) days thereof) in a manner consistent with the Gross Revenues actual results in the prior Lease Year and increased by five (5%) percent, in each case without adjustment pursuant to Section 3.1.4 until a new Operating Budget is adopted, and (ii) if the Capital Budget has not been agreed upon, no Capital Expenditures shall be made unless the same are set forth in a previously approved Capital Budget or are specifically required by Landlord or are otherwise required to comply with Legal Requirements or to make emergency repairs.

17.4 General Operations. Tenant shall furnish to Landlord:

- (a) Within thirty (30) days after receipt or modification thereof, copies of all licenses authorizing Tenant and/or the Manager to operate the Hotel for its Permitted Use; and
- (b) Promptly after receipt or sending thereof, copies of all material notices given or received by Tenant under the Management Agreement.

ARTICLE 18

LANDLORD'S RIGHT TO INSPECT

18.1 Right to Inspect. Tenant shall permit, and shall cause the Manager to permit, Landlord and its authorized representatives to inspect the Leased Property during usual business hours upon reasonable notice and to make such repairs as Landlord is permitted to make pursuant to the terms of this Agreement, provided that any inspection or repair by Landlord or its representatives will not unreasonably interfere with Tenant's use and operation of the Leased Property and further provided that in the event of an emergency, as determined by Landlord in its reasonable discretion, prior Notice shall not be necessary. Landlord shall not communicate directly with any employees of Tenant or Manager, other than to Tenant's or Manager's designated representative, without the consent of Tenant (which consent shall not be unreasonably withheld, delayed or conditioned).

ARTICLE 19

LIMITATIONS

19.1 Personal Property Limitation. Anything contained in this Agreement to the contrary notwithstanding, (i) the average of the adjusted tax basis, for U.S. federal income tax purposes, of the items of Landlord's personal property that are leased to the Tenant under this Agreement at the beginning and at the end of any Lease Year shall not exceed 15% of the average of the aggregate adjusted tax bases of the Leased Property at the beginning and at the end of such Lease Year, and (ii) the value of the items of Landlord's personal property that are

leased to the Tenant under this Agreement shall not at any time exceed 10% of the value of the Leased Property (together, the "Personal Property Limitation"). Landlord and Tenant shall at all times cooperate in good faith and use their best efforts to permit Landlord to comply with the Personal Property Limitation, which compliance may include, by way of example only and not by way of limitation or obligation, the purchase by Tenant at fair market value of personal property in excess of the Personal Property Limitation. All such compliance shall be effected in a manner which has no material net economic detriment to Tenant and will not jeopardize the REIT's status as a real estate investment trust under the applicable provisions of the Code. This Section 19.1 is intended to ensure that all of the Rent qualifies as "rents from real property," within the meaning of Section 856(d) of the Code, and as rents described in Section 512(b)(3)(A) of the Code, or any similar or successor provisions thereto, and shall be interpreted in a manner consistent with such intent.

19.2 Tenant Ownership Limitation. Anything contained in this Agreement to the contrary notwithstanding, Landlord shall not take, or permit an Affiliate of Landlord to take, any action that would cause the REIT to own, directly or indirectly, a 10% or more interest in the Tenant, or in the assets or net profits of Tenant, within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto. Anything contained in this Agreement to the contrary notwithstanding, Tenant shall not take, or permit an Affiliate of Tenant to take, any action that would cause the REIT to own directly or indirectly, a 10% or more interest in the Tenant, or in the assets or net profits of Tenant, within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto.

19.3 Director, Officer and Employee Limitation. Anything contained in this Agreement to the contrary notwithstanding, Landlord and Tenant shall cooperate to ensure that (a) no directors, trustees, officers or employees of Landlord, the REIT or any Affiliate of the REIT shall be directors, officers or employees of, or own any ownership interest in, Tenant or any Affiliate thereof (or any Person who furnishes or renders services to the Tenant or manages or operates the Leased Property), and (b) no directors, trustees, officers or employees of Tenant or any Affiliate thereof (or of any Person who furnishes or renders services to the Tenant or manages or operates the Leased Property) shall be directors, officers or employees of Landlord, the REIT or any Affiliate of the REIT.

ARTICLE 20

HOTEL MORTGAGES

20.1 Landlord May Grant Liens. Without the consent of Tenant, Landlord may, subject to the terms and conditions set forth in this Section 20.1, from time to time, directly or indirectly, create or otherwise cause to exist any lien, encumbrance or title retention agreement ("Encumbrance") upon the Leased Property, or any portion thereof or interest therein, whether to secure any borrowing or other means of financing or refinancing. Any such Encumbrance (other than a Hotel Mortgage, in which event the provisions of Section 20.2 shall govern) shall be, and shall provide that it is, subject and subordinate to the rights of Tenant under this Agreement. Additionally, Tenant shall cooperate in all reasonable respects, and as generally described in Section 22.15, with any transfer of the Leased Property to a Hotel Mortgagee that succeeds to the interest of Landlord in the Leased Property (including, without limitation, in connection with the

transfer of any franchise, license, lease, permit, contract, agreement, or similar item to such Hotel Mortgagee or such Hotel Mortgagee's designee necessary or appropriate to operate the Leased Property). Landlord and Tenant shall cooperate in (a) including in this Agreement by suitable amendment from time to time any provision which may be reasonably requested by any proposed lender, or may otherwise be reasonably necessary, to implement the provisions of this Section 20.1 and (b) entering into any further agreement with or at the request of any Hotel Mortgagee which may be reasonably requested or required by such Hotel Mortgagee in furtherance or confirmation of the provisions of this Section 20.1; provided, however, that any such amendment or agreement shall not in any way affect the Fixed Term nor affect adversely in any material respect any rights of Landlord or Tenant under this Agreement.

20.2 Subordination of Lease. Subject to Section 20.1 and this Section 20.2, any and all rights of Tenant hereunder, are and shall be automatically subject and subordinate to any ground or master lease, and all renewals, extensions, modifications and replacements thereof, and to all mortgages and deeds of trust, which may now or hereafter affect the Leased Property or any improvements thereon and/or any of such leases to each and every advance made or hereafter to be made under such mortgages and deeds of trust, and to all renewals, modifications, replacements and extensions of such leases and such mortgages and deeds of trust and all consolidations of such mortgages and deeds of trust. This Section 20.2 shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute, acknowledge and deliver any instrument that Landlord, the lessor under any such lease or the holder of any such mortgage or the trustee or beneficiary of any deed of trust or any of their respective successors in interest may reasonably request to evidence such subordination. Any lease to which this Agreement is, at the time referred to, subject and subordinate is herein called "Superior Lease" and the lessor of a Superior Lease or its successor in interest at the time referred to, is herein called "Superior Landlord" and any mortgage or deed of trust to which this Agreement is, at the time referred to, subject and subordinate, is herein called "Superior Mortgage" and the holder, trustee or beneficiary of a Superior Mortgage is herein called "Superior Mortgagee". Tenant shall have no obligations under any Superior Lease or Superior Mortgage other than those expressly set forth in this Section 20.2. If any Superior Landlord or Superior Mortgagee or the nominee or designee of any Superior Landlord or Superior Mortgagee shall succeed to the rights of Landlord under this Agreement (any such person, "Successor Landlord"), whether through possession or foreclosure action or delivery of a new lease or deed, or otherwise, such Successor Landlord shall have the right to terminate this Agreement and the Successor Landlord shall not be (a) liable in any way to Tenant for any act or omission, neglect or default on the part of any prior Landlord under this Agreement, (b) responsible for any monies owing by or on deposit with any prior Landlord to the credit of Tenant (except to the extent actually paid, credited or delivered to the Successor Landlord), (c) subject to any counterclaim or setoff which theretofore accrued to Tenant against any prior Landlord, (d) bound by any modification of this Agreement subsequent to such Superior Lease or Mortgage, or by any previous prepayment of Minimum Rent or Participating Rent for more than one (1) month in advance of the date due hereunder, which was not approved in writing by the Superior Landlord or the Superior Mortgagee thereto, (e) liable to Tenant beyond the Successor Landlord's interest in the Leased Property and the rents, income, receipts, revenues, issues and profits issuing from the Leased Property, (f) responsible for the performance of any work to be done by the Landlord under this Agreement to render the Leased Property ready for occupancy by Tenant or with respect to any insurance or Condemnation

proceeds), or (g) required to remove any Person occupying the Leased Property or any part thereof, except if such Person claims by, through or under the Successor Landlord. Tenant agrees at any time and from time to time to execute a suitable instrument in confirmation of Tenant's agreement to attorn, as aforesaid and, if Tenant has been requested to attorn.

20.3 Notice to Mortgagee and Ground Landlord. Subsequent to the receipt by Tenant of Notice from Landlord as to the identity of any Hotel Mortgagee or ground lessor under a lease with Landlord, as ground lessee, which includes the Leased Property as part of the demised premises and which complies with Sections 20.1 and 20.2 (which Notice shall be accompanied by a copy of the applicable mortgage or lease), no notice from Tenant to Landlord as to the Leased Property shall be effective unless and until a copy of the same is given to such Hotel Mortgagee or ground lessor at the address set forth in the above described Notice, and the curing of any of Landlord's defaults by such Hotel Mortgagee or ground lessor shall be treated as performance by Landlord.

ARTICLE 21

ADDITIONAL COVENANTS OF TENANT

21.1 Prompt Payment of Indebtedness. Tenant shall (a) pay or cause to be paid when due all payments on Tenant's Indebtedness and shall not permit or suffer any such Indebtedness to become or remain in default beyond any applicable grace or cure period, (b) pay or cause to be paid when due all lawful claims for labor and rents, (c) pay or cause to be paid when due all trade payables and (d) pay or cause to be paid when due all other of Tenant's Indebtedness upon which it is or becomes obligated, except, in each case, other than that referred to in clause (a), to the extent payment is being contested in good faith by appropriate proceedings in accordance with Article 8 and if Tenant shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP, if appropriate, or unless and until foreclosure, distraint sale or other similar proceedings shall have been commenced.

21.2 Intentionally Omitted.

21.3 Notice of Litigation, Etc. Tenant shall give prompt Notice to Landlord of any litigation or any administrative proceeding to which Tenant may hereafter become a party of which Tenant has notice or actual knowledge which involves a potential liability equal to or greater than Fifty Thousand Dollars (\$50,000.00) or which may otherwise result in any material adverse change in the business, operations, property, results of operation or financial condition of Tenant. Forthwith upon Tenant obtaining knowledge of any event or condition that would be required to be disclosed in a current report filed by Tenant on Form 8-K or in Part II of a quarterly report on Form 10-Q if Tenant were required to file such reports under the Securities Exchange Act of 1934, as amended, Tenant shall furnish Notice thereof to Landlord specifying the nature and period of existence thereof and what action Tenant has taken or is taking or proposes to take with respect thereto.

21.4 Indebtedness of Tenant. Tenant shall not create, incur, assume or guarantee, or permit to exist, or become or remain liable directly or indirectly upon, any Indebtedness except the following:

- (a) Indebtedness of Tenant to Landlord;
- (b) Indebtedness of Tenant for Impositions, to the extent that payment thereof shall not at the time be required to be made in accordance with the provisions of Article 8;
- (c) Indebtedness of Tenant in respect of judgments or awards (i) which have been in force for less than the applicable appeal period and in respect of which execution thereof shall have been stayed pending such appeal or review, (ii) which are fully covered by insurance payable to Tenant (subject to any deductibles permitted hereunder);
- (d) Trade payables incurred in the ordinary course of business.

21.5 Financial Condition of Tenant. Tenant shall at all times be Solvent.

21.6 Intentionally Omitted.

21.7 Prohibited Transactions. Tenant shall not permit to exist or enter into any agreement or arrangement whereby it engages in a transaction of any kind with any Affiliate of Tenant without the prior written consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion.

21.8 Liens and Encumbrances. Except as permitted by Section 7.1, Tenant shall not create or incur or suffer to be created or incurred or to exist any Lien on this Agreement or any of Tenant's assets, properties, rights or income, or any of its interest therein, now or at any time hereafter owned, other than:

- (a) Permitted Encumbrances; and
- (b) As permitted pursuant to Section 21.4.

21.9 Merger, Sale of Assets, Etc. Tenant shall not (a) sell, lease (as lessor or sublessor), transfer or otherwise dispose of, or abandon, all or any material portion of its assets (including capital stock) or business to any Person, (b) merge into or with or consolidate with any other Person, or (c) sell, lease (as lessor or sublessor), transfer or otherwise dispose of, or abandon, any personal property or fixtures or any real property; provided, however, that, notwithstanding the provisions of clause (c) Tenant may dispose of equipment or fixtures which have become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, provided substitute equipment or fixtures having equal or greater value and utility (but not necessarily having the same function) have been provided.

21.10 Compliance with Franchise Agreement. If requested by Landlord, Tenant shall become the Franchisee under the Franchise Agreement. To the extent any of the provisions of the Franchise Agreement impose a greater obligation on Landlord than the corresponding provisions of this Agreement, then Tenant shall be obligated to comply with, and to take all reasonable actions necessary to prevent breaches or defaults under, the provisions of the Franchise Agreement. It is the intent of the parties hereto that Tenant shall comply in every

respect with the provisions of the Franchise Agreement so as to avoid any default thereunder during the term of this Agreement. Landlord shall not terminate or enter into any modification of the Franchise Agreement without in each instance first obtaining Tenant's written consent (which shall not be unreasonably withheld or delayed). Tenant shall not terminate the Franchise Agreement without Landlord's prior written consent which may be withheld or granted in Landlord's sole discretion. Landlord and Tenant agree to cooperate fully with each other in the event it becomes necessary to obtain a franchise extension or modification or a new franchise for the Leased Property, and in any transfer of the Franchise Agreement to Landlord or any Affiliate thereof or any other successor to Tenant upon the termination of this Agreement; provided, however, Tenant shall have the right to terminate this Agreement, upon thirty (30) days prior written notice, in the event Tenant chooses not to become a franchisee under a new Franchise Agreement proposed by Landlord, and shall surrender the Leased Property to Landlord in compliance with the Terms hereof and as if this Agreement had expired pursuant to the terms hereof.

21.11 Termination Upon Revenue Performance Shortfall, Sale, Etc.

(a) If (i) with respect to any two (2) complete Fiscal Years during the Fixed Term, Tenant shall fail to realize from the operation of the Hotel an amount equal to at least ninety-five (95%) percent of the actual Gross Revenues from the preceding complete Fiscal Year and calendar year, or (ii) with respect to any Fiscal Year during the term, Tenant shall fail to realize from the operation of the Hotel an amount equal to at least ninety (90%) percent of the actual Gross Revenues from the preceding calendar year, or (iii) with respect to any Fiscal Year during the Fixed Term the RevPAR Yield Index of the Leased Property as of the end of such Fiscal Year shall have declined by more than five (5) percentage points from the Leased Property's RevPAR Yield Index at the end of the prior calendar year, or (iv) with respect to any Fiscal Year during the Fixed Term the RevPAR Yield Index of the Leased Property as of the end of such Fiscal Year shall have declined by more than ten (10) percentage points from the Leased Property's RevPAR Yield Index at the beginning of the Fixed Term, or (v) with respect to any Fiscal Year during the Fixed Term, Tenant shall fail to realize from the operation of the Hotel an amount equal to at least ninety (90%) percent of the actual Gross Revenues from the calendar year immediately preceding the Commencement Date (each, a "Revenue Performance Shortfall"), such failure shall constitute a Revenue Performance Shortfall under this Agreement; provided, however, if a Force Majeure Event has occurred, then the time period for determining a Revenue Performance Shortfall shall be extended for a period of time equal to the time period for which the Force Majeure Event was in effect. The existence of a Revenue Performance Shortfall for any Fiscal Year shall be determined by Landlord on the basis of the Officer's Certificate delivered by Tenant to Landlord pursuant to the requirements of Section 3.1.2(c) and shall be subject to confirmation pursuant to Section 3.1.2(d). Notwithstanding anything to the contrary, however, Tenant shall have the right to cure a Revenue Performance Shortfall with respect to any Fiscal Year during the Fixed Term hereof by paying to Landlord, at the time of the annual reconciliation of Participating Rent, pursuant to Section 3.1.2(c), the amount necessary during such Fiscal Year to

ensure that Landlord receives the same amount of Participating Rent as Landlord would have received had there not been a Revenue Performance Shortfall; provided, however, Tenant's right to cure a Revenue Performance Shortfall shall be limited to one (1) time during the Fixed Term. Landlord shall have no obligation to repay any amount advanced by Tenant to cure a Revenue Performance Shortfall. Nothing contained in this Section 21.11 shall be construed to alter or affect Tenant's obligation to pay Rent as otherwise provided in this Agreement.

(b) Upon the occurrence of (i) a Revenue Performance Shortfall (unless cured by Tenant within ten (10) days after Notice of termination as provided in this subsection and unless caused by casualty, Condemnation or any other cause beyond Tenant's control), (ii) the entering into by Landlord of a bona-fide contract to sell the Leased Property to a non-Affiliate (provided such sale actually occurs), (iii) a Tax Law Change resulting in Landlord's determination to terminate this Agreement, (iv) a Change of Control in Tenant (other than as provided in Section 22.22) or a Change of Control of the Manager without Landlord's consent (which consent will not be unreasonably withheld), or (v) a Material Franchise Change has occurred, Landlord shall have the right, at Landlord's option, to terminate this Agreement upon thirty (30) days' Notice to Tenant, in which event this Agreement and the Management Agreement shall terminate and Tenant shall immediately surrender the Leased Property to Landlord after the expiration of such 30 day period, and, if Tenant fails to so surrender, Landlord shall have the right, without notice, to enter upon and take possession of the Leased Property and to expel or remove Tenant and its effects without being liable for prosecution or any claim for damages therefor; and Tenant shall, and hereby agrees to, indemnify Landlord for the total of (x) in the event that Tenant does not promptly surrender the Leased Property, the reasonable costs of recovering the Leased Property and all other losses, liabilities and reasonable expenses incurred by Landlord in connection with Tenant's failure to surrender; (y) the unpaid Rent earned as of the date of termination, plus interest at the Overdue Rate accruing after the due date; and (z) all other sums of money then owing by Tenant to Landlord. Landlord's election to terminate this Agreement as a result of a Tax Law Change shall be deemed to be a determination to simultaneously terminate all Participating Leases and to enter into a Management Agreement with any of Tenant's Affiliates upon terms and conditions to be mutually agreed upon.

21.12 Change in Operations. (a) The following events shall constitute changes in the operation of the Hotel ("Change in Operations") for the purposes of this Agreement: (i) a change in the franchisor, if any, or (ii) the conversion of a subtenant, licensee or concessionaire to an operating department of the Hotel or vice-versa without Landlord's consent, or (iii) Tenant's decision to delegate or eliminate the operation of any food or beverage operations at the Hotel, or (iv) the repositioning or expansion of the Hotel.

(b) If Tenant desires to implement a Change in Operations, Landlord may accept or reject such change in its sole and absolute discretion. If Landlord does

not consent to the Change in Operations, Tenant shall not be entitled to implement the proposed Change in Operations and this Agreement shall remain in full force and effect.

(c) Notwithstanding anything to the contrary contained herein, no adjustment of Rent pursuant to a Change in Operations shall be implemented without the receipt by Landlord of an opinion from its tax counsel, satisfactory to Landlord in form and substance, that such adjustment will not adversely affect the REIT's ability to qualify as a real estate investment trust under the applicable provisions of the Code.

21.13 Use of the Leased Property. Tenant covenants and agrees that from and after the Commencement Date, and except for reasonable periods of time required for remodeling or restoration otherwise permitted hereunder, it shall continuously and without interruption use and occupy the entire Leased Property (and not less than one hundred (100%) percent of the Leased Property) solely for the purpose of the Permitted Use and for no other purpose. Tenant's business in and throughout the Leased Property shall continuously be conducted under the Tenant's, or Manager's, name, as the case may be.

21.14 Continuing Covenants. Tenant, acknowledging that the Leased Property has been developed and is being maintained as a hotel consistent with and in a manner such as to preserve the Landlord's property interest in the Leased Property, and as a further inducement to Landlord to enter into this Agreement, covenants and agrees with Landlord to:

- (a) not abandon the Leased Property;
- (b) maintain the Leased Property and the abutting grounds, sidewalks, roads, parking and landscaped areas in good repair, order and condition;
- (c) promptly make all necessary or desirable repairs, renewals, replacements and additions, to the Leased Property;
- (d) not commit or suffer waste with respect to the Leased Property;
- (e) operate the Leased Property in accordance with the Minimum Operating Standards so as not to diminish the value or integrity of the Leased Property or the value of this Agreement;
- (f) not make, suffer or permit any nuisance to exist on the Leased Property;
- (g) conduct its business in a manner consistent with the purpose and character of the Leased Property and in accordance with the standards for operating the type of business currently operated at the Leased Property in a sufficient manner, consistent with and to preserve the Landlord's property interest in the Leased Property;

- (h) keep the Land and Improvements clean and attractive in appearance at all times and to keep any refuse in proper containers in the interior of the Leased Property out of sight until the same is removed;
- (i) neither do nor suffer anything to be done or kept in or about the Leased Property which contravenes Landlord's insurance policies or increases the premiums therefor;
- (j) adequately heat and cool the Leased Improvements;
- (k) not enter into any collective bargaining or similar agreement without prior notification being given to Landlord;
- (l) comply with the Franchise Agreement and not amend or otherwise modify any provision thereof without Landlord's prior written consent;
- (m) not enter into a contract for goods or services (x) in an amount greater than twenty-five thousand dollars (\$25,000.00) or (y) for a period of more than one (1) year without Landlord's prior written consent, not to be unreasonably withheld;
- (n) not enter into a lease for any items used in the operation of the Leased Property (x) in an amount in excess of twenty-five thousand dollars (\$25,000.00) or (y) for a period in excess of one (1) year without Landlord's prior written consent, not to be unreasonably withheld;
- (o) not enter into any contract to supply rooms or services for a period of more than thirty (30) days without Landlord's prior written consent, not to be unreasonably withheld;
- (p) not reduce any items of operating expense by more than five (5%) percent from the previous Fiscal Year without Landlord's prior written consent, not to be unreasonably withheld; and
- (q) at all times remain a Single Purpose Entity.

21.15 Intentionally Omitted.

21.16 Other Activities. Tenant covenants, during the Fixed Term, that Tenant will not engage in any business unrelated to the operation and management of the Hotel or otherwise permitted under any Participating Leases.

21.17 Reservation System. Tenant shall not materially change, modify or terminate the system for making reservations utilized at the Hotel without the prior consent of Landlord which may be withheld or granted in Landlord's sole discretion.

ARTICLE 22

MISCELLANEOUS

22.1 Limitation on Payment of Rent. All agreements between Landlord and Tenant herein are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of Rent, or otherwise, shall the Rent or any other amounts payable to Landlord under this Agreement exceed the maximum permissible under applicable law, the benefit of which may be asserted by Tenant as a defense, and if, from any circumstance whatsoever, fulfillment of any provision of this Agreement, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, or if from any circumstances Landlord should ever receive as fulfillment of such provision such an excessive amount, then, ipso facto, the amount which would be excessive shall be applied to the reduction of the installment(s) of Minimum Rent next due and not to the payment of such excessive amount. This provision shall control every other provision of this Agreement and any other agreements between Landlord and Tenant.

22.2 No Waiver. No failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. To the maximum extent permitted by law, no waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

22.3 Remedies Cumulative. To the maximum extent permitted by law, each legal, equitable or contractual right, power and remedy of Landlord or Tenant, now or hereafter provided either in this Agreement or by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Landlord or Tenant (as applicable) of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Landlord of any or all of such other rights, powers and remedies.

22.4 Severability. Any clause, sentence, paragraph, section or provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but rather the effect thereof shall be confined to the clause, sentence, paragraph, section or provision so held to be invalid, illegal or ineffective, and this Agreement shall be construed as if such invalid, illegal or ineffective provisions had never been contained therein.

22.5 Acceptance of Surrender. No surrender to Landlord of this Agreement or of the Leased Property or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Landlord and no act by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, shall constitute an acceptance of any such surrender.

22.6 No Merger of Title. It is expressly acknowledged and agreed that it is the intent of the parties that there shall be no merger of this Agreement or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly this Agreement or the leasehold estate created hereby and the fee estate or ground landlord's interest in the Leased Property.

22.7 Conveyance by Landlord. If Landlord or any successor owner of all or any portion of the Leased Property shall convey all or any portion of the Leased Property in accordance with the terms hereof other than as security for a debt, and the grantee or transferee of such of the Leased Property shall expressly assume all obligations of Landlord hereunder arising or accruing from and after the date of such conveyance or transfer, Landlord or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Landlord under this Agreement with respect to such of the Leased Property arising or accruing from and after the date of such conveyance or other transfer and all such future liabilities and obligations shall thereupon be binding upon the new owner.

22.8 Quiet Enjoyment. Provided that no Event of Default shall have occurred and be continuing, Tenant shall peaceably and quietly have, hold and enjoy the Leased Property for the Fixed Term, free of hindrance or molestation by Landlord or any Person claiming by, through or under Landlord, but subject to (a) any Encumbrance permitted under Article 20 or otherwise permitted to be created by Landlord hereunder, (b) all Permitted Encumbrances, (c) Liens as to obligations of Landlord that are either not yet due or which are being contested in good faith and by proper proceedings, provided the same do not materially interfere with Tenant's ability to operate the Hotel and (d) Liens that have been consented to in writing by Tenant. Except as otherwise provided in this Agreement, no failure by Landlord to comply with the foregoing covenant shall give Tenant any right to cancel or terminate this Agreement or abate, reduce or make a deduction from or offset against the Rent or any other sum payable under this Agreement, or to fail to perform any other obligation of Tenant hereunder.

22.9 Memorandum of Lease. Neither Landlord nor Tenant shall record this Agreement. However, Landlord and Tenant shall promptly, upon the request of the other, enter into a short form memorandum of this Agreement, in form suitable for recording under the laws of the State in which reference to this Agreement shall be made. The parties shall share equally all costs and expenses of recording such memorandum.

22.10 Notices.

(a) Any and all notices, demands, consents, approvals, offers, elections and other communications required or permitted under this Agreement shall be given in writing and the same shall be delivered either in hand, by telecopier with written acknowledgment of receipt, or by mail or Federal Express or similar expedited commercial carrier, addressed to the recipient of the notice, postpaid and registered or certified with return receipt requested (if by mail), or with all freight charges prepaid (if by Federal Express or similar expedited carrier).

(b) All notices required or permitted to be sent hereunder shall be deemed to have been given for all purposes of this Agreement upon the date of

acknowledged receipt, in the case of a notice by telecopier and, in all other cases, upon the date of receipt or refusal, except that whenever under this Agreement a notice is either received on a day which is not a Business Day or is required to be delivered on or before a specific day which is not a Business Day, the day of receipt or required delivery shall automatically be extended to the next Business Day.

(c) All such notices shall be addressed,

if to Landlord to:

c/o LaSalle Hotel Properties
3 Bethesda Metro Center, Suite 1200
Bethesda, Maryland 20814
Attention: Chief Operating Officer
Telecopier: (301) 941-1553

with a copy to:

Hagan & Vidovic LLP
200 East Randolph Drive, Suite 4322
Chicago, Illinois 60601
Attn: R.K. Hagan, Esq.
Telecopier No.: (312) 228-0982

if to Tenant to:

c/o LaSalle Hotel Properties
3 Bethesda Metro Center, Suite 1200
Bethesda, Maryland 20814
Attention: Chief Financial Officer
Telecopier: (301) 941-1553

with a copy to:

Hagan & Vidovic LLP
200 East Randolph Drive, Suite 4322
Chicago, Illinois 60601
Attn: R.K. Hagan, Esq.
Telecopier No.: (312) 228-0982

(d) By notice given as herein provided, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses effective upon receipt by the other parties of such notice and each shall have the right to specify as its address any other address.

22.11 Construction. Anything contained in this Agreement to the contrary notwithstanding, all claims against, and liabilities of, Tenant or Landlord arising prior to any date of termination or expiration of this Agreement with respect to the Leased Property shall survive such termination or expiration. In no event shall Landlord or Tenant be liable for any consequential damages suffered by the other as the result of a breach of this Agreement. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated except by an instrument in writing signed by the party to be charged. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Each term or provision of this Agreement to be performed by Tenant shall be construed as an independent covenant and condition. Time is of the essence with respect to the exercise of any rights of Tenant and Landlord under this Agreement. Except as otherwise set forth in this Agreement, any obligations of Tenant (including without limitation, any monetary, repair and indemnification obligations) and Landlord shall survive the expiration or sooner termination of this Agreement.

22.12 Counterparts, Headings. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but which, when taken together, shall constitute but one instrument and shall become effective as of the date hereof when copies hereof, which, when taken together, bear the signatures of each of the parties hereto shall have been signed. Headings in this Agreement are for purposes of reference only and shall not limit or affect the meaning of the provisions hereof.

22.13 Applicable Law, Etc. This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of the State applicable to contracts between residents of the State which are to be performed entirely within the State, regardless of: (a) where this Agreement is executed or delivered; (b) where any payment or other performance required by this Agreement is made or required to be made; (c) where any breach of any provision of this Agreement occurs, or any cause of action otherwise accrues; (d) where any action or other proceeding is instituted or pending; (e) the nationality, citizenship, domicile, principal place of business, or jurisdiction of organization or domestication of any party; (f) whether the laws of the forum jurisdiction otherwise would apply the law of a jurisdiction other than the State; or (g) any combination of the foregoing.

22.14 Right to Make Agreement. Each party warrants, with respect to itself, that neither the execution of this Agreement, nor the consummation of any transaction contemplated hereby, shall violate any provision of any law, or any judgment, writ, injunction, order or decree of any court or governmental authority having jurisdiction over it; nor result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; nor require any consent, vote or approval which has not been given or taken, or at the time of the transaction involved shall not have been given or taken. Each party covenants that it has and will continue to have throughout the term of this Agreement and any extensions thereof, the full right to enter into this Agreement and perform its obligations hereunder.

22.15 Transition Procedures. Upon the expiration or termination of this Agreement, for whatever reason, Landlord and Tenant shall do the following (and the provisions of this Section 22.15 shall survive the expiration or termination of this Agreement until they have been fully

performed) and, in general, shall cooperate in good faith to effect an orderly transition of the Hotel. Nothing contained herein shall limit Landlord's rights and remedies under this Agreement if such termination occurs as the result of an Event of Default.

(a) Transfer of Licenses. Upon the expiration or earlier termination of this Agreement, Tenant shall use its best efforts (i) to transfer to Landlord or Landlord's nominee all licenses, operating permits and other governmental authorizations and all contracts, including contracts with Government Agencies that may be necessary for the operation of the Hotel (collectively, "Licenses") or (ii) if such transfer is prohibited by law or Landlord otherwise elects, to cooperate with Landlord or Landlord's nominee in connection with the processing by Landlord or Landlord's nominee of any applications for the transfer of all Licenses; provided, in either case, that the costs and expenses of any such transfer or the processing of any such application shall be paid by Landlord or Landlord's nominee.

(b) Leases and Concessions. Tenant shall assign to Landlord or Landlord's nominee simultaneously with the termination of this Agreement, all leases and concession agreements in effect with respect to the Hotel then in Tenant's or Manager's name.

(c) Books and Records. To the extent that Landlord has not already made or received copies thereof, all books and records (including computer records) for the Hotel kept by Tenant pursuant to Section 17.2 shall be promptly made available to Landlord or Landlord's nominee for photocopying or other duplication.

(d) Receivables, Payables, and etc. Except with respect to Minimum Working Capital, Tenant shall be entitled to retain all cash, bank accounts and house banks, and to collect all Gross Revenues and accounts receivable accrued through the termination date. Tenant shall be responsible for the payment of Rent, all Gross Operating Expenses of the Hotel and all other obligations of Tenant accrued under this Agreement as of the termination date, and Landlord shall be responsible for all operating expenses of the Hotel accruing after the termination date.

22.16 Complimentary Rooms. Tenant shall make available (to the extent that same have not otherwise been committed) "deluxe" or "superior" guest rooms and all related goods and services, including, without limitation, food and beverages, telephones and facsimile services on a no-cost complimentary basis to employees, advisors, consultants, trustees and members of the board of directors of the REIT or the Landlord who are visiting the Hotel in connection with the operations of the REIT or the Landlord or doing business in the State related to the REIT or the Landlord.

22.17 Approval of Key Employees. Tenant shall not appoint, nor may Tenant permit the Manager to appoint, any general manager, controller or director of sales and marketing (each, a "Key Employee") for the Hotel without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

22.18 Incorporation of Prior Agreements. This Agreement and the attached exhibits set forth all the agreements, terms, covenants and conditions between Landlord and Tenant concerning the Leased Property and there are no agreements, terms, covenants or conditions, oral or written, between them other than those herein contained. No amendment, change or addition to this Agreement shall be binding upon Landlord or Tenant unless it is in writing and signed by each party.

22.19 Attorney's Fees. If either Landlord or Tenant retains an attorney to enforce the terms of or determine rights under this Agreement, the prevailing party shall be entitled to recover reasonable costs, attorney's fees and expenses.

22.20 Intentionally Omitted.

22.21 Governing Law. Submission to Jurisdiction. This Agreement is or will be made and delivered in the State and shall be governed by and construed and interpreted in accordance with the laws of the United States of America and the State, without regard to principles of conflict of laws. All judicial actions, suits or proceedings brought by or against Tenant with respect to its rights, obligations, liabilities or any other matter under or arising out of or in connection with this Agreement or any transaction contemplated hereby or for recognition or enforcement of any judgment rendered in any such proceedings shall be brought by Tenant in any state or federal court in the State. By execution and delivery of this Agreement, Tenant accepts, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any final judgment rendered thereby in connection with this Agreement or any transaction contemplated hereby from which no appeal has been taken or is available. Tenant and Landlord each hereby irrevocably waives any objections, including without limitation any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in any such jurisdiction. Tenant and Landlord acknowledge that final judgment against it in any action suit or proceeding referred to in this Section shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the same.

22.22 Change of Control of Tenant. If, during the Fixed Term, any Parent or Affiliate (each a "Transferor") of Tenant has elected to transfer its interest in Tenant to a third party which is not an Affiliate of Tenant, which, for the purposes of this Agreement shall only be permitted in conjunction with the sale of all, or substantially all, of Transferor's hotel management businesses (a "Permitted Transfer"), then such Permitted Transfer shall be made only upon the following terms and conditions:

(a) Transferor shall give written notice of the proposed Permitted Transfer to Landlord (the "Sale Notice");

(b) Landlord shall have thirty (30) days from the date of receipt of the Sale Notice to provide Transferor with written notice (the "Purchase Notice") of Landlord's intention to purchase, in Landlord's name or in the name of Landlord's designee, Transferor's interest in Tenant at the then Fair Market Value of such interest (the "Purchase");

(c) If Landlord elects to make the Purchase, then any parties holding remaining interests in Tenant (each a "Third Party") shall have the right, but not the obligation, to require Landlord to purchase (the "Required Purchase") such remaining interests in the Tenant at the then Fair Market Value of such interests by delivering to Landlord, no later than fifteen (15) days from Transferor's receipt of the Purchase Notice, written notice (the "Third Party Notice") of such Third Party's Required Purchase election;

(d) If any Third Party fails to exercise its Required Purchase election as provided in subparagraph (c) above, then such Third Party shall be deemed to have unconditionally consented to, if applicable, (i) the admission of Landlord as a [limited][general] partner in Tenant and (ii) the amendment of Tenant's partnership agreement or, with respect to a corporation, its organizational documents to provide that said remaining Third Party shall not transfer its interests in Tenant except as provided for in this Section 22.22;

(e) The closing of the Purchase, and, if applicable, the Required Purchase, shall occur within sixty (60) days from the later to occur of (x) delivery of the Sale Notice or (y) delivery of the Third Party Notice;

(f) If the parties fail to agree on the Fair Market Value of the respective interests in Tenant, the matter shall be referred to arbitration as provided for in Article 23; provided, however, unless and until the Fair Market Value of the respective interests in Tenant have been fully determined, Landlord shall have no obligation to complete the Purchase or the Required Purchase.

22.23 Non-Competition. During the Fixed Term and for one (1) year following the expiration or earlier termination thereof, Tenant, or Tenant's Parent or Affiliate shall not operate, manage, lease or own any interest, directly or indirectly, in (a) any hotel or related facility under any name or (b) any other type of business under the same or a similar name as the Hotel, within twenty (20) miles of the Leased Property. The covenant set forth herein shall survive the expiration or earlier termination of this Agreement.

ARTICLE 23

ARBITRATION

23.1 Arbitration. In each case specified in this Agreement in which it shall become necessary to resort to arbitration, such arbitration shall be determined as provided in this Section 23.1. The party desiring such arbitration shall give Notice to that effect to the other party and an arbitrator shall be selected by mutual agreement of the parties, or if they cannot agree within thirty (30) days of such notice, by appointment made by the American Arbitration Association ("AAA") from among the members of its panels who are qualified and who have experience in resolving matters of a nature similar to the matter to be resolved by arbitration.

23.2 Intentionally Omitted.

23.3 Arbitration Procedures. In any arbitration commenced pursuant to Article 23, a single arbitrator shall be designated and shall resolve the dispute. The arbitrator's decision shall be binding on all parties and shall not be subject to further review or appeal except as otherwise allowed by applicable law. To the maximum extent practicable, the arbitrator and the parties, and the AAA, if applicable, shall take any action necessary to insure that the arbitration shall be concluded within ninety (90) days of the filing of such dispute. The fees and expenses of the arbitrator shall be shared equally by Landlord and Tenant. Unless otherwise agreed in writing by the parties or selected by the arbitrator or AAA, if applicable, arbitration proceedings hereunder shall be conducted in New York City. Notwithstanding formal rules of evidence, each party may submit such evidence as each party deems appropriate to support its position and the arbitrator shall have access to and the right to examine all books and records of Tenant and Landlord regarding the Hotel during the arbitration.

IN WITNESS WHEREOF, the parties have executed this Agreement as an instrument as of the date above first written.

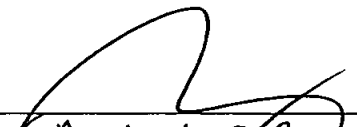
LANDLORD:

LHO MISSION BAY ROSIE HOTEL, L.P.

By: LHO Mission Bay Rosie Hotel, L.L.C.
its general partner

By: LaSalle Hotel Operating Partnership, L.P.,
its managing member

By: LaSalle Hotel Properties, its general partner

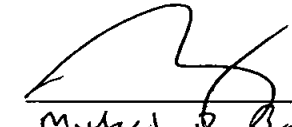
By: 

Name: Michael R. Barwell

Title: Managing Member

TENANT:

LHO MISSION BAY ROSIE LESSEE, INC.,
a Delaware corporation

By: 

Name: Michael R. Barwell

Title: President

EXHIBIT A

Initial Reserve Fund Payment: \$ -0-

Manager: Mission Bay Management, LLC

Minimum Rent: \$6,400,000 per annum, payable in equal monthly installments.

Expiration Date: _____, 2010

Participating Rent: Participating Rent shall be an amount calculated by the following formula (the "Revenues Computation"):

For any Fiscal Quarter, Participating Rent shall equal:

The amount equal to the Quarterly Revenues Computation (defined below)

less

the amount equal to the Participating Rent previously paid for the Lease Year to date

less

the amount equal to the Minimum Rent previously paid for the Lease Year to date

All calculations required to determine Participating Rent shall be prepared in accordance with GAAP and the Uniform System of Accounts except as otherwise provided in Section 1.60 [Gross Operating Expenses] hereof.

For purposes of defining the Quarterly Revenues Computation:

(i) "Cumulative Quarterly Portion" shall mean a fraction having as its numerator the total number of Fiscal Quarters (including partial Fiscal Quarters) in a Lease Year which have elapsed prior to the Fiscal Quarter in which a payment of quarterly Participating Rent is due, and having as its denominator the total number of Fiscal Quarters (including partial Fiscal Quarters) in the Lease Year. For example, the Cumulative Quarterly Portion in a four-quarter Year for the quarterly Participating Rent payment due on the twentieth day of April will be 1/4 and for the quarterly Participating Rent payment due on the twentieth day of July will be 2/4, and such progression shall continue for each successive Fiscal Quarter so that the Cumulative Quarterly Portion for the quarterly Participating Rent payment due on the twentieth day of January of the next Lease Year will be 4/4 or 100%.

(ii) "First Tier Room Revenues Percentage", "Second Tier Room Revenues Percentage", "Third Tier Room Revenues Percentage", "First Tier Food and Beverage Sales Percentage", "Second Tier Food and Beverage Sales Percentage", "Third Tier Food and Beverage Sales Percentage", "First Tier Telephone Revenues Percentage", "Second Tier Telephone Revenues Percentage", "Third Tier Telephone Revenues Percentage", "First Tier Other Operating Departments Revenues Percentage", "Second Tier Other Operating Departments Revenues Percentage", "Third Tier Other Operating Departments Revenues Percentage", and "Other Income Percentage", shall mean the percentages corresponding to each of such terms as set forth on Schedule 1.

(iii) "Annual Room Revenues First Break Point" and "Annual Room Revenues Second Break Point", shall mean the amount of annual Room Revenues corresponding to each of such terms as set forth on Schedule 1.

(iv) "Annual Food and Beverage Sales First Break Point" and "Annual Food and Beverage Sales Second Break Point" shall mean the amount of annual Food Sales and Beverage Sales corresponding to each of such terms as set forth on Schedule 1.

(v) "Annual Telephone Revenues First Break Point" and "Annual Telephone Revenues Second Break Point" shall mean the amount of annual Telephone Revenues corresponding to each of such terms as set forth on Schedule 1.

(vi) "Annual Other Operating Departments Revenues First Break Point" and "Annual Other Operating Departments Revenues Second Break Point" shall mean the amount of annual Other Operating Departments Revenues corresponding to each of such terms as set forth on Schedule 1.

The "Quarterly Revenues Computation" shall be the amount obtained by adding, for the applicable Lease Year, (i) an amount equal to the First Tier Room Revenues Percentage of all year to date Room Revenues up to (but not exceeding) the Cumulative Quarterly Portion of the Annual Room Revenues First Break Point, (ii) an amount equal to the Second Tier Room Revenues Percentage of all year to date Room Revenues in excess of the Cumulative Quarterly Portion of the Annual Room Revenues First Break Point up to (but not exceeding) the Cumulative Quarterly Portion of the Annual Room Revenues Second Break Point, (iii) an amount equal to the Third Tier Room Revenues Percentage of all year to date Room Revenues in excess of the Cumulative Quarterly Portion of the Annual Room Revenues Second Break Point, (iv) an amount equal to the First Tier Food and Beverage Sales Percentage of the Cumulative Quarterly Portion of all year to date Food Sales and Beverage Sales up to (but not exceeding) the Cumulative Quarterly Portion of the Annual Food and Beverage Sales First Break Point, (v) an amount equal to the Second Tier Food and Beverage Sales Percentage of all year to date Food Sales and Beverage Sales in excess of the Cumulative Quarterly Portion of the Annual Food and Beverage Sales First Break Point up to (but not exceeding) the Cumulative Quarterly Portion of the Annual Food and Beverage Sales Second Break Point, (vi) an amount equal to the Third Tier Food and Beverage Sales Percentage of all year to date Food Sales and Beverage Sales in

excess of the Cumulative Quarterly Portion of the Annual Food and Beverage Sales Second Break Point, (vii) an amount equal to the First Tier Telephone Revenues Percentage of all year to date Telephone Revenues up to (but not exceeding) the Cumulative Quarterly Portion of the Annual Telephone Revenues First Break Point, (viii) an amount equal to the Second Tier Telephone Revenues Percentage of all year to date Telephone Revenues in excess of the Cumulative Quarterly Portion of the Annual Telephone Revenues First Break Point up to (but not exceeding) the Cumulative Quarterly Portion of the Annual Telephone Revenues Second Break Point, (ix) an amount equal to the Third Tier Telephone Revenues Percentage of all year to date Telephone Revenues in excess of the Cumulative Quarterly Portion of the Annual Telephone Revenues Second Break Point (x) an amount equal to the First Tier Other Operating Departments Revenues Percentage of all year to date Other Operating Departments Revenues up to (but not exceeding) the Cumulative Quarterly Portion of the Annual Other Operating Departments Revenues First Break Point, (xi) an amount equal to the Second Tier Other Operating Departments Revenues Percentage of all year to date Other Operating Departments Revenues in excess of the Cumulative Quarterly Portion of the Annual Other Operating Departments Revenues First Break Point up to (but not exceeding) the Cumulative Quarterly Portion of the Annual Other Operating Departments Revenues Second Break Point, (xii) an amount equal to the Third Tier Other Operating Departments Revenues Percentage of all year to date Other Operating Department Revenues in excess of the Cumulative Quarterly Portion of the Annual Other Operating Department Revenues Second Break Point, and (xiii) an amount equal to the Other Income Percentage of all year to date Other Income.

If the Fixed Term begins or ends during a calendar year, then the number of Fiscal Quarters falling within the Fixed Term during such calendar year shall constitute a separate Lease Year, and, in such event, Cumulative Quarterly Portion for each of the Fiscal Quarters in such partial Lease Year shall mean a fraction having as its numerator the actual number of days elapsed in such partial Lease Year prior to the Fiscal Quarter in which a payment of Participating Rent is due, and having as its denominator the actual number of days in such calendar year.

SCHEDULE 1

(Numbers are in U.S. Dollars
(\$ unless otherwise indicate)

	<u>Dec. 2005- 2006</u>
First Tier Room	
Revenues Percentage:*	40.0%
Annual Room Revenues	
First Break Point:	\$9,250,000
Second Tier Room	
Revenues Percentage:**	50.0%
Annual Room Revenues	
Second Break Point:	\$21,000,000
Third Tier Room	
Revenues Percentage:	65.0%
First Tier Food and Beverage Sales Percentage:	15.0%
Annual Food and Beverage Sales	
First Break Point:	\$6,000,000
Second Tier Food and Beverage Sales Percentage:	20.0%
Annual Food and Beverage Sales	
Second Break Point:	\$12,000,000
Third Tier Food and Beverage Sales Percentage:	45.0%
First Tier Telephone Revenues Percentage:	10.0%
Annual Telephone Revenues First Break Point:	\$150,000
Second Tier Telephone Revenues Percentage:	20.0%
Annual Telephone Revenues Second Break Point:	\$300,000
Third Tier Telephone Revenues Percentage:	25.0%
First Tier Other Operating Departments Revenues Percentage:	30.0%
Annual Other Operating Departments Revenues First Break Point:	\$900,000
Second Tier Other Operating Departments Revenues Percentage:	45.0%

	<u>Dec. 2005- 2006</u>
Annual Other Operating Departments Revenues Second Break Point	\$1,800,000
Third Tier Other Operating Departments Revenues Percentage:	60.0%
Other Income Percentage:	95.0%

* The Second Tier Room Revenues Percentage shall increase to 56.0% for calendar year 2008 and thereafter.

EXHIBIT B
INTENTIONALLY OMITTED

EXHIBIT C

INTENTIONALLY OMITTED

EXHIBIT D

MINIMUM WORKING CAPITAL

\$100,000

EXHIBIT D

MINIMUM WORKING CAPITAL

EXHIBIT D

MINIMUM WORKING CAPITAL

EXHIBIT E

THE LAND

The real property in the Commonwealth of Massachusetts, County of Suffolk, City of Boston, between Stuart Street, Huntington Avenue and Dartmouth Street and shown on a plan entitled "Plan of Property Owned by Massachusetts Turnpike Authority Sublease Air Rights to Westban Hotel Venture, Copley Place, Boston, Massachusetts", dated October 16, 1980, most recently revised May 11, 1981, prepared by Cullinan Engineering Co., Inc., bounded and described as follows as shown on said plan:

Beginning at a point of curvature of rounding from the northwesterly sideline of Dartmouth Street to the northerly sideline of Stuart Street, said point of curvature having a north coordinate of 491623.27 and an east coordinate of 714285.61 referred to the Massachusetts Coordinate System; thence

Along the northerly sideline of Stuart Street following three (3) courses;

Southerly by a curve to the right having a radius of 30.00 feet, an arc distance of 23.26 feet to a point of compound curvature;

Westerly by a curve to the right having a radius of 65.00 feet, an arc distance of 54.31 feet to a point of tangency; and

S 71° 59' 45" W a distance of 320.25 feet to the point of curvature of rounding to the sideline of Huntington Avenue; thence

Westerly by a curve to the right having a radius of 50.00, feet, an arc distance of 19.81 feet to a point of compound curvature;

Northwesterly by a curve to the right having a radius of 20.00 feet, an arc distance of 36.41 feet to a point of compound curvature; and

Northeasterly by a curve to the right having a radius of 50.00 feet, an arc distance of 19.81 feet to a point of tangency on the southeasterly sideline of Huntington Avenue; thence

N 41° 42' 20" E a distance of 373.46 feet to the point of curvature of rounding to Dartmouth Street, thence

In an easterly and southeasterly direction along said rounding by a curve to the right having a radius of 40.00 feet, an arc distance of 82.38 feet to a point tangency on the northwesterly sideline of Dartmouth Street; and thence

S 20° 17' 35" E along the northwesterly sideline of Dartmouth Street, a distance of 160.27 feet to the point of beginning.

Said parcel containing 60,661 square feet, more or less and includes Registered Land being Parcel B22-7 shown on Land Court Plan No. 10351B and Parcel B22-10A and Parcel B22-C9A shown on Land Court Plan No. 17947B.

EXCEPTING therefrom those parts of the Premises lying below the plane which is at an elevation of (i) plus ninety feet (+90') referred to the Massachusetts Turnpike Authority Datum, (ii) minus ten feet (-10') referred to the National Geodetic Vertical Datum and (iii) minus four and 35/100 feet (-4.35') referred to the Boston City Base.

TOGETHER WITH the rights and benefits inuring to Westban Hotel Venture as provided in the Easement Agreement dated as of February 22, 1982 among Marriott Urban Boston Venture, Westban Hotel Venture and UIDC of Massachusetts, Inc. recorded with said Deeds in Book 10011, Page 115 and filed with said Land Court as Document No. 364226.

Including a part of the premises described on Certificates of Title 71269, 87133, 93875, filed with the Suffolk County Registry District of the Land Court.

EXHIBIT F

INTENTIONALLY OMITTED

AGREEMENT OF PURCHASE AND SALE

by and between

HILTON SAN DIEGO CORPORATION
a California corporation
"Seller"

and

LHO MISSION BAY ROSIE HOTEL, L.P.,
a Delaware limited partnership

"Purchaser"

for

Hilton San Diego Resort
1775 East Mission Bay Drive
San Diego, California 92109

TABLE OF CONTENTS

1.	AGREEMENT OF PURCHASE AND SALE	1
2.	PURCHASE PRICE	2
3.	PURCHASER'S INSPECTION RIGHTS.	3
4.	TITLE.....	4
5.	CLOSING.....	4
6.	FRANCHISE LICENSE AGREEMENT.	5
7.	SELLER'S CLOSING DOCUMENTS.....	5
8.	CONDITIONS PRECEDENT TO CLOSING.....	6
9.	PURCHASER'S CLOSING ITEMS.....	7
10.	PRORATIONS, CLOSING ADJUSTMENTS AND POST-CLOSING SETTLEMENT.....	7
11.	SELLER'S REPRESENTATIONS AND WARRANTIES.	10
12.	PURCHASER'S REPRESENTATIONS AND WARRANTIES AND ACKNOWLEDGEMENTS AND AGREEMENTS.....	11
13.	CONDUCT OF HOTEL BUSINESS/LIQUOR LICENSES.....	14
14.	EMPLOYEES.....	15
15.	LOSS BY FIRE, OTHER CASUALTY OR CONDEMNATION.	16
16.	DEFAULT.....	17
17.	MISCELLANEOUS.....	18

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Drive

ADDENDUM & EXHIBIT LIST

Exhibit A	Legal Description
Exhibit B	Contracts and Leases
Exhibit C	Assignment and Assumption of Ground Lease
Exhibit D	Bill of Sale
Exhibit E	Assignment of Intangible Property
Exhibit F	Assignment and Assumption of Contracts
Exhibit G	Non-Foreign Affidavit
Exhibit H	Liquor License Agreement
Exhibit I	Capital Expenditures
Exhibit J	Litigation
Exhibit K	Liquor Assets Bill of Sale
Exhibit L	Guaranty from Hilton Hotels Corporation
Exhibit M	Gift Certificates
Exhibit N	Sales Office Lease
Exhibit O	Laundry Services Agreement

SUMMARY OF BASIC PURCHASE AND SALE TERMS

This Summary is hereby incorporated into and made a part of the attached Agreement of Purchase and Sale (this Summary and the Agreement of Purchase and Sale to be known collectively as this "Agreement"). Each reference in the Agreement of Purchase and Sale to any term of this Summary shall have the meaning as set forth in this Summary for such term. In the event of a conflict between the terms of this Summary and the Agreement of Purchase and Sale, the terms of this Summary shall prevail.

Effective Date	October 31, 2005
Seller	Hilton San Diego Corporation, a California corporation
Purchaser	LHO Mission Bay Rosie Hotel, L.P., a Delaware limited partnership
Hotel	Hilton San Diego Resort, located at 1775 East Mission Bay Drive, San Diego, California 92109, as more particularly described on <u>Exhibit A</u> , attached hereto
Purchase Price	\$91,185,000 plus or minus the adjustments described in <u>Section 10</u> .
Liquor Assets Purchase Price	\$90,000
Ground Lease	That certain City of San Diego Percentage Lease executed July 27, 2000 by and between the City of San Diego, a municipal corporation ("Ground Lessor"), and Hilton San Diego Corporation and filed in the Office of the City Clerk, San Diego, California on September 12, 2000 as Document No. 293815.
Deposit	\$2,500,000.00
Closing Date	The later of (a) December 1, 2005, or (b) ten (10) days after receipt of consent from the Ground Lessor to the assignment of Ground Lease to Purchaser
Liquor Assets Closing Date	The date which is the later of (a) the Close of Escrow; or (b) the date the ABC (defined below) approves the transfer of the Liquor Assets and issuance of a liquor license and satisfaction of all ABC requirements with respect to the sale of the Liquor Assets.
Franchise License Agreement	At the Closing, Purchaser shall enter into a Franchise License Agreement with Seller or an affiliate of Seller as provided in Section 6 of this Agreement
Title Company	Commonwealth Land Title Company
Escrow Holder	Commonwealth Land Title Company
Liquor Assets Escrow Holder	The Heritage Bank of Commerce
Cut-Off Time	12:01 a.m. on the Closing Date
Seller's Broker	Eastdil Realty
Purchaser's Broker	None

Purchase and Sale Agreement
Hilton San Diego Resort
1775 Mission Bay Drive

Seller's Address Hilton San Diego Corporation
9336 Civic Center Drive
Beverly Hills, California 90210
Telephone No. 310-205-4244
Facsimile No. 310-205-4092
Attention: Dave Sherf

With copies to:

Hilton Hotels Corporation
9336 Civic Center Drive
Beverly Hills, California 90210
Telephone No. 310-205-3606
Facsimile No. 310-205-8611
Attention: K. Allen Anderson, Esq.

Landmark Law Group LLP
10350 Santa Monica Boulevard
Suite 295
Los Angeles, CA 90025
Telephone No. (310) 300-2300 x101
Facsimile No.: (310) 300-2310
Attention: Gulwinder S. Singh, Esq.

Purchaser's Address LHO Mission Bay Rosie Hotel,
L.P.
c/o La Salle Hotel Properties
3 Bethesda Metro Center
Suite 1200
Bethesda, Maryland 20814
Telephone No. (301) 941-1530
Facsimile No. (301) 941-1553
Attention: Chief Operating Officer

With copies to:

Hagan & Vidovic LLP
200 East Randolph Drive
Suite 4322
Chicago, Illinois 60601
Telephone No. (312) 228-2050
Facsimile No. (312) 228-0982
Attention: R.K. Hagan

Title Company's Address Commonwealth Land Title Insurance Company
888 West Sixth Street
Los Angeles, California 90017
Telephone No.: (213) 627-7070 x111
Facsimile No.: (213) 627-8722
Attn: Amy Musselman
Title Order No. NCS 04-9072

Escrow Holder's Address Commonwealth Land Title Company
888 West Sixth Street
Los Angeles, California 90017
Telephone No.: (213) 627-7070 x 124
Facsimile No.: (213) 627-8722
Attn: Mai Lee Marsh
Escrow No. 10550957

**Liquor Assets Escrow
Holder's Address** The Heritage Bank of Commerce
150 Almaden Blvd.
San Jose, CA 95113 Telephone No.: (408) 494-4530
Facsimile No.: (408) 947-6910
Attn: Cloe Flowers

Initial Here: 

Seller Purchaser

Purchase and Sale Agreement
Hilton San Diego Resort
1775 Mission Bay Drive

Exhibits The following Addendum and Exhibits are incorporated herein and made a part of this Agreement:

Exhibit A – Legal Description
Exhibit B – Schedule of Leases & Contracts
Exhibit C – Assignment and Assumption of Ground Lease
Exhibit D – Bill of Sale
Exhibit E – Assignment of Intangible Property
Exhibit F – Assignment and Assumption of Contracts
Exhibit G – Non-Foreign Person Affidavit
Exhibit H – Liquor License Agreement
Exhibit I – Capital Expenditures
Exhibit J – Litigation
Exhibit K – Liquor Assets Bill of Sale
Exhibit L – Guaranty from Hilton Hotels Corporation
Exhibit M – Gift Certificates
Exhibit N – Sales Office Lease
Exhibit O – Laundry Services Agreement

Initial Here:

X. 

Seller Purchaser

AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (this "Agreement") is entered into as of the Effective Date, by and between Seller and Purchaser. Seller and Purchaser hereby agree as follows:

1. **Agreement of Purchase and Sale.** At the Closing, Seller and Purchaser agree to simultaneously effect and consummate all of the following interdependent transactions:

(a) **Purchase and Sale of the Property.** Subject to and upon the terms and conditions herein, Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller:

- (i) All of Seller's right, title and interest under the Ground Lease in that certain real property located at the address for the Hotel set forth in the Summary, more particularly described in Exhibit A attached hereto (the "Land");
- (ii) All of Seller's right, title and interest in all improvements and fixtures situated on the Land (the "Improvements"), including the Hotel;
- (iii) All of Seller's right, title and interest in and to the land lying in the bed of any street or highway adjoining the Land and all other appurtenances to the Land and Improvements, and all right, title and interest of Seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for damages to the Land and Improvements by reason of change of grade of any street (the "Appurtenances");
- (iv) All of Seller's right, title and interest in all tangible personal property, furniture, equipment and vehicles (the "Personal Property") owned or leased by Seller and located on or used in connection with the ownership, operation and management of the Hotel (defined below), including, without limitation, a 1995 Ford E350 Challenger 15 passenger van (the "Vehicle") and The Lady Hilton (the "Boat");
- (v) All opened boxes and in-service inventory of food, beverages, operating supplies, operating equipment, merchandise and goods held for sale or for consumption in the ordinary course of business of the Hotel, excluding the Liquor Assets (defined below), and all of Seller's Unopened Inventory (defined below) pursuant to Section 10(m) (collectively "Inventories");
- (vi) To the extent assignable, all of Seller's right, title and interest in all leases and contracts in effect with respect to the Hotel, including without limitation, those leases and other contracts identified on Exhibit B attached hereto together with any other leases and contracts entered into after the date hereof and prior to Closing that replace existing contracts and that are on substantially the same terms or are otherwise entered into in the ordinary course of business, consistent with past practices, as permitted by the terms of this Agreement, provided copies of such contracts are sent to Purchaser upon execution thereof (the "Contracts"), other than any Contracts that Seller or its affiliates have entered into with respect to all its hotels or a particular flag or segment of hotels which are not assignable as to a particular hotel ("Unassignable Contracts"). The Unassignable Contracts have also been identified on Exhibit B and have been provided to Purchaser as part of its due diligence materials pursuant to Section 3(a) below because Purchaser may benefit from these Unassignable Contracts under the Franchise Agreement with Seller or its affiliates pursuant to Section (6) below; and
- (vii) To the extent assignable, all of Seller's right, title and interest in all rights, warranties, guaranties, approvals (governmental or otherwise), licenses, permits, authorizations, entitlements, surveys, plans and specifications, the right to use any telephone numbers and post office boxes that relate only to the Hotel, booking agreements to the extent they relate to the Hotel, any prepaid advertising and sales materials that relate to the Hotel and not to any other hotels of Seller or Seller's affiliates and that do not reference the ownership or management by Seller or Seller's affiliates, operating manuals for Personal Property to the extent they are available and at the Hotel, all sales materials and information from the Cluster Sales Office (defined below) related specifically to the Hotel, if any, all books and records that relate only to the Hotel that do not contain Seller's confidential or proprietary information and other intangible rights relating to the construction, ownership, operation, use and management of the Real Property (as defined herein), including without limitation all operations and businesses conducted on or from the Real Property (the "Intangible Property"), other than any non-assignable operational licenses and permits.

The Land, the Appurtenances and the Improvements are referred to collectively herein as the "Real Property". The Real Property, the Personal Property, the Contracts and the Intangible Property are referred to collectively herein as the "Property".

- (b) **Excluded Property.** The following assets and systems are not included in the Property and, to the extent present at the Property, shall be retained by Seller (the "Excluded Assets"): (i) OnQ (ii) System 21, (iii) CRS (Central Reservations System), (iv) Delphi Multi-Property Edition ("DMPE" sales system); (v) Peoplesoft (financials and human resources); (vi) Infinium (financials and executive information system); (vii) ancillary systems accessed via Hilton Wide Area Network such as HADB, HSMS and the Hilton Intranet; (viii) access to Hilton Wide Area Network and Hilton email addresses, (ix) all proprietary customer lists and customer information related to Hilton branded properties other than customer lists, contact information and booking information specifically related to the Hotel, provided the Property shall include, without limitation, lists and information related to future bookings, prospects, sales contacts and other solicitations specifically related to the Hotel, if any, (x) any computer hardware that is primarily dedicated to operating the foregoing systems other than standalone personal computers located at the Hotel used to access the systems, such as servers that operate DMPE, (xi) laptop computers, (xii) the Liquor License (defined below) and all opened and unopened and sealed alcoholic beverages on hand at the Property on the Closing Date (collectively, the "Liquor Assets") which will be transferred to Purchaser on the Liquor Assets Closing Date (xiii) any system or other item related to any trade secret or proprietary business method of Seller, (xiv) all sales materials and information from the Cluster Sales Office located at the Hotel not related to the Hotel, (xv) all of the furniture, fixtures and equipment in the Cluster Sales Office located at the Hotel ("Sales Office FF&E"); (xvi) all of Seller's right, title and interest in the service marks, copyrights, trademarks, logos, insignia, emblems, symbols, designs, slogans, distinguishing characteristics, trade names, domain names, and all other marks or characteristics associated or used with or in connection with "Hilton" or other brand name owned by Hilton Hotels Corporation or any affiliate of Hilton Hotels Corporation (the "Hilton Trademarks") and all of Seller's right title and interest in the name "Hilton". After the Closing Date, Purchaser's rights to utilize any Hilton Trademarks shall be governed by the Franchise License Agreement (defined below). At Closing, Seller shall reasonably cooperate with Purchaser to extract Hotel-specific data from DMPE, Peoplesoft and future reservations from the reservations system, and provide that data to Purchaser in such format as Purchaser reasonably requests.

2. **Purchase Price.** The Purchase Price shall be paid to Seller by Purchaser through Escrow Holder as follows:

- (a) **Deposit.** Within two (2) business days after the execution of this Agreement, Purchaser shall deposit the Deposit in Escrow and the Deposit shall be non-refundable except as a result of (i) a default by Seller, or (ii) termination of this Agreement pursuant to Sections 1(b), 2(e), 6(b), 8(b), 15(a), 15(d), 16(b) or 17(s). The term "Deposit" shall refer to the Deposit and all interest earned thereon. If the transaction contemplated by this Agreement is consummated, the Deposit shall be credited on Purchaser's account against the Purchase Price.
- (b) **Balance of the Purchase Price.** Seller shall cause its Lender, if any, to deposit lender's funds in Escrow prior to 10:00 a.m. Pacific Time on the Closing Date by wire transfer. The balance of the Purchase Price, as well as all sums sufficient to pay Purchaser's costs, expenses and prorations as provided in this Agreement, after crediting (i) the Deposit, (ii) the Liquor Assets Purchase Price, and (iii) any other prorations and other amounts to which Purchaser is entitled as a credit against the Purchase Price as provided in this Agreement, shall also be deposited by Purchaser in Escrow by wire transfer or cashier's check by 10:00 a.m. Pacific Time on the Closing Date to allow Seller to receive the proceeds from the sale on the Closing Date. If Seller does not receive the proceeds from the sale on the Closing Date as a result of Purchaser's failure to timely deposit the funds in Escrow, for purposes of the reconciliation provided for in Section 10(f), the Closing Date shall be the date the Seller actually receives the proceeds from the sale and the prorations will be adjusted accordingly. If Seller does not receive the proceeds from the sale by one (1) day after the Closing Date due to Purchaser's failure to deposit funds by 10:00 a.m. Pacific Time on the Closing Date, Seller shall have the right to terminate this Agreement and retain the Deposit as liquidated damages in accordance with Section 16(a) of this Agreement. Purchaser shall deposit the Liquor Assets Purchase Price with Liquor Assets Escrow Holder prior to 10:00 a.m. Pacific Time on the Closing Date by wire transfer or cashier's check pursuant to a Liquor Escrow Agreement reasonably acceptable to Seller and Purchaser ("Liquor Escrow Agreement"). It is acknowledged and agreed that payment of the Liquor Assets Purchase Price is in addition to the Purchase Price to be paid by Purchaser.
- (c) **Allocation.** Seller and Purchaser acknowledge and agree that the Purchase Price is allocated for title insurance, tax and other reporting purposes as follows: (1) \$86,385,000 to the Improvements; and (2) \$4,800,000 to the Personal

Property.

- (d) **Termination.** If this Agreement is terminated pursuant to Sections 1(e), 6(b), 8(b), 15(a), 15(d), 16(b), or 17(s) of this Agreement, Escrow Holder shall return the portion of the Deposit previously delivered to Escrow Holder to Purchaser, less one-half of any escrow cancellation fees and neither party shall have any further obligation under this Agreement other than Purchaser's obligations under Section 3. Except as otherwise expressly provided in this Agreement, in the event the purchase of the Property is not consummated for any reason other than (i) a default under this Agreement by Seller, or (ii) termination of this Agreement pursuant to Sections 1(b), 6(b), 8(b), 15(a), 15(d), 16(b), or 17(s), then the Deposit and all interest earned thereon shall be retained by Seller and shall constitute liquidated damages of Seller.

3. Purchaser's Inspection Rights.

- (a) **Receipt of Contracts and Documents.** Seller made available to Purchaser for review at the Hotel or on a designated web site: (i) copies of those Contracts listed on Exhibit B, and (ii) other documents reasonably requested by Purchaser to the extent such documents pertain to the Property and the business conducted thereon or relating thereto, are in Seller's possession or control, are not confidential, do not constitute Seller's trade secrets and are not subject to attorney client privilege. All Contracts that are assignable shall be assigned to Purchaser at the Close of Escrow. Execution of this Agreement is deemed Purchaser's acceptance of all Contracts and Purchaser shall have no further right to disapprove any Contracts. If any Contract requires the other party's consent to assignment and such other party disapproves the assignment to Purchaser or does not permit Seller to be released from the obligations under such Contract, the Seller shall pay all costs and expenses of terminating the subject contract.
- (b) **Review and Termination.** Purchaser has reviewed the materials provided by Seller and conducted such other due diligence, studies, tests, and inspections of the Property (collectively, "Due Diligence Matters") as Purchaser has deemed appropriate under the circumstances. Upon execution of this Agreement, Purchaser has waived all due diligence contingencies.
- (c) **Right of Entry.** Upon execution of this Agreement, Purchaser and its agents and contractors shall have the right, at Purchaser's sole cost and expense, to enter onto the Hotel, or any other portion of the Real Property, at reasonable times and in a reasonable manner upon prior notice to the Seller for the purpose of making such tests, inspections, surveys or other inquiries as Purchaser deems necessary or desirable in connection with this Agreement. However, in no event shall Purchaser be permitted to conduct any drilling or boring without the express written consent of Seller. In conducting its due diligence, Purchaser is authorized to contact any governmental authorities that may have jurisdiction over the Property if Purchaser gives Seller prior notice of the nature of the communication with the governmental agency and a reasonable opportunity to participate in all such communications or meetings. During such inspection, Purchaser shall not unreasonably disturb any tenants or occupants of the Hotel. In addition, as condition to any such entry, Purchaser shall maintain liability insurance coverage applicable to such tests and inspections with coverage in an amount equal to Two Million Dollars (\$2,000,000) per occurrence and provide Seller with certificates of such insurance naming Seller as an additional insured prior to any entry, test or inspection. After making any such tests and inspections, Purchaser shall restore the Real Property to its condition prior to such tests and inspections. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from any loss, damage, cost or expense (including without limitation attorneys fees) incurred by Seller and caused by Purchaser or its agents or contractors in exercising its rights under this Section 3(c). This Indemnity shall survive the Close of Escrow or the termination of this Agreement.
- (d) **Confidentiality.** Subject to applicable laws, including Regulation FD of the Securities and Exchange Commission, Purchaser agrees to protect and safeguard, and to instruct all other Qualified Persons (as defined below) to protect and safeguard, all information delivered to Purchaser in connection with its inspection and review of the Property ("Confidential Information") against unauthorized use, publication or disclosure. Confidential Information that is provided to Purchaser in written form will, at Seller's election, be destroyed or returned to Seller immediately upon Seller's request. Purchaser acknowledges that Seller shall be entitled to exercise any and all remedies, in law or in equity, which Seller may have against Purchaser for a breach of Purchaser's obligations in this paragraph. Seller shall be entitled to recover its attorneys fees reasonably incurred in connection with enforcement of its rights hereunder. "Qualified Persons" shall mean employees, agents, attorneys, accountants, lenders, investors or other consultants to

whom it is necessary to show the Confidential Information for the purposes of completing Purchaser's inspection and review. The provisions of this Section 3(d) shall survive the termination of this Agreement.

4. Title.

- (a) **PTR.** Seller has made available to Purchaser and Purchaser acknowledges receipt of a standard coverage preliminary title report or commitment for the Property (the "PTR"), together with legible copies (to the extent available) of all documents relating to the title exceptions referred to in such PTR. As used herein, the term "Permitted Exceptions" shall mean those (1) exceptions to title of the Real Property as shown on the Approved Pro Forma (defined below), excluding mortgage liens, mechanics liens and overdue tax liens which shall be removed by Seller on or before the Closing; and (2) leases described on Exhibit B attached hereto.
- (b) **Title Policy.** Except as provided above, Seller shall not be obligated to assist in the removal or elimination of any title exception reflected in the PTR. Upon execution of this Agreement, Purchaser shall deliver to Seller a Pro Forma Leasehold Policy of Title Insurance issued by the Title Company subject to the Permitted Exceptions and endorsements that the Title Company commits to issue upon Closing ("Approved Pro Forma"). Purchaser has no right to terminate or cancel this Agreement or delay the Close of Escrow in order to obtain the title endorsements that were not included on the Approved Pro Forma or eliminate exceptions that Purchaser may desire to eliminate that were included on the Approved Pro Forma. Upon the Closing, Purchaser's title to the Land, Appurtenances and Improvements shall be insured by an ALTA Extended Coverage Leasehold Policy of Title Insurance in favor of Purchaser showing title to the leasehold interest vested in Purchaser as of the Closing Date, subject only to the Permitted Exceptions, and issued by the Title Company with aggregate liability in the amount of the Purchase Price, with such endorsements as are included in the Approved Pro Forma (collectively, the "Title Policy").

5. Closing.

- (a) **Escrow.** The parties have opened an escrow (the "Escrow") with the Escrow Holder. This Agreement, together with such further instructions, if any, as the parties shall provide to the Escrow Holder, shall constitute the escrow instructions to the Escrow Holder. If the parties give the Escrow Holder contradictory instructions, the Escrow Holder shall have the right at its election to file an action in interpleader requiring the parties to answer and litigate their several claims and rights among themselves, and the Escrow Holder is authorized to deposit with the clerk of court all documents and funds held in this Escrow. In the event such action is filed, the parties agree to pay the Escrow Holder's cancellation charges and costs, expenses and reasonable attorney's fees that the Escrow Holder is required to expend or incur in the interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such an action, the Escrow Holder shall thereupon be fully released and discharged from all obligations to further perform any duties or obligations otherwise imposed by the terms of Escrow.
- (b) **Reportable Real Estate.** The purchase and sale of the Property is the sale of "reportable real estate" within the meaning of U.S. Treasury Regulations Section 1.6045-4 (the "Regulations"). The Escrow Holder is the "real estate reporting person" within the meaning of the Regulations and shall make all reports to the federal government as required by the Regulations.
- (c) **Timing of Closing.** The purchase and sale contemplated herein shall close (the "Closing") on or before the Closing Date. If the Closing does not occur by the Closing Date, this Agreement shall terminate and neither party shall have any further liability or obligation hereunder, except that, (i) Purchaser and Seller shall each be responsible for one half of any title or escrow cancellation fee; (ii) Purchaser shall remain obligated to observe the confidentiality provisions of Section 3(d); (iii) the Deposit shall be delivered as provided elsewhere in this Agreement; and (iv) nothing herein contained is intended to relieve either party of liability arising as a result of a breach of this Agreement by such party. As used in this Agreement, the "Closing", "Close of Escrow" or "Closing Date" means the date and time that the Purchase Price is paid to Seller. Closing shall occur through the Escrow with Escrow Holder in accordance with the general provisions of the usual form of escrow agreement used by Escrow Holder in similar transactions to the extent not inconsistent herewith (with such special provisions inserted as may be required to conform to this Agreement).
- (d) **Closing Costs.** Seller shall pay the premium for the Title Policy up to the amount of the premium for an ALTA Standard Coverage Leasehold Policy of Title Insurance, with aggregate liability in the amount of the Purchase Price, fifty percent (50%) of the escrow charges of Escrow Holder, fifty percent (50%) of the escrow charges of the Liquor Escrow Assets Holder, and any documentary transfer tax. Purchaser shall pay any bulk sales tax, revenue tax, or

excise tax (and any surtax thereon) due in connection with the consummation of this transaction, the fees for recording the Assignment and Assumption of Ground Lease, the cost differential of the premium for the ALTA Extended Coverage included in the Title Policy over the ALTA premium paid for by Seller, the cost of any title endorsements, the cost of any lender title insurance policies or endorsements, and the cost of the survey of the Land and Improvements ordered by Seller and delivered to Purchaser as part of its due diligence materials and any modifications or upgrades to such survey, fifty percent (50%) of the escrow charges of the Liquor Assets Escrow Holder and fifty percent (50%) of all the charges of escrow charges of Escrow Holder. Each party shall bear the expense of its own counsel and other consultants. Any closing cost not allocated herein shall be borne in the manner that is customary in the county in which the Property is located.

- (e) **Additional Consideration to Ground Lessor.** Seller shall pay the Additional Consideration (as set forth in Section 7.21 of the Ground Lease) to Ground Lessor at Closing through Escrow Holder.
 - (f) **Delivery of Property.** Seller shall deliver possession of the Property to Purchaser at Closing subject to the Permitted Exceptions.
 - (g) **Cluster Sales Office.** Purchaser acknowledges that Seller has a sales office at the Hotel which is used for three (3) hotels, including the Property. Purchaser agrees to allow Seller to maintain this office at the Property pursuant to the Sales Office Lease attached hereto as Exhibit N between Purchaser, or Purchaser's affiliate, and Seller, or Seller's affiliate for a period of sixty (60) days, after which either party will have the right to terminate the agreement with thirty (30) days' prior written notice. At the expiration or early termination of the Sales Office Lease, Seller will remove the Sales Office FF&E at no cost to Purchaser.
 - (h) **Laundry Services.** Seller, or Seller's affiliate, will provide certain laundry services for Purchaser for a period of ninety (90) days after the Close of Escrow pursuant to the Laundry Services Agreement attached hereto as Exhibit O between Purchaser or Purchaser's manager and Seller or Seller's affiliate.
6. **Franchise License Agreement** The Parties have negotiated the terms and conditions and form of a Franchise License Agreement (the "Franchise License Agreement") with Seller or its affiliate ("Franchisor") for the Hilton brand.
7. **Seller's Closing Documents.** On or before Closing, Seller shall deliver or cause to be delivered to Escrow Holder, or where indicated to the Liquor Assets Escrow Holder or Purchaser, the following ("Seller's Closing Documents"), in form and substance reasonably acceptable to Purchaser:
- (a) **Assignment and Assumption of Ground Lease.** An Assignment and Assumption of Ground Lease in the form and content of Exhibit C attached hereto (the "Assignment of Ground Lease") duly executed, with acknowledgment, by Seller;
 - (b) **Bill of Sale.** A Bill of Sale (the "Bill of Sale") to the Personal Property, in the form and content of Exhibit E attached hereto duly executed by Seller, conveying the Personal Property to Purchaser;
 - (c) **Intangible Property Assignment.** An assignment of the Intangible Property (the "Intangible Property Assignment"), in the form and content of Exhibit E attached hereto duly executed by Seller, conveying the Intangible Property to Purchaser;
 - (d) **Contract Assignment.** An Assignment and Assumption of Contracts (the "Contract Assignment") in the form attached hereto as Exhibit F, and duly executed by Seller, assigning the Contracts, not including the Unassignable Contracts, to Purchaser;
 - (e) **Non-Foreign Affidavit.** A Non-Foreign Affidavit in the form attached hereto as Exhibit G, duly executed by Seller;
 - (f) **Form 593-W.** A California Real Estate Withholding Exemption Certificate (Form 593-W), duly executed by Seller;
 - (g) **Liquor License Agreement.** If a temporary liquor permit or Liquor License is not obtained by Purchaser simultaneously with or upon completion of closing, the Liquor License Agreement in the form attached hereto as Exhibit H, duly executed by Seller; and
 - (h) **Franchise License Agreement** Two originals of the Franchise License Agreement, duly executed by Seller.

- (i) **Title Company Documents.** Any documents reasonably required by the Title Company to consummate the transaction contemplated herein;
- (j) **Tenant Notice Letters.** Notices to each of the tenants under tenant leases at the Property notifying them of the sale of the Property and directing them to pay all future rent as Purchaser may direct; such notices to be delivered to Purchaser outside of Escrow;
- (k) **Certificate re Representations and Warranties.** A certificate from Seller that each of the representations and warranties contained herein is true and correct as set forth herein as of the Closing Date duly executed by Seller;
- (l) **Certificate of Title.** California Certificates of Title transferring ownership of the Vehicle and the Boat to Purchaser;
- (m) **Liquor Assets Bill of Sale.** A Bill of Sale (the "Liquor Assets Bill of Sale") to the Liquor Assets, in the form and content of Exhibit I attached hereto duly executed by Seller which shall be deposited with the Liquor Assets Escrow Holder transferring the Liquor Assets to Purchaser;
- (n) **Pension Funds Letter.** A letter from the trustees for any pension plans or the actuary who manages any pension funds which Seller or its manager contribute to for employees at the Property, confirming the amount by which such plans are underfunded and the amount of withdrawal liability which Seller or its manager may incur upon the termination of such employees (collectively, the "Pension Liabilities");
- (o) **Guaranty.** A guaranty from Hilton Hotels Corporation, a Delaware corporation, in the form attached hereto as Exhibit J, and
- (p) **Liquor Escrow Agreement.** A Liquor Escrow Agreement executed by Seller and delivered to Liquor Escrow Holder.

8. Conditions Precedent to Closing.

- (a) **Seller's Conditions Precedent to Closing.** Seller shall have no obligation to sell the Property unless the following additional conditions ("Seller's Conditions Precedent") have been satisfied or waived in writing by Seller at or prior to the Closing:
 - (i) **Performance.** Purchaser shall have timely performed, in all material respects, all of the obligations required to be performed by Purchaser by the terms of this Agreement;
 - (ii) **Deliveries.** Purchaser shall have executed and delivered, or caused to be executed and delivered, the Purchaser's Closing Items (as defined in Section 9 below); and
 - (iii) **Ground Lessor's Consent.** Seller shall have received and delivered to Purchaser written consent to the assignment of Ground Lease contemplated by this Agreement from the City Manager, as required pursuant to Section 4.2 of the Ground Lease ("Ground Lessor's Consent"). If Seller has not received the Ground Lessor's Consent by the Closing Date, either party shall have the right to extend the Closing Date for a period of up to ninety (90) days in order to obtain the Ground Lessor's Consent ("Extended Closing Date"). If Seller does not obtain the Ground Lessor's Consent by the Extended Closing Date, then either party may terminate this Agreement on written notice to the other and following such termination, Seller shall refund Purchaser's Deposit, and neither party shall have any further obligation or liability hereunder except for Purchaser's obligations in Section 3(c) and Section 3(d) of this Agreement.
- (b) **Purchaser's Conditions Precedent to Closing.** Purchaser shall have no obligation to purchase the Property unless the following additional conditions ("Purchaser's Conditions Precedent") have been satisfied or waived in writing by Purchaser at or prior to the Closing:
 - (i) **Performance.** Seller shall have timely performed, in all material respects, all of the material obligations required to be performed by Seller by the terms of this Agreement and all of Seller's representations and warranties set forth herein shall be true and correct as of the Closing;
 - (ii) **Deliveries.** Seller shall have executed and delivered, or caused to be executed and delivered, the Seller's Closing Documents (as defined in Section 7);
 - (iii) **Ground Lessor's Consent.** Purchaser shall have received the Ground Lessor's Consent;

- (iv) **Termination of Existing Management and Franchise Agreements.** Seller shall have terminated the management agreement and franchise license agreement in effect at the Property, if any;
 - (v) **Title Policy.** Title Company's commitment to issue a Title Policy at Closing in the form of the Approved Pro Forma, provided that Purchaser has fulfilled all of Title Company's requirements listed in the PTR which are imposed by Purchaser;
 - (vi) **Ground Lessor Estoppel.** Purchaser shall have received an estoppel from the Ground Lessor certifying (1) the expiration date of the Ground Lease as no earlier than December 31, 2045; (2) that there exists no default by Seller, nor any event that after the giving of notice or the passage of time would constitute a default by Seller; and (3) that the Ground Lease is in full force and effect and has not been modified or amended;
 - (vii) **Damage and Condemnation.** This Agreement has not been previously terminated under Section 15.
9. **Purchaser's Closing Items.** Except as provided below, on or before the Closing, Purchaser shall deliver to Escrow Holder, or where indicated to the Liquor Assets Escrow Holder or Seller, the following ("Purchaser's Closing Items"), in form and substance reasonably acceptable to Seller:
- (a) **Purchase Price.** The Purchase Price, after crediting the Deposit;
 - (b) **Liquor Assets Purchase Price.** The Liquor Assets Purchase Price delivered to Liquor Assets Escrow Holder;
 - (c) **Assignment and Assumption of Ground Lease.** The Assignment and Assumption of Ground Lease, duly executed, with acknowledgment, by Purchaser;
 - (d) **Intangible Property Assignment.** The Intangible Property Assignment duly executed by Purchaser;
 - (e) **Contract Assignment.** The Contract Assignment duly executed by Purchaser;
 - (f) **Liquor License Agreement.** If a temporary liquor permit or a Liquor License is not obtained by Purchaser simultaneously with or upon completion of closing, the Liquor License Agreement, duly executed by Purchaser;
 - (g) **Franchise License Agreement.** Two originals of the Franchise License Agreement, duly executed by Purchaser;
 - (h) **Title Company Documents.** Any documents reasonably required by the Title Company to consummate the transaction contemplated herein; and
 - (i) **Liquor Escrow Agreement.** A Liquor Escrow Agreement executed by Purchaser and delivered to Liquor Escrow Holder.
10. **Prorations, Closing Adjustments and Post-Closing Settlement.** The following items shall be apportioned in respect of the Property in question between Purchaser and the Seller on a per diem basis as of the Cut-Off Time (except as otherwise specified in this Paragraph 10):
- (a) **Taxes and Assessments.** Real estate taxes and annual municipal or special district assessments and personal property or use taxes which have accrued for the fiscal year in which the Closing occurs. Seller shall remain responsible after Closing for any supplemental taxes assessed after closing which relate to the period prior to the Closing.
 - (b) **Ground Lease.** All sums payable under the Ground Lease shall be prorated as of the Closing Date, excluding the Additional Consideration (as that term is defined in the Ground Lease) which shall be the sole cost of Seller. The prorations of percentage rents shall be made based on Seller's good faith estimates of such amounts, which shall be re-calculated as provided in Section 10(f).
 - (c) **Rent.** Rent paid to and received by the Seller under any leases at the Property; provided, however, in no event shall Purchaser be obligated to give Seller a credit for any rent which has accrued prior to the Closing but which has not yet been collected. Any payments received by Purchaser after the date of closing from a tenant under any leases on account of rentals which are applicable to periods prior to closing and on account of sums which are attributable to expenses incurred by the lessor for periods of time prior to closing, shall be apportioned by Purchaser upon receipt and the portion thereof attributable to periods or expenses prior to Close of Escrow shall immediately be paid by Purchaser to the Seller.

- (d) **Revenues.** Guest, convention, room, food, beverage, and all other charges and revenues for services rendered and the operation of all departments of the Property, including, but not limited to, advance payments under booking agreements for rooms, facilities and services of such Property and any other revenues shall be apportioned, as follows: (1) all food, room service and restaurant revenue as of the closing of dinner service hours at each restaurant on the evening preceding the Closing Date, and bar revenues as of 2:00 A.M. on the Closing Date, shall be retained by the Seller and (2) the guest (tray) ledger as of 12:01 a.m. on the Closing Date for guests staying in such Property as of such time, including any charges for overnight parking, shall be counted and such room revenue and associated taxes, shall be divided equally between Purchaser and Seller. Except as hereinabove provided, all revenues for each Property for days preceding the Closing Date shall be attributed to the Seller and all revenues for each Property for the Closing Date and days following the Closing Date shall accrue to the benefit of Purchaser after closing. Purchaser shall also receive a credit for any cancellation fees and forfeited deposits collected by Seller for events or reservations scheduled to take place on or after the Closing
- (e) **Accounts Receivable.** Purchaser shall purchase all accounts receivable for the Property which have aged no more than sixty (60) days as of the Closing Date. Seller shall receive a credit for such amounts and after the Close of Escrow Purchaser shall be entitled to all collections for such accounts receivable but this credit will be subject to the reconciliation provided in Section 10(t) based on actual collections by Purchaser. Seller shall retain the right to those accounts receivable which have aged more than sixty (60) days as of the Closing Date and shall, in its sole and absolute discretion, handle collection of such receivables. As an ongoing obligation that survives the Closing and is not limited by the one-time reconciliation provided in Section 10(t) below, if Purchaser receives any payment attributable to those accounts receivables retained by Seller, Purchaser shall immediately forward such amounts to Seller.
- (f) **Accounts Payable.** Purchaser shall assume all accounts payable for the Property. Purchaser shall receive a credit for those accounts payable that are for expenses attributable to periods prior to the Closing Date.
- (g) **Operating Costs.** All costs and expenses of operating the Property, and amounts paid or payable under the service contracts. All expenses that have been prepaid by Seller shall be prorated as of the Closing Date and Seller shall receive a credit at the Closing for the portion of such prepaid expenses applicable to periods following the Closing Date.
- (h) **Miscellaneous.** Fees and expenses for music, entertainment, trade association dues, trade subscriptions, coin machine income, and washroom and checkroom income.
- (i) **No Tax Bill.** If, on the Closing Date, bills for the real estate taxes imposed upon the Property for the tax year in which closing occurs have been issued but shall not have been paid, the prorations shall be made on the basis thereof. If such bills shall not have been issued on the date of closing, the amount of the taxes shall be reasonably ascertained by the Seller based upon the then current assessment and anticipated tax rate, and the prorations shall be made on the basis of such estimate and in the event the taxes for the year in which the closing occurs are more or less than such estimated amount, the Seller or Purchaser shall promptly pay the amount necessary to adjust for the correct proration as soon as the actual tax amount becomes available.
- (j) **Tenant Security Deposits.** At closing, Purchaser shall receive a credit against the Purchase Price for the Property in question in an amount equal to all cash security deposits, if any, held by or for the Seller on the date hereof or collected after the date hereof by Seller under any leases at the Property. Purchaser will cause such amount to be maintained after closing as a security deposit in accordance with the requirements of applicable law and the leases and shall indemnify the Seller from all claims of tenants with respect thereto.
- (k) **Utilities.** The parties shall switch all utilities into Purchaser's name as of the Close of Escrow so no prorations shall be necessary; provided, however, Seller shall assign to Purchaser at Closing any refundable deposits made by Seller with any utility companies, in which case Purchaser shall give Seller a credit for such assigned deposits at Closing.
- (l) **Sales Taxes.** All sales, use and occupancy taxes, if any, due or to become due in connection with revenues received from the Property prior to the Closing Date will be paid by the Seller. The Seller shall be entitled to receive any rebates or refunds with respect to any such taxes paid by such Seller prior to closing.

Notwithstanding the foregoing, Purchaser and Seller shall each pay one-half (1/2) of occupancy taxes attributable to revenues from the night immediately prior to Closing.

- (m) **Supplies.** At closing, Purchaser shall purchase from the Seller all of such Seller's inventory (other than "in service" inventory) of unopened food and beverage supplies including linen supplies in unopened cases, cartons or similar containers, excluding the Liquor Assets, and all sides and shells of meat (in any storage freezer at such Property) that are still in their unopened sacks or other original containers except to the extent such inventories are obsolete or no longer usable ("Unopened Inventory"). The purchase price of such goods shall be equal to the actual cost of such goods paid therefor by the Seller in question not to exceed \$75,000. The Liquor Assets will be delivered to Purchaser pursuant to Section 2(c).
- (n) **Cash.** All cash in the Hotel's various bank accounts at financial institutions as of the Cut-Off Time ("Outside Bank Accounts") shall remain the Property of Seller. Purchaser shall receive cash in house banks at the Hotel as of the Cut-Off Time ("House Banks") and Seller shall receive a credit at the Close of Escrow for such amounts.
- (o) **Liquor Assets.** On the Liquor Assets Closing Date, Liquor Assets Escrow Holder shall release the Liquor Assets Purchase Price to Seller, less any amounts claimed by creditors pursuant to the applicable rules and regulations of the California Alcoholic Beverage Control Board ("ABC") and Liquor Assets Escrow Holder shall release the bill of sale and assignment with respect to the Liquor Assets to Purchaser or Purchaser's licensed designee at the Property.
- (p) **Advanced Booking Deposit.** At the Closing, Seller shall provide Purchaser with a current list of Advance Bookings and Purchaser shall receive a credit and Seller a corresponding debit in the amount of all Advanced Booking deposits paid to Seller and not earned with respect to the period prior to the Closing.
- (q) **Employees.** With respect to employee wages and benefits, the Seller shall be solely responsible for any liability for payment of employees' wages, workers' compensation claims, pension benefits due to or accrued to employees at the Property through the Cut-Off Time, together with F.I.C.A., unemployment and other taxes and benefits due with respect to the employment of such employees, other than earned and accrued vacation and sick pay. From and after the Cut-Off Time, Purchaser shall assume all of the Seller's liability and obligations with respect to accrued vacation and sick pay and shall indemnify the Seller from all claims of such employees with respect to such vacation and sick pay. In connection therewith, Purchaser shall receive the Benefits Credit (as defined in Section 14(d)). Notwithstanding the foregoing, Purchaser is not assuming the Workers' Compensation Insurance liability of Seller and Seller shall be solely responsible for adjustment and payment of all claims for compensation in connection with such insurance and shall retain any and all rebates, reimbursements or other payments due from the insurer in connection with such policies.
- (r) **Approved Capital Expenditures.** As set forth in Section 13(e) herein, Purchaser or Seller shall receive a credit to the Purchase Price for capital expense items on Exhibit J at Closing.
- (s) **Gift Certificates.** Purchaser shall receive a credit at Closing for (1) one hundred percent (100%) of the dollar amount of all outstanding gift certificates purchased by customers for free rooms and other goods and services at the Hotel; and (2) sixty percent (60%) of the dollar amount of all outstanding complimentary gift certificates for free or reduced rate room charges or other goods and services at the Hotel given to customers. At Closing, Seller shall furnish Purchaser with an updated listing or other detailed description of the outstanding gift certificates as of the Closing. Following the Closing, Purchaser shall honor all the gift certificates listed on Exhibit M or issued by the terms of this agreement, in both cases, in accordance with their terms. Seller will not issue any complimentary gift certificates for free or reduced rate room charges or other goods and services at the Hotel to charities or non-profit organizations from the execution of this Agreement without the consent of Purchaser. Notwithstanding the foregoing, Seller will have the right to issue complimentary gift certificates for free or reduced rate room charges or other goods and services at the Hotel to dissatisfied customers in the ordinary course of business at any time prior to the Close of Escrow.
- (t) **Reconciliation and Final Payment.** A draft of the foregoing prorations will be prepared by Seller and delivered to Purchaser at least three (3) days prior to the Closing. A detailed closing statement shall be prepared at closing for the Property setting forth the manner of computation of the aforesaid proration adjustments and all other closing expenses, which closing statement shall be subject to the reasonable approval of Seller and Purchaser. All prorations shall be made on the basis of a 365 day year and the actual days in the month. The apportionments described herein at such closing shall be based on the actual figures to the extent available. If

any of the prorations cannot be calculated based on actual figures, then they shall be calculated based on the Seller's good faith estimates thereof. Each Seller and Purchaser shall cooperate in good faith and act reasonably after closing to make a final determination of the prorations required hereunder. Ninety (90) days following the close of escrow for each Property (or such other time as the parties may agree), there shall be a final one-time reconciliation of the proration adjustments, except for prorations which by their nature cannot be finally determined as of such date.

Purchaser shall have a representative available at the Hotel beginning no later than 10 p.m. on the night prior to the Closing Date who will cooperate with Seller in calculating the apportionment discussed in this Section 10. Purchaser shall have a representative available via telephone and facsimile who will be authorized to sign the proration schedule on behalf of Purchaser upon completion.

11. **Seller's Representations and Warranties.** Except for the limited representations and warranties set forth below, the Property is being sold to Purchaser in its "As-Is" condition without any representations or warranties, express or implied. The term "Seller's knowledge" and words or similar import as used herein shall mean the actual knowledge of any of Dave Sherf, Jennifer Burk, Hotel Manager and Rehan Fazal, Director of Finance of the Hotel. The representations and warranties below which specify that they are to Seller's knowledge are based upon the actual, current knowledge of the foregoing individuals without any inquiry or investigation or duty to inquire or investigate and without regard to imputed knowledge. Except for the representations and warranties contained in and as otherwise provided by this Agreement, Purchaser shall rely solely on its own investigation of the Property in making its decision of whether or not to purchase the Property. Seller hereby represents and warrants to Purchaser that the following are true and correct as of the date hereof and as of the Closing:
- (a) **Power and Authority of Seller.** Seller is a corporation duly organized and existing in the State of California and has the requisite right, power and authority to sell, convey and transfer the Property to Purchaser, as provided herein, and to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The individual executing this Agreement has the authority to bind Seller to the terms and conditions hereof and thereof. All proceedings required to be taken by or on behalf of Seller to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by, Seller of its obligations under this Agreement, except with respect to any consent which may be required in connection with the assignment of any Contract.
 - (b) **Validity of Agreement.** This Agreement executed by Seller constitutes, and all other documents required by this Agreement to be executed by Seller shall constitute when so executed, the valid and binding obligation of Seller, enforceable against Seller in accordance with their respective terms.
 - (c) **Non-Foreign Status.** Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code.
 - (d) **Financial Statements.** To the Seller's Knowledge, all financial statements for the Hotel provided by the Seller to the Purchaser in connection with this transaction are complete, true and accurate.
 - (e) **Compliance with Laws.** To Seller's Knowledge (i) the Property, and each component and part thereof, is being operated in material compliance with all building, zoning, environmental, health and insurance laws and regulations, and all other laws, ordinances, requirements, regulations, statutes, orders and similar directives affecting or having jurisdiction over the Property; and (ii) no uncured or uncorrected notices of violation of governmental regulations relating to the Property has been issued to, served upon, received by or entered against Seller. To Seller's knowledge, there are no proceedings, governmental administrative actions, or judicial proceedings contemplated under any federal, state, or local laws regulating the discharge of Hazardous Substances, or hazardous or toxic materials or substances into the environment.
 - (f) **Other Contracts.** Seller has not entered into any other contracts for the sale or lease of the Property, or any portion thereof, nor are there any unwaived rights of first refusal or options to purchase or lease the Property or any portion thereof.
 - (g) **Utilities.** The Property has operating water supplies and sewage disposal systems and is served by public utilities providing electrical, gas and telephone service, all to Seller's Knowledge, with sufficient capacity to serve the improvements as hotels.

- (h) **Condemnation.** To Seller's Knowledge, there is no pending condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of the Property, and Seller has not received any written notice of any of the same and has to Seller's Knowledge no such proceeding is contemplated.
- (i) **Insolvency, Bankruptcy.** No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to the best of Seller's knowledge, threatened against Seller, nor are any such proceedings contemplated by Seller.
- (j) **Hazardous Substances.** To Seller's Knowledge, Seller has not during its ownership of the Property stored, produced, or disposed of any Hazardous Substance, including asbestos, on the Property, other than such products normally used in the operations of the Hotels.
- (k) **ERISA.** Seller is not and is not acting on behalf of an "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), a "plan" within the meaning of Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code") or an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. Section 2510.3-101 of any such employee benefit plan or plans.
- (l) **Litigation.** To the best of Seller's Knowledge, there is no litigation pending or threatened or any governmental proceeding pending or threatened against the Property or Seller other than those listed on Exhibit J attached hereto.
- (m) **Ground Lease.** The Ground Lease has not been modified or amended, and Seller has delivered a true, correct and complete copy of the Ground Lease to Purchaser. To Seller's knowledge, neither Seller nor the City is currently in default under the Ground Lease and, to Seller's knowledge, there are no disputes, defenses, claims or rights of set-off currently outstanding with respect to the Ground Lease.
- (n) **Contracts.** To Seller's Knowledge, Exhibit B contains a complete list of all of the Contracts in effect at the Property, including all amendments and modifications thereto. To the extent documented and in Seller's possession and control, Seller has delivered to Purchaser true, correct and complete copies of the Contracts. To Seller's Knowledge, there are no material defaults under the Contracts.
- (o) **Collective Bargaining Agreement.** There are no collective bargaining agreements with respect to the Property except that certain Collective Bargaining Agreement between the Hilton San Diego Resort and Unite-Here, Local 30 effective November 1, 2003 (the "Collective Bargaining Agreement"). The Collective Bargaining Agreement has not been modified or amended and Seller has delivered a true, correct and complete copy of the Collective Bargaining Agreement to Purchaser. To Seller's Knowledge, there are no material defaults under the Collective Bargaining Agreement.
- (p) **Hiring of Employees.** Seller represents and warrants that at the time of hire, Seller complied with its hiring policies and procedures and applicable laws for newly hired team members.
- (q) **Gift Certificates.** Attached hereto as Exhibit M is a list of all outstanding gift certificates and discount coupons with respect to the Hotel (which, together with any gift certificates issued after the date hereof in accordance with the terms of this Agreement, are referred to collectively as the "Gift Certificates")

The representations and warranties of Seller made in this Agreement shall not merge into any instrument or conveyance delivered at the Closing, but shall survive the Closing for a period of one (1) year. In the event Purchaser has actual knowledge of or discovers before the Closing Date that a representation or warranty of Seller made herein is untrue or inaccurate, Purchaser may elect to terminate this Agreement for failure of a condition precedent but, whether or not Purchaser elects to terminate this Agreement, it shall have no other right or claim against Seller as a result of such untrue or inaccurate representation or warranty.

12. **Purchaser's Representations and Warranties and Acknowledgements and Agreements.** Purchaser hereby warrants and represents to Seller that the following are true and correct as of the date hereof and will be true and correct as of the Closing Date. Seller's rights with respect to the following representations and warranties shall survive the Closing for a period of one (1) year. The term "Purchaser's knowledge" and words of similar import as used in this Agreement shall mean the actual knowledge of Michael Barnello and Alfred Young without any inquiry or investigation or duty to inquire or investigate and without regard to imputed knowledge.

- (a) **Power and Authority of Purchaser.** Purchaser is a corporation duly organized and validly existing in good standing in the state of its incorporation and is authorized to do business in the state in which the Hotel is located. Purchaser

has the requisite right, power and authority to purchase the Property from Seller, as provided herein, and to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The performance by Purchaser of Purchaser's obligations hereunder will not violate or constitute a default under the terms and provisions of any material agreement, document or instrument to which Purchaser is a party or by which Purchaser is bound or affected. All proceedings required to be taken by or on behalf of Purchaser to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by, Purchaser of its obligations under this Agreement.

(b) Purchase As Is.

- (i) **Books and Records.** Prior to Closing, Purchaser will be afforded access to certain of the books and records of Seller relating to the operation of the Hotel and to other information made available by Seller with respect thereto. Prior to the Closing Date, Seller has made no representations or warranties of any kind, except as set forth in Section 11, including, without limitation, concerning the condition of the Property or the accuracy or completeness of information provided to Purchaser by Seller.
- (ii) **Purchaser's Own Investigation.** Purchaser has conducted its own investigation of the Property; made all inquiries, inspections, tests, audits, studies and analyses that it deems necessary or desirable in connection with purchasing the Property; and has approved the results of its investigation (including engineering and structural tests, economic feasibility studies, soils and geological reports, reviews of books and records, financial statements, projections relating to the operation of the Hotel and other documents obtained or prepared by or for Purchaser in connection with its review). Purchaser hereby acknowledges that it is relying solely on the representations and warranties of Seller set forth in Section 11 hereof and on its own inspections, tests, audits, studies and investigations conducted in connection with, and on Purchaser's own judgment with respect to, its purchase of the Property. Purchaser acknowledges that no person has made, any representation, agreement, statement, warranty, guarantee or promise regarding the Property or the transaction contemplated herein or the zoning, construction, physical condition or other status of the Property except as may be expressly set forth in this Agreement or any amendment hereto. No representation, warranty, agreement, statement, guarantee or promise, if any, made by any person acting on behalf of Seller which is not contained in this Agreement, or any amendment hereto will be valid or binding on Seller.
- (iii) **Indemnification.** Purchaser hereby indemnifies, defends and holds Seller entirely harmless from and against any claim, demand, cause of action, judgment, loss, liability, cost or expense which Seller may suffer, sustain, incur or otherwise become subject to (either directly or indirectly) to the extent the same results from any action or omission by Purchaser, its affiliates, agents or representatives, or in connection with Purchaser's ownership and operation of the Property after the Closing Date, which occurs subsequent to the Closing Date and to the extent not caused by Seller's breach of this Agreement. Seller hereby indemnifies, defends and holds Purchaser entirely harmless from and against any claim, demand, cause of action, judgment, loss, liability, cost or expense which Purchaser may suffer, sustain, incur or otherwise become subject to (either directly or indirectly) to the extent the same results from (a) claims arising out of occurrences prior to the Close of Escrow which are covered by Seller's insurance policies; (b) third-party contractual claims based on occurrences prior to the Closing, not including claims made under the Ground Lease, and (c) claims made by the Ground Lessor pursuant to Section 3.2 of the Ground Lease.
- (iv) **AS IS CONDITION.** PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 11 HEREIN AND IN THE CLOSING DOCUMENTS EXECUTED BY SELLER IN CONNECTION HERewith (THE "CLOSING DOCUMENTS"), SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY OR ANY MATTER RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, AND COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS. EXCEPT AS PROVIDED IN SECTION 11 OF THIS AGREEMENT AND IN

THE CLOSING DOCUMENTS, PURCHASER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS, AND THAT SELLER HAS NO OBLIGATIONS TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN.

BY INITIALING BELOW, THE PURCHASER ACKNOWLEDGES THAT (i) THIS SECTION 12(b)(iv) HAS BEEN READ AND FULLY UNDERSTOOD, (ii) THE PURCHASER HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (iii) THE PURCHASER HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION 12(b)(iv).

PURCHASER'S INITIALS

- (c) **Release.** Except as expressly set forth herein and in the Closing Documents, Purchaser and anyone claiming by, through or under Purchaser hereby waives its right to recover from and fully and irrevocably releases Seller, its employees, officers, directors, representatives, agents, servants, attorneys, affiliates, parent, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations in its behalf ("Released Parties") from any and all claims that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to any matters affecting the Property, or any portion thereof. This release includes claims of which Purchaser is presently unaware or which Purchaser does not presently suspect to exist which, if known by Purchaser, would materially affect Purchaser's release to Seller. Without limiting the generality of the foregoing, Purchaser expressly waives any and all rights conferred upon it by any statute or rule of law which provides that a release does not extend to claims which the claimant does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the released party, including, without limitation, any provisions similar to the following: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

In this connection and to the extent permitted by law, Purchaser hereby agrees, represents and warrants, which representation and warranty shall survive the Close of Escrow and not be merged with the Closing, that Purchaser realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Purchaser further agrees, represents and warrants, which representation and warranty shall survive the Close of Escrow and not be merged with the Closing, that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Purchaser nevertheless hereby intends, except as set forth in the Closing Documents, to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to Seller by Purchaser in exchange for Seller's performance hereunder. The foregoing release shall not apply to any of the matters expressly contained in this Agreement.

Seller and Purchaser have each initialed this Section 12(c) to further indicate their awareness and acceptance of each and every provision hereof.

SELLER'S INITIALS

PURCHASER'S INITIALS

- (d) **Validity of Agreement.** This Agreement executed by Purchaser constitutes, and all other documents required by this Agreement to be executed, by Purchaser shall so constitute when so executed the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with their respective terms.
- (e) **Ground Lease.** Purchaser hereby represents and warrants that it has reviewed the Ground Lease and is satisfied with all its terms, conditions and obligations. Additionally, Seller and Purchaser each agree to provide any information required by the City of San Diego in connection with the Ground Lessor's Consent.

13. Conduct of Hotel Business/Liquor Licenses/Baggage/Safe Deposit Boxes.

- (a) **Conduct of Hotel Business.** During the period from the date of this Agreement until the earlier of (a) the Closing Date, or (b) the termination of this Agreement, Seller shall operate the Property only in the ordinary course of business consistent with the past practice of Seller. At all times prior to the Closing Date, Seller shall maintain insurance coverage for the Property consistent with past practice and shall not, without the prior written consent or other due authorization or approval of Purchaser, make any modifications or alterations to the Property other than in the ordinary course of business. Seller shall not modify or amend the Ground Lease and shall perform all of its obligations thereunder through Closing.
- (b) **Liquor License.** With respect to the operation of the restaurants, lounges and bars presently located within the Property, the liquor license(s) ("Liquor License") therefor is held by Seller. Purchaser shall execute and file, at its sole cost and expense, all necessary forms, applications and other documents (and Seller shall reasonably cooperate with Purchaser in filing such forms, applications and other documents) with the appropriate liquor and alcoholic beverage authorities prior to the Closing so that the Liquor Assets Closing Date shall be, if possible, on the same date as the Closing. If it is not possible for the Liquor Assets Closing Date to be on the same date as the Closing, Purchaser shall promptly execute all forms, applications and other documents required for the Liquor Assets Closing Date to occur on the earliest date reasonably practicable, consistent with the laws of California, in order that all appropriate liquor licenses may be acquired by Purchaser at the earliest reasonably practicable time after Closing (but the failure or inability of Purchaser to obtain such liquor licenses on or before Closing shall not relieve Purchaser of its obligation to proceed with Closing hereunder, except as set forth below). Purchaser's attempts to obtain such liquor licenses shall not diminish, prior to the Closing, the full force and effect of the liquor licenses maintained by Seller in the operation of the restaurants, lounges and bars presently located within the Property. If the Liquor Assets Closing Date cannot occur until after the Close of Escrow, then Seller shall reasonably cooperate with Purchaser and Purchaser's operator if any, to the extent permitted by law in keeping open the bars and lounges and liquor facilities of the Property between the Close of Escrow and the Liquor Assets Closing Date, by entering into a Liquor License Agreement in substantially the form attached hereto as EXHIBIT H for the continued operation for up to 90 days of and under the liquor licenses with respect to the Property. In no event shall Seller be required to obtain any additional liquor or alcoholic beverage licenses which it does not possess at the time of Closing. Prior to the Closing Date, if Purchaser discovers a violation of Seller or Seller's affiliates that would prevent Purchaser from obtaining the necessary liquor licenses for the Hotel, Seller will diligently proceed to cure the violation in order to allow Purchaser to obtain the necessary licenses. The Closing Date will be extended as necessary for Seller to cure such violation, provided that if Seller does not cure the violation within thirty (30) days following the scheduled Closing Date, either party will have the right to terminate this Agreement and Purchaser will receive a refund of its Deposit.
- (c) **Guest Baggage.** Any baggage or other property of departed guests held by Seller may be left at the Hotel for a period not to exceed ninety (90) days following the Closing Date. At any time during such period, all such baggage or property will, at the option of Seller, be removed by Seller and disposed of by Seller or abandoned by Seller, in which case Purchaser shall dispose of such baggage in any manner deemed appropriate by Purchaser. Seller shall indemnify, defend and hold Purchaser harmless from and against all claims, losses and liabilities in connection with the holding of such baggage or other property for such period and the disposal of same by Seller. Purchaser shall indemnify, defend and hold Seller harmless from and against all claims, losses and liabilities in connection with Purchaser's disposal of such baggage. All baggage of guests who are still in the Hotel on the Closing Date which has been checked with or left in the care of Seller shall be inventoried, sealed and tagged jointly by Seller and Purchaser immediately after the Closing. Purchaser shall indemnify, defend and hold Seller harmless from and against all claims, losses or liabilities with respect to such baggage arising out of the acts or omissions of Purchaser after the Closing. Seller shall indemnify, defend and hold Purchaser harmless from and against all claims, losses or liabilities with respect to (i) such baggage arising out of the acts or omissions of Seller prior to the Closing, and (ii) any claims with respect to baggage allegedly checked or left in the care of Seller prior to Closing which is not included in the baggage inventory.
- (d) **Safe Deposit Boxes.** Seller shall indemnify, defend and hold Purchaser harmless from and against any liability or responsibility for any claims relating to items deposited in safety deposit boxes prior to the Closing. Purchaser shall indemnify, defend and hold Seller harmless from and against any liability or responsibility for items deposited in safety deposit boxes from and after the Close of Escrow.

- (e) **Capital Expenditures.** Seller has expended sums and intends to continue to expend the sums shown to perform the approved capital expense items listed on Exhibit I. To the extent that Seller does not complete the work listed on Exhibit I before the Closing Date, Purchaser will receive a credit to the Purchase Price for the listed cost of the uncompleted work. The Purchase Price already reflects an estimated credit of \$2,200,000 as a result of an estimate of uncompleted items on Exhibit I as of the date of this Agreement. Upon the reconciliation of prorations provided in Section 10(t), to the extent that Purchaser's credit should have been more than \$2,200,000, Purchaser will receive an additional credit and to the extent Purchaser's credit should have been less than \$2,200,000, Seller will receive a credit for such difference.

14. Employees.

- (a) **Termination of Employees.** Seller shall terminate the employment of all employees of the Property as of the Closing Date, and Purchaser shall cause its manager to offer employment to such employees on the terms set forth below:
- (b) **No Delivery of Layoff Notice to Employees.** The parties agree that no notices are required or shall be given under the Worker Adjustment and Retraining Act, 29 USC §2101 et seq., ("WARN Act") and Purchaser shall indemnify, defend and hold Seller, its successors, subsidiaries, and affiliated companies harmless from all liability under the WARN Act resulting from Purchaser or its manager's acts or omissions in connection with (a) the hiring, firing, offering to hire, or failure to hire any of the current employees at the Hotel; (b) Seller's termination of the employees at the Hotel by reason of the sale of the Property to Purchaser; or (c) the failure of Purchaser to rehire in accordance with the terms of this Agreement. The provisions of this paragraph shall survive the Closing.
- (c) **Rehiring.** Purchaser shall, on or prior to the Closing Date, offer or cause its manager to offer employment effective on the Closing Date to not fewer of the employees at the Property so as to not trigger any requirement for notice under the WARN Act. Such employees shall be hired for substantially the same position, in full or part time status, and at not less than the hourly wage rate currently being paid. Purchaser acknowledges that it is familiar with the Collective Bargaining Agreement, and agrees to assume and be bound by such agreement. Purchaser shall provide written notice to Seller at least ten (10) business days prior to the Closing. Seller shall reasonably cooperate with Purchaser and its manager prior to Closing to facilitate the hiring of such employees.
- (d) **Benefits.** Purchaser agrees to be responsible for, and to indemnify, defend and hold Seller harmless from, all costs and expenses of accrued and unpaid vacation and sick leave for all employees including payroll taxes due in connection therewith; provided, however, that Purchaser shall receive a credit against the Purchase Price for the sum equal to the aggregate amount of all accrued and unpaid vacation and sick leave, including payroll taxes due in connection therewith, for employees at the Property as of the Closing Date, including the Pension Liabilities ("Benefits Credit"). If required by applicable law, Purchaser shall give each employee at the Property who is employed by Seller as of the Closing Date an option and election whether to receive payment of an amount equal to such employee's Benefits Credit as of the Closing Date or to continue to accrue and receive the benefit of such Benefits Credit while employed by Purchaser after the Closing Date. The covenants and agreements contained in this Paragraph 14(d) are not intended and shall not confer any benefit or right on any person or entity other than the parties to this Agreement. Seller shall be and remain solely responsible for payment of any other payroll and employee benefits accrued in connection with employees at the Property for any period prior to the Closing Date and shall indemnify, defend and hold Purchaser harmless therefrom.
- (e) **Not a Successor.** Nothing in this Agreement shall cause Purchaser to be deemed to be a successor to Seller with respect to any matter affecting the Property, including without limitation, the employment of its employees. Seller shall remain solely liable for any and all claims arising from Seller's use, occupancy or operation of, or employment or termination by Seller of employees at the Property through the Closing Date, shall indemnify Purchaser for any and all such claims and shall reimburse Purchaser's reasonable costs of the defense thereof. Purchaser shall remain solely liable for any and all claims arising from Purchaser's use, occupancy or operation of, or employment or termination by Purchaser of employees at the Property on and after the Closing Date, shall indemnify Seller for any and all such claims and shall reimburse Seller's reasonable costs of the defense thereof. Nothing in this subsection (e) shall reduce, alter, waive, construe or otherwise affect (a) any agreement between any one of the parties, on the one hand, and any other party, on the other hand, pertaining to Seller's or Purchaser's rights against and obligations to such other parties with respect to the Property; or (b) any right, remedy or defense at law, in equity or otherwise.

- (f) **Credit for Payment by Purchaser.** Solely for the purposes of determining the reduction of Seller's liability pursuant to 29 U.S.C. § 2104(a)(2), but for no other purpose, Purchaser's payment of wages, benefits and other compensation to employees at the Hotel during any period of time shall be deemed to have been paid by Seller also.

15. Loss by Fire, Other Casualty or Condemnation.

- (a) **Material Damage.** In the event that, prior to the Closing, the Property is destroyed or materially damaged (as defined in Section 15(c) below) by casualty, Purchaser shall have the right, exercisable by giving notice to Seller within fifteen (15) days after receiving written notice of such casualty, either (i) to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder except that Purchaser and Seller each shall be responsible for one-half of any title or escrow cancellation fee, and Purchaser shall remain obligated under Section 3, or (ii) to accept the Property in its then condition and to proceed with the Closing with an abatement or reduction in the Purchase Price in the amount of the deductible for the applicable insurance coverage, in which case Purchaser shall be entitled to receive an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction. If Purchaser elects to proceed under clause (ii) above, Seller shall not compromise, settle or adjust any claims to such proceeds without Purchaser's prior written consent.
- (b) **Non-Material Damage.** In the event that, prior to the Closing, there is any non-material damage to the Property caused by casualty, Seller shall elect either (i) to repair or replace such damage prior to the Closing and Purchaser shall proceed with the Closing following completion of such repair or replacement, or (ii) to proceed to Closing without repair or replacement of the damage, in which case the Purchase Price shall be reduced by the amount of any deductible or self-insurance for the applicable insurance coverage and Purchaser shall be entitled to receive an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction; *provided, however*, that any cost or expense incurred by Seller in connection with repairing or replacing such damage shall not be included in any closing or post-closing proration or adjustment of the Purchase Price or otherwise credited to Seller's benefit in connection with this transaction.
- (c) **Business Interruption Insurance.** Purchaser shall be a loss payee and additional insured under the property insurance carried by Seller, but only for loss resulting from the necessary interruption of business conducted by the Purchaser after the Closing Date and caused by damage, or destruction to Real Property and Personal Property by any of the perils covered by Seller's insurance, provided that such damage or destruction occurs prior to Closing. Purchaser's interest under the policy shall be subject to Purchaser adhering to all terms and conditions contained therein, including the requirement to exercise due diligence and dispatch to restore the business to normal operating conditions. Purchaser shall have no interest or protection under Seller's insurance for destruction or damage occurring after closing.
- (d) **Definition of Material Damage.** For purposes of this Section 15, damage to the Property shall be deemed to involve a material portion thereof if the estimated cost of restoration or repair of such damage reasonably estimated by Seller shall exceed Two Million Dollars (\$2,000,000).
- (e) **Condemnation.** In the event that, prior to the Closing, the entire Property, or any substantial portion thereof, is subject to a condemnation by a public authority, then Purchaser shall have the right, exercisable by giving notice to Seller within fifteen (15) days after receiving written notice of such taking, either (a) to terminate this Agreement and obtain a refund of the Deposit, in which case neither party shall have any further rights or obligations hereunder, except that Purchaser and Seller shall each be responsible for one half of any title or Escrow cancellation fee and Purchaser shall remain obligated under Section 3, or (b) to accept the Property in its then condition and proceed to close this transaction, and to receive an assignment of all of Seller's rights to any condemnation awards payable by reason of such condemnation. If Purchaser elects to proceed under clause (b) above, Seller shall not compromise, settle or adjust any claims to such awards without Purchaser's prior written consent. Seller agrees to give Purchaser prompt notice of any threatened taking of the Property promptly after Seller receives notice of the same. For the purposes of this Section 15(d) "substantial portion" shall mean any portion of the Property valued, in the reasonable estimate of Seller, at Two Million Dollars (\$2,000,000).

16. Default. Except as otherwise provided in this Agreement, in the event of a default hereunder, the parties shall have all the rights available to them in law and equity, except that:

- (a) **LIQUIDATED DAMAGES - DEPOSIT.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF THE SALE OF THE PROPERTY TO PURCHASER IS NOT CONSUMMATED AS A

RESULT OF ANY REASON OTHER THAN (1) SELLER'S DEFAULT UNDER THIS AGREEMENT, OR (2) TERMINATION OF THIS AGREEMENT PURSUANT TO SECTIONS 1(b), 2(e), 6(b), 8(b), 15(a), 15(d), 16(b), or 17(s), SELLER SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS SELLER'S LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF PURCHASER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH FAILURE, PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHTS TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES, NOR WAIVE OR AFFECT SELLER'S RIGHTS AND PURCHASER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF ANY APPLICABLE STATUTE OR LAW, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION.

SELLER'S INITIALS

PURCHASER'S INITIALS

- (b) **Seller's Breach Pre-Closing.** If Seller shall have failed to perform in any material respect any of the covenants and agreements contained herein to be performed by Seller within the time for performance as specified herein, Purchaser's remedy shall be the termination of Purchaser's obligations under this Agreement by written notice to Seller, in which case the Deposit shall be returned to the Purchaser, and Seller shall be responsible for any title or escrow cancellation fee and Purchaser's actual, reasonable and documented out-of-pocket expenses incurred in connection with this Agreement and the transaction set forth herein, not to exceed \$150,000. The foregoing sentence notwithstanding, if Purchaser is ready, willing and able to purchase the Property on the Closing Date pursuant to this Agreement, and such ability is evidenced by the delivery of the Purchase Price to Escrow Holder, and Seller refuses to convey title to the Property to Purchaser in accordance with the terms of this Agreement (except in the event of the failure of any of Seller's Conditions Precedent), Purchaser may file an action for specific performance of this Agreement. For each day that the Purchase Price remains with Escrow Holder in connection with this Section 16(b) and Seller has not performed its obligations in order to close escrow, Purchaser will be entitled to interest on the amount deposited Purchaser at the rate of 8% per annum.
- (c) **Purchaser Aware that Seller's Representations Untrue.** If Purchaser has actual knowledge that any of Seller's representations and warranties contained herein are not materially true and correct prior to the Close of Escrow then Purchaser's sole remedy shall be to either (i) terminate this Agreement by written notice to Seller and Escrow Holder, in which event the Deposit shall be returned to Purchaser and Seller shall reimburse Purchaser for Purchaser's actual, reasonable and documented out-of-pocket expenses in connection with this Agreement and the transaction set forth herein, not to exceed \$150,000 or (ii) waive any and all claims directly or indirectly related to the representation and/or warranty and proceed to the Closing.
- (d) **Post-Closing Claim by Purchaser.** Any claim by Purchaser for any breach of any representation or warranty after the Close of Escrow, or any other claim for breach of this Agreement, other than pursuant to Section 12(b)(iii), Section 10, and Section 13(e), shall be subject to the following: (i) no such claim shall be made until the damages from all such claims are at least \$50,000 in the aggregate (but if such claims exceed \$50,000, Purchaser shall be entitled to make a claim for the entire amount), (ii) any such claim must be made within one (1) year of the Close of Escrow and (iii) Purchaser shall be limited to its actual compensatory damages not to exceed \$2,000,000 in the aggregate from all claims, but shall not be entitled to consequential or punitive damages.

17. Miscellaneous.

- (a) **Waiver of Performance.** Either party may waive the satisfaction or performance of any conditions or agreements in the Agreement which have been inserted for its own and exclusive benefit, so long as the waiver is in writing (unless this Agreement provided for a non-written waiver) and specifies the waived condition or agreement and is delivered to the other party hereto and to the Escrow Holder.

- (b) **Paragraph Headings.** The paragraph headings of this Agreement are for purposes of reference only and shall not be used for limiting or interpreting the meaning of any paragraph.
- (c) **Notices.** All notices under this Agreement shall be in writing and shall be effective upon actual receipt whether delivered by personal delivery, legible facsimile or nationally recognized overnight courier (such as Federal Express or United Parcel Service) or sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the respective parties addresses indicated in the Summary.
- (d) **Amendments.** This Agreement may be amended only by written agreement signed by both of the parties hereto.
- (e) **Time of the Essence.** Time and each of the terms, covenants, conditions and contingencies of this Agreement are hereby expressly made of the essence.
- (f) **Counterparts.** This Agreement may be executed in several counterparts and all such executed counterparts shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.
- (g) **Governing Law.** The validity, construction and operational effect of this Agreement shall be governed by the laws of the State of California.
- (h) **Attorneys' Fees and Costs.** In any action between the parties hereto seeking the enforcement of any of the terms or provisions of this Agreement, or in connection with the Property, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees, charges and expenses.
- (i) **Prior Agreements.** This Agreement supersedes any and all oral or written agreements between the parties hereto regarding the Property which are prior in time to this Agreement. Neither Purchaser nor Seller shall be bound by any prior understanding, agreement, promise, representation or stipulation, express or implied, not specified herein.
- (j) **Further Assurance.** Purchaser and Seller agree to execute all documents and instruments reasonably required in order to consummate the purchase and sale herein contemplated.
- (k) **Successors and Assigns.**
 - (i) Purchaser shall have the right to assign all of its right, title and interest in, to and under this Agreement to any Affiliate of Purchaser but to no other person or entity (herein "Person") without the prior written consent of Seller, which consent shall not be unreasonably withheld, delayed or conditioned. As used herein with respect to Purchaser, the term "Affiliate" shall mean any other Person who, directly or indirectly, is owned or controlled by or is under common control with Purchaser as well as any Person that owns or controls Purchaser, directly or indirectly. For purposes of this definition, "own" or "ownership" means ownership by one Person of fifty-one percent (51%) or more of the voting stock of the controlled Person, in the case of a corporation, or, in the case of Persons other than corporations, entitlement of the controlling Person, directly or indirectly, to receive fifty-one percent (51%) or more of the dividends, profits or similar economic benefit from the controlled Person; and "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the controlled Person. No assignment made by Purchaser shall be of any force or effect whatsoever unless and until Purchaser shall have delivered to Seller, at least ten (10) business days prior to the Closing Date (1) a notice of assignment, (2) a counterpart of such assignment, duly executed by Purchaser and the assignee, and (3) an assumption agreement with respect thereto in favor of Seller, duly executed by Purchaser and the assignee. Notwithstanding anything to the contrary contained herein, no such assignment shall relieve the assigning party from its liability under this Agreement. Any assignment made in violation hereof or which does not comply with the provisions hereof is and shall be null and void.
 - (ii) Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- (l) **Possession.** Seller shall deliver possession of the Property to Purchaser as of 12:01 a.m. on the Closing Date, including all keys in Seller's possession, all books and records relating to the Property, and originals of documents delivered hereunder, such possession being subject only to the rights of tenants and guests in possession.

- (m) **Severability.** If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.
- (n) **Broker's Fees and Commissions.** Except with respect to Seller's Broker (the "Seller's Broker"), Purchaser and Seller each represent and warrant to the other that they have not entered into any agreement or taken any action which will result in any obligation to pay any brokerage, finder's fee or similar commission in connection with the purchase and sale of the Property as herein contemplated, and each agrees to indemnify, defend and hold the other harmless from and against any and all claims for brokerage commissions and fees or finder's fees payable in connection with the sale of the Property or the transactions covered and contemplated by this Agreement resulting from the act or omission of such indemnifying party. Seller's Broker shall be compensated directly by Seller in accordance with a separate listing agreement between Seller and Seller's Broker. Nothing in this Agreement shall be construed to confer any third party benefit on any broker or any other person not a party hereto with respect to this Agreement. Each party represents and warrants to the other that it has not dealt with any brokers, agents or others in connection with the transaction contemplated herein, except Seller's Broker, which would give rise to any claim for a sales commission, finder's fee, or fee or commission of a similar kind or nature.
- (o) **Construction of Agreement.** The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. When required by the context, whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular, the masculine gender shall include the feminine and neuter genders, and vice versa. As used in this Agreement, the term "Seller" shall include the respective successors and assigns of Seller, and the term "Purchaser" shall include the successors and permitted assigns of Purchaser.
- (p) **Days.** As used herein "days" shall refer to calendar days and not business days. However, should any expiration date, due date or other time period fall on a Saturday, Sunday or holiday on which the New York Stock Exchange is closed for business for the entire day, such expiration date, due date or time period shall be extended to the next business day.
- (q) **Announcements.** Seller and Purchaser shall consult with each other with regard to all press releases and other announcements issued at or prior to the Closing concerning this Agreement or the transactions contemplated hereby and, except as may be required by applicable laws or the applicable rules and regulations of any governmental agency or stock exchange, neither Seller nor Purchaser shall issue any such press release or other such publicity prior to the Closing without the prior consent of the other party.
- (r) **Exchange Cooperation.** Either party shall be permitted to assign its obligations under this Agreement to an intermediary for the purpose of effectuating a tax-deferred exchange or reverse tax deferred exchange of like kind property under IRS Code Section 1031 ("1031 Exchange") and the regulations thereunder, so long as such assignment shall not (a) delay or extend the Closing Date, or (b) require the other party to assume any additional obligations, incur any out-of-pocket expenses, or take title to any other property. Neither party shall be, in any way, responsible or liable for the tax or other consequences of the tax-deferred exchange or reverse tax deferred exchange (or attempted tax-deferred exchange) effected by the other party. Each party shall reasonably cooperate with the other party to effectuate the other party's 1031 Exchange, including, but not limited to, executing an Acknowledgement of Assignment of Purchase Agreement.
- (s) **No Effect Until Mutual Execution.** The submission of this Agreement by Seller, its agent or representative for examination or execution by Purchaser does not constitute an option or offer to sell the Property upon the terms and conditions contained herein or a reservation of the Property in favor of Purchaser, it being intended hereby that this Agreement shall only become effective upon the execution hereof by Seller and Purchaser and delivery of a fully executed agreement to Purchaser and Escrow Holder.

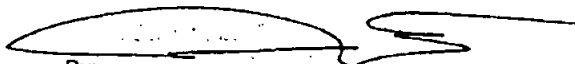
[The next page is the signature page.]

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the date first above written.

SELLER:

HILTON SAN DIEGO CORPORATION
a California corporation

By: 
Name: Robert M. LaForsia
Title: Senior Vice President

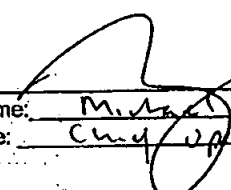
PURCHASER:

LHO MISSION BAY ROSIE HOTEL, L.P.,
a Delaware partnership

By: LHO Mission Bay Rosie Hotel, L.L.C.,
a Delaware limited liability company,
its General Partner

By: LaSalle Hotel Operating Partnership, L.P.,
a Delaware limited partnership
its managing member

By: LaSalle Hotel Properties,
a Maryland real estate investment trust
its General Partner

By: 
Name: Michael D. Barnello
Title: Chief Operating Officer

AGREED AND ACCEPTED:

COMMONWEALTH LAND TITLE COMPANY

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM
BY: <u>KAA</u>
Date: <u>11/18/05</u>

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of San Diego, State of California, described as follows:

Parcel 1

That portion of the tidelands and submerged or filled lands of Mission Bay – formerly False Bay – and a portion of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which was filed in the Office of the County Recorder of San Diego County, November 14, 1921 and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, described as a whole as follows:

Beginning at the Southeast corner of Lot 24 of Block 10 in the Resubdivision of Blocks 7, 8, 10 and a portion of Block 9 and Lot A of Inspiration Heights, according to Map thereof No. 1700, filed in the Office of the County Recorder of San Diego County;

Thence along the Southerly line of said lot South 89° 55' 56" West (record North 89° 59' West) 25 feet to a point of tangent curve in the boundary of said lot;

Thence South 0° 04' 04" East 2 feet to a line which is parallel with and 2 feet Southerly at right angles from the Southerly line of said Block 10;

Thence along said parallel line North 89° 55' 56" East 249.70 feet;

Thence North 5° 30' 02" West 104.06 feet to the United States Coast and Geodetic Survey, Triangulation Station "Old Town" (the Lambert Grid Co-ordinates California Zone 6 for said Station "Old Town" are X equals 1,712,415.69 and Y equals 213,820.33), said Station "Old Town" being the point of origin for the San Diego City Engineer's Mission Bay Park Co-ordinate System;

Thence North 27° 48' 28" West 13,663.23 feet to the United States Coast and Geodetic Survey Triangulation Station "Morena" the Lambert Grid Co-ordinates, California Zone 6 for said Station "Morena" are X equals 1,706,149.86 and Y equals 225,961.33, the Mission Bay Park Co-ordinates for said Station "Morena" being North 12,085.37 and West 6373.96;

Thence South 31°17'52" West, 1517.69 feet to the POINT OF BEGINNING, having NAD83 Lambert Zone 6 Coordinates of North 1865109.573 and East 6266767.295; Thence South 12°43'53" West, 316.00 feet to the beginning of a curve, concave Easterly, having a radius of 2465.00 feet, a radial line bears North 77°16'07" West; Thence Southerly along the arc of said curve 189.34 feet through a central angle of 4°24'04" to a point on said curve, to which a radial line which bears North 81°40'11" West; Thence South 81°40'11" East 30.00 feet; Thence South 8°02'09" West 25.00 feet; Thence North 82°15'28" West 30.00 feet to a point on a curve, concave Easterly, having a radius of 2465.00 feet, to which a radial line bears North 82°15'28" West; Thence Southerly along the arc of said curve 449.33 feet through a central angle of 10°26'39", to which a radial line bears South 87°17'53" West;; Thence South 67°09'03" West 423.61 feet; Thence North 26°55'52" West 45.50 feet to a point on a

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

curve, concave Easterly, having a radius of 19.00 feet, to which a radial line bears South 26°55'52" East; Thence Westerly, Northwesterly, Northerly, Northeasterly along the arc of said curve 59.69 feet through a central angle of 180°00'00", to a point on said curve, to which a radial line bears North 26°55'52" West; Thence North 26°55'52" West 132.80 feet; Thence North 23°05'58" West 40.40 feet; Thence North 9°31'58" West 52.70 feet; Thence North 1°54'02" East 57.30; Thence North 73°41'18" West 30.71 feet to the beginning of a curve, concave Easterly, having a radius of 167.00 feet, a radial line bears South 16°18'42" West; Thence Northwesterly and Northerly along the arc of said curve 249.08 feet through a central angle of 85°27'20", to a point hereinafter referred to as **POINT "A"**, to which a radial line bears North 78°13'58" West; Thence North 85°45'22" East 19.30 feet; Thence North 6°41'15" East 30.00 feet; Thence North 87°43'56" West 3.03 feet; Thence North 2°16'02" East 38.87 feet to a point hereinafter referred to as **POINT "B"**; Thence North 6°21'58" West 17.00 feet; Thence North 10°30'58" West 50.60 feet; Thence North 21°26'58" West 53.20 feet; Thence North 29°00'58" West 56.40 feet; Thence North 24°36'58" West 54.30 feet; Thence North 16°46'58" West 19.80 feet; Thence North 15°03'57" West 31.86 feet to the beginning of curve, concave Easterly, having a radius of 1525.13 feet, a radial line bears South 83°20'24" West; Thence Northerly along the arc of said curve 84.96 feet through a central angle of 3°11'30" to the beginning of a compound curve, concave Easterly, having a radius of 2142.16 feet, a radial line bears South 86°31'54" West; Thence Northerly along the arc of said curve 55.46 feet through a central angle of 1°29'01" to an intersection with a curve, concave Easterly, having a radius of 19.00 feet, a radial line to said intersection bears South 1°59'06" East; Thence Westerly, Northwesterly, Northerly, Northeasterly and Easterly along the arc of said curve 60.04 feet through a central angle of 181°01'00" to a point on curve, concave Easterly, having a radius of 2142.16 feet, a radial line to said point bears South 89°01'54" West; Thence Northerly along the arc of said curve 222.34 feet through a central angle of 5°56'48", to which a radial line bears North 85°01'18" West; Thence South 80°26'56" East 873.32 feet to the **POINT OF BEGINNING**.

EXCEPTING THEREFROM all gas, oil, minerals or water upon or beneath said land. Reserving an easement and right of way for slope rights in excavation or embankment over the Easterly 10.00 feet thereof.

Parcel 2 (Pier and Walkway)

The revocable permission to maintain a concrete walkway and portions of a pier serving Parcel No. 3, being a strip 13.00 feet wide lying 6.50 feet on each side of the following described line:

Commencing at **POINT "B"** as set out and established in Parcel No. 1 above; Thence North 6°21'58" West 12.00 feet to the **POINT OF BEGINNING**, NAD 83 Zone 6 Lambert Coordinates of said **POINT OF BEGINNING** being North 1864601.568 and East 6266002.588; Thence South 73°46'04" West 88.70 feet to the Mean High Tide Line of Mission Bay.

The side lines of said 13.00 foot strip to be extended or shortened to terminate as follows:

On the West at the mean high tide line and on the East, at the Westerly line of above said Parcel 1.

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

Parcel 3 (Docks)

A 155.00 foot wide strip of land Southwesterly of the Mean High Tide Line lying 77.50 feet on each side of the following described line:

BEGINNING at the POINT OF BEGINNING for aforesaid Parcel No. 2; Thence South 73°46'04" West, 252.00 feet.

On the East, the side lines of said 155.00 foot strip are to be extended or shortened to terminate at the Mean High Tide Line.

Parcel No. 4 (Boat Dock Building)

Being the revocable permission to maintain a boat dock building on the following described parcel.

BEGINNING at POINT "A" as set out and established in Parcel No. 1 above; Thence North 78°13'55" West 23.11 feet; Thence North 7°23'30" East 28.40 feet; Thence South 87°43'58" East 38.71 feet; Thence South 87°43'56" East 3.03 feet; Thence South 6°41'15" West 30.00 feet; Thence South 85°45'22" West 19.30 feet to the POINT OF BEGINNING

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT B

SCHEDULE OF CONTRACTS

1. ADP (Annual prepaid service; Invoice provided)
2. All Service (ASC) dated December, 2004
3. Aquatic Quality Assurance dated January 1, 2004
4. ASCAP (Annual paid license; Invoice provided)
5. Avian dated July 19, 2005
6. Brother's Building (HMS) dated January 29, 2004
7. Dunbar dated July 19, 2004
8. Homisco dated January 31, 2004
9. HRC International dated June 24, 2005 and August 1, 2005
10. Kone dated March 6, 2002
11. Lodgenet Entertainment Corp. (Corporate Contract)
12. Millicare dated October 24, 2001
13. Mobile Mini dated August 5, 2004
14. Muzak dated January 3, 2003
15. Nextira dated October 24, 2001
16. Nortel dated January 3, 2005
17. OnQ (Hotel Information Technology Systems dated November 22, 2002)
18. Kolland dated August 22, 2005
19. Pitney Bowes (date N/A)
20. Presentation Services dated November 13, 2002
21. SD Games dated October 7, 2004
22. SDA Security Systems dated May 20, 2003
23. Siemens dated January 25, 2005
24. Simplex Grinnell dated March 15, 2005
25. Steritech dated February 10, 2005
26. STSN dated February 3, 2004
27. Pots of Gold (date N/A)
28. Telecheck dated February 16, 1999
29. Ware Disposal Company dated February 16, 2005
30. Xerox dated May 28, 2004
31. Coca Cola Co. dated July 17, 2005
32. HIS Micros dated January 1, 2005
33. Scottel Voice & Database, Inc. dated January 31, 2005

EXHIBIT C
ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

(Space Above for Recorder's Use Only)

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE ("Assignment") is made as of the ____ day of _____, 2005 by **HILTON SAN DIEGO CORPORATION**, a California corporation ("Assignor"), whose address is c/o Hilton Hotels Corporation, World Headquarters, 9336 Civic Center Drive, Beverly Hills, California 90210, Attention: General Counsel, to **LHO MISSION BAY ROSIE HOTEL, L.P.**, a Delaware limited partnership, ("Assignee"), whose address is c/o LaSalle Hotel Properties, 3 Bethesda Metro Center, Suite 1200, Bethesda, Maryland 20814, Attention: Chief Operating Officer.

RECITALS

- A. Assignor as "Seller" and Assignee as "Purchaser" have entered into that certain Agreement of Purchase and Sale (the "Purchase Agreement") dated as of October ____, 2005, pursuant to the terms of which Assignor shall sell to Assignee and Assignee shall purchase from Assignor all of Assignor's right, title and interest under the Ground Lease (as defined below), including the hotel (the "Hotel") commonly known as the "Hilton San Diego Resort" located at 1775 East Mission Bay Road, San Diego, California 92109, as more particularly described in Exhibit A attached hereto.
- B. Pursuant to the terms of the Purchase Agreement, Assignor desires to assign to Assignee, and Assignee desires to accept such assignment from Assignor, all the right, title and interest of Assignor in and to that certain City of San Diego Percentage Lease executed July 27, 2000 by and between the City of San Diego, a municipal corporation, and Hilton San Diego Corporation and filed in the Office of the City Clerk, San Diego, California on September 12, 2000 as Document No. 293815 (the "Ground Lease").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment and Assumption.** Effective as of the date thereof (the "Effective Date"), Assignor hereby grants, assigns, transfers and conveys to Assignee, and Assignee hereby accepts from Assignor such grant, assignment, transfer and conveyance, all right, title and interest of Assignor in and to the Ground Lease. Assignee hereby assumes and agrees to perform and to be bound by all of the terms, covenants, conditions and obligations of Assignor under the Ground Lease which arise on or after the Effective Date (the "Post- Effective Date Obligations").

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

2. **Assignee Indemnity.** Assignee hereby agrees to protect, defend, indemnify and save and hold harmless Assignor from and against the Post Effective Date Obligations and any and all liability, loss, costs, damage or expense (including attorneys' fees, charges and expenses) which Assignor may incur in connection with the Ground Lease arising from events occurring on or after the Effective Date, and from any and all claims and demands whatsoever which may be asserted against Assignor by reason of any alleged obligation or undertaking on Assignee's part or failure of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Ground Lease, which claims or demands arise from events occurring on or after the Effective Date.
3. **Assignor Indemnity.** Assignor hereby agrees to protect, defend, indemnify and save and hold harmless Assignee from and against any and all liability, loss, cost, damage or expense (including attorneys' fees, charges and expenses) which Assignee may incur under the Ground Lease and from and against any and all claims and demands whatsoever which may be asserted against Assignee, by reason of any alleged obligation or undertaking on Assignor's part or failure of Assignor to perform or discharge any of the terms, covenants or agreements contained in any of the Ground Lease which claims or demands arose from events occurring prior to the Effective Date.
4. **Further Assurances.** Each party agrees to execute such other and further instruments and documents as may be necessary or proper in order to consummate the transaction contemplated by this Assignment.
5. **Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of Assignor and Assignee.
6. **Attorneys' Fees and Costs.** If either party to this Assignment brings any action or suit against the other party to this Assignment by reason of any breach of any covenant, condition, agreement or provision on the part of the other party set forth in this Assignment, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges and expenses, in addition to any other relief to which it may be entitled.
7. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of California.
8. **Conflict with Purchase Agreement.** This Assignment is intended to implement the terms and conditions of the Purchase Agreement. If any of the provisions hereof are in direct conflict with the provisions of the Purchase Agreement, the Purchase Agreement shall control.
9. **Counterparts.** This Assignment may be executed in several counterparts and all such executed counterparts shall constitute one Assignment, binding on all of the parties hereto, notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

[Signature Page Follows]

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

ASSIGNOR

HILTON SAN DIEGO CORPORATION,
a California corporation

By: EXHIBIT – DO NOT SIGN
Name: _____
Title: _____

ASSIGNEE:

LHO MISSION BAY ROSIE HOTEL, L.P.,
a Delaware partnership

By: **LHO Mission Bay Rosie Hotel, L.L.C.,**
a Delaware limited liability company,
its General Partner

By: **LaSalle Hotel Operating Partnership, L.P.,**
a Delaware limited partnership
its managing member

By: **LaSalle Hotel Properties,**
a Maryland real estate investment trust
Its General Partner

By: EXHIBIT – DO NOT SIGN
Name: _____
Title: _____

**Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road**

Exhibit A to Assignment and Assumption of Ground Lease

Legal Description

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

State of California. (

County of _____)

On _____ before me, _____ personally
appeared _____, personally known to me (or proved
to me on the basis of satisfactory evidence) to be the person(s) whose name(es) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

to be the person(s) whose name(es) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted,
executed the instrument.

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

State of California. (

County of _____)

On _____ before me, _____ personally
appeared _____, personally known to me (or proved
to me on the basis of satisfactory evidence) to be the person(s) whose name(es) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT D

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that **HILTON SAN DIEGO CORPORATION**, a California corporation, whose address is c/o Hilton Hotels Corporation, World Headquarters, 9336 Civic Center Drive, Beverly Hills, CA 90210, Attention: General Counsel, ("Seller"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, lawful money of the United States, paid by **LHO MISSION BAY ROSIE HOTEL, L.P.**, a Delaware limited partnership, whose address is c/o LaSalle Hotel Properties, 3 Bethesda Metro Center, Suite 1200, Bethesda, Maryland 20814 ("Purchaser"), the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto Purchaser all Personal Property as defined in that certain Purchase and Sale Agreement dated _____ ("Purchase Agreement") between Seller and Purchaser with respect to the Property as defined therein.

TO HAVE AND TO HOLD the same unto Purchaser and its successors and assigns forever. Seller, for itself, its successors and assigns, does hereby warrant that it has good title to the Personal Property free and clear of all liens and encumbrances.

IN WITNESS WHEREOF, Seller has hereunto set its hand and seal by and through its duly authorized undersigned officer, this ____ day of _____, 2005.

HILTON SAN DIEGO CORPORATION,
a Delaware corporation

By: _____ **EXHIBIT -DO NOT SIGN**
Name: _____
Title: _____

EXHIBIT E

ASSIGNMENT OF INTANGIBLE PROPERTY

THIS ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY ("Assignment") is made as of the ____ day of _____, 2005 by HILTON SAN DIEGO CORPORATION, a California corporation ("Assignor"), whose address is c/o Hilton Hotel Corporation, World Headquarters, 9336 Civic Center Drive, Beverly Hills, California 90210, Attention: General Counsel, to LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership ("Assignee"), whose address is c/o LaSalle Hotel Properties, 3 Bethesda Metro Center, Suite 1200, Bethesda, Maryland 20814, Attention: Chief Operating Officer.

RECITALS

- A. Assignor as "Seller" and Assignee as "Purchaser" have entered into that certain Agreement of Purchase and Sale (the "Purchase Agreement") dated as of October ____, 2005, pursuant to the terms of which Assignor shall sell to Assignee and Assignee shall purchase from Assignor that certain hotel (the "Hotel") commonly known as the "Hilton San Diego Resort" located at 1775 East Mission Bay Road, San Diego, California 92109, as more particularly described in the Purchase Agreement.
- B. Pursuant to the terms of the Purchase Agreement, Assignor desires to assign to Assignee, and Assignee desires to accept such assignment from Assignor, all the rights, warranties, guaranties, business names, logos, agreements, utility contracts, approvals (governmental or otherwise), plans and specifications and other rights relating to the construction, ownership, operation and management of the Hotel, to the extent they can be as assigned (the "Intangible Property").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment and Assumption.** Effective as of the date of this Assignment (the "Effective Date"), Assignor hereby grants, assigns, transfers and conveys to Assignee, and Assignee hereby accepts from Assignor such grant, assignment, transfer and conveyance, all right, title and interest of Assignor in and to the Intangible Property. Assignee hereby assumes and agrees to perform and to be bound by all of the terms, covenants, conditions and obligations of Assignor under the Intangible Property which arise on or after the Effective Date ("Post-Effective Date Obligations").
2. **Assignee Indemnity.** Assignee hereby agrees to protect, defend, indemnify and save and hold harmless Assignor from and against the Post Effective Date Obligations, and from any and all claims and demands whatsoever which may be asserted against Assignor by reason of any alleged obligation or undertaking on Assignee's part or failure of Assignee to perform or discharge any of the terms, covenants or agreements contained in any of the Intangible Property, which claims or demands arise from events occurring on or after the Effective Date.
3. **Assignor Indemnity.** Assignor hereby agrees to protect, defend, indemnify and save and hold harmless Assignee from and against any and all liability, loss, cost, damage or expense (including attorneys' fees, charges and expenses) which Assignee may incur under the Intangible Property and from and against any and all claims and demands whatsoever which may be asserted against Assignee, by reason of any alleged obligation or undertaking on Assignor's part or failure of Assignor to perform or discharge any of the terms, covenants or agreements contained in any of the Intangible Property which claims or demands arose from events occurring prior to the Effective Date.
4. **Further Assurances.** Each party agrees to execute such other and further instruments and documents as may be necessary or proper in order to consummate the transaction contemplated by this Assignment.
5. **Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of Assignor and Assignee.

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

6. **Attorneys' Fees and Costs.** If either party to this Assignment brings any action or suit against the other party to this Assignment by reason of any breach of any covenant, condition, agreement or provision on the part of the other party set forth in this Assignment, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges and expenses, in addition to any other relief to which it may be entitled.
7. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of California
8. **Conflict with Purchase Agreement.** This Assignment is intended to implement the terms and conditions of the Purchase Agreement. If any of the provisions hereof are in direct conflict with the provisions of the Purchase Agreement, the Purchase Agreement shall control.
9. **Counterparts.** This Assignment may be executed in several counterparts and all such executed counterparts shall constitute one Assignment, binding on all of the parties hereto, notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

[Signature Page Follows]

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

ASSIGNOR

HILTON SAN DIEGO CORPORATION,
a California corporation

By: EXHIBIT – DO NOT SIGN
Name: _____
Title: _____

ASSIGNEE:

LHO MISSION BAY ROSIE HOTEL, L.P.,
a Delaware partnership

By: **LHO Mission Bay Rosie Hotel, L.L.C.,**
a Delaware limited liability company,
its General Partner

By: **LaSalle Hotel Operating Partnership, L.P.,**
a Delaware limited partnership
its managing member

By: **LaSalle Hotel Properties,**
a Maryland real estate investment trust
Its General Partner

By: EXHIBIT – DO NOT SIGN
Name: _____
Title: _____

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS ("Assignment") is made as of the ____ day of _____, 2005 by HILTON SAN DIEGO CORPORATION, a California corporation ("Assignor"), whose address is c/o Hilton Hotels Corporation, World Headquarters, 9336 Civic Center Drive, Beverly Hills, California 90210, Attention: General Counsel, to LHO MISSION BAY ROSIE LESSEE, INC., a Delaware corporation ("Assignee"), whose address is c/o LaSalle Hotel Properties, 3 Bethesda Metro Center, Suite 1200, Bethesda, Maryland 20814, Attention: Chief Operating Officer.

RECITALS

- A. Assignor as "Seller" and Assignee as "Purchaser" have entered into that certain Agreement of Purchase and Sale (the "Purchase Agreement") dated as of October ____, 2005 pursuant to the terms of which Assignor shall sell to Assignee and Assignee shall purchase from Assignor certain property, including the hotel (the "Hotel") commonly known as the "Hilton San Diego Resort" located at 1775 East Mission Bay Road, San Diego, California 92109, as more particularly described in the Purchase Agreement.
- B. Pursuant to the terms of the Purchase Agreement, Assignor desires to assign to Assignee, and Assignee desires to accept such assignment from Assignor, all the right, title and interest of Assignor in and to those contracts (the "Contracts") identified on *Schedule 1*, attached hereto and incorporated by reference herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

- 1. Assignment and Assumption.** Effective as of the date hereof (the "Effective Date"), Assignor hereby grants, assigns, transfers and conveys to Assignee, and Assignee hereby accepts from Assignor such grant, assignment, transfer and conveyance, all right, title and interest of Assignor in and to the Contracts. Assignee hereby assumes and agrees to perform and to be bound by all of the terms, covenants, conditions and obligations of Assignor under the Contracts which arise on or after the Effective Date (the "Post Effective Date Obligations").
- 2. Assignee Indemnity.** Assignee hereby agrees to protect, defend, indemnify and save and hold harmless Assignor from and against the Post Effective Date Obligations and any and all liability, loss, costs, damage or expense (including attorneys' fees, charges and expenses) which Assignor may incur in connection with the Contracts arising from events occurring on or after the Effective Date, and from any and all claims and demands whatsoever which may be asserted against Assignor by reason of any alleged obligation or undertaking on Assignee's part or failure of Assignee to perform or discharge any of the terms, covenants or agreements contained in any of the Contracts, which claims or demands arise from events occurring on or after the Effective Date.
- 3. Assignor Indemnity.** Assignor hereby agrees to protect, defend, indemnify and save and hold harmless Assignee from and against any and all liability, loss, cost, damage or expense (including attorneys' fees, charges and expenses) which Assignee may incur under the Contracts and from and against any and all claims and demands whatsoever which may be asserted against Assignee, by reason of any alleged obligation or undertaking on Assignor's part or failure of Assignor to perform or discharge any of the terms, covenants or agreements contained in any of the Contracts which claims or demands arose from events occurring prior to the Effective Date.
- 4. Further Assurances.** Each party agrees to execute such other and further instruments and documents as may be

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

necessary or proper in order to consummate the transaction contemplated by this Assignment.

5. **Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of Assignor and Assignee.
6. **Attorneys' Fees and Costs.** If either party to this Assignment brings any action or suit against the other party to this Assignment by reason of any breach of any covenant, condition, agreement or provision on the part of the other party set forth in this Assignment, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges and expenses, in addition to any other relief to which it may be entitled.
7. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of California.
8. **Conflict with Purchase Agreement.** This Assignment is intended to implement the terms and conditions of the Purchase Agreement. If any of the provisions hereof are in direct conflict with the provisions of the Purchase Agreement, the Purchase Agreement shall control.
9. **Counterparts.** This Assignment may be executed in several counterparts and all such executed counterparts shall constitute one Assignment, binding on all of the parties hereto, notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

(Signatures on Following Page)

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

ASSIGNOR

HILTON SAN DIEGO CORPORATION,
a California corporation

By: EXHIBIT - DO NOT SIGN
Name: _____
Title: _____

ASSIGNEE:

LHO MISSION BAY ROSIE LESSEE, INC.,
a Delaware corporation

By: LaSalle Hotel Properties,
a Maryland real estate investment trust
its General Partner

By: EXHIBIT - DO NOT SIGN
Name: _____
Title: _____

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

SCHEDULE 1 TO ASSIGNMENT OF CONTRACTS

SCHEDULE OF CONTRACTS

SCHEDULE 1 TO ASSIGNMENT OF CONTRACTS

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT G
NON-FOREIGN PERSON AFFIDAVIT

Under Section 1445 of the Internal Revenue Code of 1986, as amended (the "U.S. Code"), a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership, (the "Transferee"), that withholding of tax will not be required upon the transfer to Transferee by HILTON SAN DIEGO CORPORATION, a California corporation (the "Transferor"), of that certain real property located in the State of California and commonly known as the Hilton San Diego Resort (the "Property"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate, as those terms are defined in the U.S. Code and the Income Tax Regulations promulgated thereunder; and
2. Transferor's U.S. employer identification number is 95-2395937.
3. Transferor's principal place of business address is:

Hilton Hotels Corporation
9336 Civic Center Drive
Beverly Hills, California 90210
Attention: General Counsel

Transferor understands that this Certification may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment, or both.

Transferor understands that Transferee is relying on this Certificate in determining whether withholding is or will be required in connection with the transfer of the Property by Transferor to Transferee, and that Transferee may face liabilities if any statement contained in this certificate is false.

Transferor hereby indemnifies Transferee, and agrees to hold Transferee harmless, from any liability or cost which such Transferee may incur as a result of: (i) the Transferor's failure to pay any U.S. Federal Income tax which Transferor is required to pay under applicable federal law or (ii) any false or misleading statement contained herein. Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge declare that I have authority to sign this document on behalf of Transferor.

Dated: _____, 20__

"TRANSFEROR":

HILTON SAN DIEGO CORPORATION,
a California corporation

By: EXHIBIT - DO NOT SIGN
Name: _____
Title: _____

EXHIBIT H
LIQUOR LICENSE AGREEMENT

THIS LIQUOR LICENSE AGREEMENT (this "Agreement"), is made as of this ____ day of _____, 2005 (the "Effective Date"), by and among HILTON SAN DIEGO CORPORATION, a California corporation, ("Holder"), LHO MISSION BAY ROSIE LESSEE, INC., a Delaware corporation ("Owner") and MISSION BAY MANAGEMENT, LLC ("Manager").

Recitals

- A. Owner is the owner of certain property and improvements located at 1775 East Mission Bay Road, San Diego, California 92109 (the "Property"), including the hotel, bar, restaurant, and banquet facility (the "Hotel") conducted and operated out of the Property; and
- B. Holder holds an alcoholic beverage license or licenses which is or are used in connection with the operation of the Hotel collectively (such license or licenses and any renewals thereof being referred to herein as the "License"); and
- C. Owner is desirous of retaining Holder to operate the business to be conducted under the License from and after the date hereof until the expiration of the term hereof. Manager manages the Hotel on behalf of Owner; and
- D. Owner is desirous of managing the business to be conducted under the License on behalf of Holder and Holder is willing to permit such management, all upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt of which is acknowledged, the parties hereto agree as follows:

1. **Retainer.** Owner retains and employs Holder, as an independent contractor, to operate and manage, for and on behalf of Owner, the business conducted under the License during the Term (as defined herein). Holder retains and employs Manager, as an independent contractor, to operate and manage for and on behalf of Holder and Owner the business conducted under the License from and after the Effective Date through and including the Termination Date. Manager shall provide, and Holder will cooperate with Manager, at Manager's sole cost and expense, to be reimbursed by Manager immediately upon demand therefor by Holder, for the purchase of alcoholic beverages and the filing of state and local sales tax reports and returns and the remittance of all related taxes to be made by or in the name of Holder to the extent that Holder, as the holder of the License, is required under applicable laws to make such purchase and to file such reports and returns and remit such taxes in connection with the operation of the alcoholic beverage business conducted at the Hotel during the Term. Notwithstanding anything contained herein to the contrary, no such delegation, employment or appointment by Holder will be effective to the extent it violates any law, rule or regulation governing the actions contemplated by this Agreement.

2. **Term.** The term of this Agreement (the "Term") shall commence on the date hereof and shall end upon the earlier to occur of the following (the "Termination Date"): (a) ninety (90) days after the Effective Date or (b) the date that a temporary permit to operate, which authorizes the sale and service of alcoholic beverages in connection with the operation of the Hotel (a "New License") is issued by the California Department of Alcoholic Beverage Control to Owner, Manager or their designee. Manager and Owner represent to Holder that Owner, Manager or their designee has, or within five (5) days after the date of this Agreement, shall have filed for the New License, and thereafter will use its best efforts in diligently pursuing its applications for the New License. Holder represents and warrants to Owner and Manager that in the event that the License it holds is to expire prior to the end of the Term, to the extent permitted by the applicable authorities, it will file such applications and information as may be required to renew or extend the expiration date of such License for at least the Term hereof and to exercise all reasonable efforts to ensure that such License is not suspended, revoked or terminated during the Term hereof all at the sole cost and expense of Owner which will be reimbursed to Holder immediately upon demand therefor by Holder. This

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

Agreement shall terminate without notice at 11:59 p.m. on the Termination Date. In the event of an occurrence between the date hereof and the Termination Date that would prevent Owner from obtaining the New License for the Hotel, and such event was not caused by Owner, the Termination Date will be extended until Owner is able to the New License.

3. **No Partnership Created.** This Agreement shall not be construed as giving rise to a partnership or co-ownership among any of the parties hereto, and no party shall be liable for the debts or obligations incurred by any other, except to the extent expressly provided herein.

4. **Operation and Management Duties.** Manager, at Owner's cost and expense:

4.1. Shall operate the business conducted under the License at the Hotel in a businesslike manner and in compliance with all municipal, county, state or federal statutes, codes, ordinances, laws, rules or regulations (collectively, "Laws") pertaining thereto, and shall further keep the Property in a reasonably neat, clean and orderly condition, until such time as this Agreement terminates.

4.2. Shall not, in connection with the operation of the Hotel, permit sales to be made or alcoholic beverages to be served to, or possessed or consumed by, any person in violation of applicable Laws. All fines and penalties imposed by reason of any violation or failure of Manager or its employees or agents to abide by the provisions of applicable Laws, including those provisions relating to the sale and service of alcoholic beverages at the Hotel, and all expenses, including legal fees, incurred by Holder as a result of such failure or alleged failure, shall be paid and borne by Manager or Owner as provided in the management agreement between Owner and Manager (the "Management Agreement").

4.3. Shall, throughout the Term, maintain all other licenses and permits, if any, it is required to maintain in connection with the business conducted under the License and all parties hereto agree to take no action which will cause a revocation of the same and further agree to take all actions necessary to renew the same in a timely manner at the sole cost and expense of Manager.

4.4. Shall comply with all Laws now in effect or that may hereinafter be enacted by any local municipal, state or federal government, insofar as the same pertains to the business conducted under the License in and upon the Property.

4.5. Shall neither use nor permit the Property or any part thereof to be used for any unlawful or hazardous purposes.

4.6. Shall operate the business conducted under the License on the Property continuously during normal business hours except when prevented by destruction of the Property by fire or other casualty, or by other valid reason beyond the reasonable control of Manager in a businesslike manner as the same is now operated without any change in any material adverse respect in the mode of operation, or the general manner in which the business is conducted and in compliance in all material respects with applicable Laws, and shall keep the Property in a reasonably neat, clean and orderly condition.

4.7. Shall train, supervise, direct, discipline, and, if necessary, discharge personnel working at the operation of the Hotel in accordance with Manager's personnel policies. All personnel directly or indirectly involved with the sale and service of alcoholic beverages will be certified by an alcoholic beverage service school approved pursuant to the Liquor Laws.

5. **Manager's Investment and Expenses.** Owner shall be responsible for obtaining or paying or causing to be obtained or paid, as the case may be, all expenses for the operation of the Hotel, including the following, at its sole cost and expense:

5.1. All labor required to operate the business conducted under the License.

5.2. All supplies which reasonably may be required in the operation of said business conducted under the License. All alcoholic beverages, as well as all other supplies, merchandise and inventory, shall be paid for by Owner promptly. It is understood that all alcoholic beverage purchases, until the Termination Date, shall be made in the name and on the account of Holder, and Manager is hereby authorized to so make such purchases.

5.3. All employees' salaries, federal withholding, state withholding, Social Security, state and federal unemployment insurance, personal property taxes, health department license and permit fees, all sales taxes, and federal, state and county income taxes, as and when the same become due and payable (provided, however, that Manager or Owner, as applicable, shall have the right to contest in good faith the validity or amount of any taxes or fees by appropriate proceedings, so long as such proceedings do not interfere with the operation of the Hotel or result in a default under any loans secured by an interest in or otherwise related to the ownership or operation of the Property).

5.4. So-called "Dram Shop" or "Innkeeper's Liability" insurance in an amount of at least \$10,000,000 against claims or liability arising directly or indirectly to persons or property on account of the sale or dispensing of alcoholic beverages, including in such coverage loss of means of support, all in amounts as may be required by Law, naming Holder as an additional insured, and maintained with insurance carriers that are reasonably satisfactory to Holder and Owner.

5.5. Public liability insurance with limits of at least \$5,000,000, naming Holder as an additional insured, maintained with insurance carriers that are reasonably satisfactory to Holder and Owner.

5.6. Statutory Workmen's Compensation insurance.

5.7. All other operating cash and funds required in the conduct of said business conducted under the License.

5.8. All utility and other operating charges, including but not limited to those for natural gas, electricity, telephone, advertising, maintenance expenses, water and sewerage charges, trash removal charges, and maintenance charges not herein enumerated, and other charges attendant to the use and occupancy of the Property when and as the same become due (provided, however, that Manager or Owner, as applicable, shall have the right to contest in good faith the validity or amount of any charges by appropriate proceedings, so long as such proceedings do not interfere with the operation of the Hotel or result in a default under any loans secured by an interest in or otherwise related to the ownership or operation of the Property).

5.9. All obligations that may be incurred by Manager at any time during the term of this Agreement shall be promptly paid by Manager or Owner, as provided in the Management Agreement, when due (subject to permitted contest consistent with the foregoing). Holder shall not be responsible for any debt or expense incurred by or on behalf of Owner or Manager.

6. **Recordkeeping; Funds.** Manager shall keep and maintain on the Property, on a daily basis, adequate records of the business conducted on the Property under the License. All such records shall be made available for examination by Holder or Holder's authorized representatives at all reasonable times during business hours. Such records shall include, but shall not be limited to, cash register tapes, purchase records, sale records, employment and payroll records, tax records, profit and loss statements, balance sheets, and other records normally maintained by such business.

7. **Division of Income.** All monies received in connection with the business conducted under the License shall be deposited in the Hotel related accounts of the Manager and Owner and shall be paid and applied to or for the use of, and in the following order of priority:

7.1. All taxes (whether federal, state or local) withheld or required to be withheld from sales or salaries, including contributions for social security payments, shall be promptly paid to the respective governmental authority when due.

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

7.2. Premiums for all insurance policies required by this Agreement shall be paid when due.

7.3. All licenses, permits and fees required to be paid shall be paid prior to the expiration date of the existing licenses and permits.

7.4. Money due for the purchase of alcoholic beverages and all other inventory and supplies shall be promptly paid when due (subject to any permitted contest consistent with the provisions of Section 5 above).

7.5. All other costs and expenses incident to the operation and management of the foregoing business conducted under the alcoholic beverage license, excluding compensation to Manager, shall next be paid when due.

7.6. Any and all compensation due Manager shall be payable to Manager only from the aforementioned account and only from net profits of the business conducted under the License, if any, and such shall not be an obligation of Holder or its officers or stockholders.

8. **Holder's Right to Terminate.** Holder shall have the right to terminate this Agreement upon notice in writing to Manager, mailed or delivered to the Property, upon the occurrence of one of the following events:

8.1. Should Manager or Owner default in the performance of any agreement set forth herein, and such default shall not be remedied within thirty (30) days after demand. Anything in this Section to the contrary notwithstanding, if a default cannot be cured by the payment of money or otherwise by ceasing to violate any Laws relating to the conduct of the business conducted under the License herein contemplated, and which cannot reasonably be performed promptly, Manager or Owner shall not be considered in default if it takes prompt action to commence curing the default, and continues diligently to exercise reasonable and bona fide efforts to cure the default.

8.2. Should Owner or Manager be declared insolvent or bankrupt, or make an assignment for the benefit of creditors, or in the event that a receiver is appointed or any proceedings are demanded by, for, or against Manager or Owner under any provision of the Federal Bankruptcy Act or any amendment thereof, or under the laws of any competent jurisdiction.

8.3. Should Manager abandon or fail to reasonably manage any of the foregoing business, and the foregoing business remains closed for business for a period of five (5) consecutive business days or more, except resulting from casualty or an act of God, unless Owner appoints a replacement manager during such five (5) day period.

9. **Obligations of the Parties Upon Termination.** Upon termination of this Agreement by lapse of time or for any other cause, other than as a result of the operation of clause (b) of Section 2 above, Manager shall immediately cease operating the business conducted under the License, and shall deliver the License to Holder.

10. **Holder's Participation.** Holder, its agents, employees or assigns shall assist Manager during the Term and may enter upon said Property at all business hours and other reasonable times.

11. **Indemnity.** Owner and Manager, jointly and severally, shall forever protect, save, and keep Holder, its affiliates and their respective equity owners, officers, directors, employees and agents (collectively, "Holder Indemnified Parties") harmless and indemnify the Holder Indemnified Parties against and from any and all claims, demands, losses, costs, damages, suits, judgments, taxes, penalties, expenses, and liabilities of any kind or nature whatsoever, whether justified or not (collectively, "Liabilities"), including attorneys' fees and costs of any defense, incurred or suffered by or brought against the Holder Indemnified Parties arising directly or indirectly out of or in connection with (a) the breach of this Agreement by Owner or Manager, (b) the sale or use of alcoholic beverages upon or out of the Property during the term hereof, and (c) the operation of the License or the business conducted under the License upon or out of the Property during the Term; provided, however that neither Owner nor Manager shall have any obligation to indemnify any Holder Indemnified Party for any Liabilities caused by the gross negligence or willful misconduct of such Holder Indemnified Party; BUT FURTHER PROVIDED, THE

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

FOREGOING INDEMNITY IS EXPRESSLY INTENDED TO INCLUDE, AND DOES INCLUDE, ANY CLAIMS IN CONNECTION WITH ANY OF THE LIABILITIES DESCRIBED IN THIS SECTION 11, INCLUDING CLAIMS ARISING AS A RESULT OF THE ORDINARY NEGLIGENCE OF THE HOLDER INDEMNIFIED PARTIES IN CONNECTION WITH SUCH LIABILITIES.. Each of Owner and Manager also agrees that it shall include all of the Holder Indemnified Parties as a loss payee on its insurance policies (and provide evidence thereof to Holder upon request) until such time as the License is transferred, or the New License is issued, to Owner, Manager or their designee.

12. **Guaranty by Owner.** Owner unconditionally, and, if more than one, jointly and severally, guaranties the full and punctual payment and performance when due of the obligations of Manager under this Agreement, including all reasonable attorney's fees and costs incurred by Holder in enforcing this Agreement.

13. **No Representation or Warranty.** HOLDER MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND HOLDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14. **Limitations of Liability.** NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL HOLDER BE LIABLE FOR DAMAGES OR LOSSES INCURRED IN CONNECTION WITH THIS AGREEMENT.

15. **Further Assurances.** The parties each agree to execute such documents in addition to those provided for herein as may be reasonably requested by the other to carry out the intent hereof or to satisfy the requirements of applicable authorities provided such does not alter the risks agreed to by the parties.

16. **Additional Remedies.** In the event of any default by any party hereunder, the other parties hereto shall be entitled to seek specific performance, enjoin such defaulting party, or exercise any other rights or remedies permitted at law or in equity. Any specific right or remedies set forth in this Agreement, legal, equitable, or otherwise shall not be exclusive but shall be cumulative upon all other rights and remedies set forth herein or allowed or allowable herein or by law.

17. **Integration; Waiver.** This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated hereby and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified or amended except by an instrument signed by the party against whom the enforcement of such waiver, modification or amendment is sought, and then only to the extent set forth in such instrument. No waiver by either party hereto of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

18. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State in which the Property is located, without giving effect to any conflicts of laws principles of such State.

19. **Captions Not Binding; Exhibits.** The captions in this Agreement are inserted for reference only and in no way define, describe or limit the scope or intent of this Agreement or of any of the provisions hereof. All Exhibits attached hereto shall be incorporated by reference as if set out herein in full.

20. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

21. **Severability.** If any term or provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

22. **Notices.** Any notice, request, demand, consent, approval and other communications under this Agreement shall be in writing, and shall be deemed duly given or made at the time and on the date when received by facsimile (provided that the sender of such communication shall send a copy of such communication by nationally recognized overnight delivery service to the appropriate parties within one (1) business day of such facsimile) or when personally delivered as shown on a receipt therefor (which shall include delivery by a nationally recognized overnight delivery service) to the address for each party set forth below. Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth below.

IF TO OWNER:

LHO MISSION BAY ROSIE HOTEL, L.P.
c/o LaSalle Hotel Properties
3 Bethesda Metro Center
Suite 1200
Bethesda, Maryland 20814

IF TO MANAGER:

MISSION BAY MANAGEMENT, LLC
c/o Westgroup Mission Bay, LLC
225 108th Avenue, N.E.
Suite 300
Bellevue, WA 98004
Attention: John M. Donoghue

IF TO HOLDER:

HILTON SAN DIEGO CORPORATION
9336 Civic Center Drive
Beverly Hills, California 90210

23. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

24. **Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment hereof.

25. **Facsimile Signatures.** Signatures to this Agreement transmitted by telecopy shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own telecopied signature and shall accept the telecopied signature of the other party to this Agreement.

(Signature page follows)

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

IN WITNESS WHEREOF, the parties have hereto caused their respective signatures and seals to be hereunto affixed the day and year first above written.

HOLDER:

HILTON SAN DIEGO CORPORATION,
a California corporation

By: _____
Name: _____
Title: _____

OWNER:

LHO MISSION BAY ROSIE LESSEE, INC.,
a Delaware corporation

By: _____ **EXHIBIT – DO NOT SIGN**
Name: _____
Title: _____

MANAGER:

MISSION BAY MANAGEMENT, LLC,
a Delaware limited liability company

By: _____ **EXHIBIT – DO NOT SIGN**
Name: _____
Title: _____

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT I
APPROVED CAPITAL EXPENSE ITEMS

Capital Project	Budgeted Expense Amount
Guest Room Renovation (All Buildings)	\$2,164,000
Tower Exterior Paint	\$76,000
Kitchen Renovation	\$94,000
Automated Business Center	\$45,000
Dishwasher	\$80,000
Mini Bar Replacement	\$114,000
Banquet Door Hardware Replacement	\$65,000
Telephone System Upgrade	\$286,000
Day Audit Software	\$30,000
Security System Upgrade	\$65,000
Guest Room Carpet	\$216,829
Guest Room Armoires	\$365,790
Sweet Dreams	\$147,114
Chiller	\$20,575
TV Project (Unbudgeted)	\$33,428
Hilton Logo Easels	\$3,240
Dryers Laundry	\$12,496
Refrigerators Housekeeping	\$19,050
Tennis Courts Resurface	\$14,500
Pool Deck Signage	\$2,210
Hot Towel Cabinet	\$942
Massage Chair Portable	\$648
Microdermabrasion Machine	\$4,416
Hobart Mixer	\$25,152
Podiums/W/Covers	\$7,600
Portable Heaters	\$8000
Boat Anchor/W/Chain	\$1,200
Engine Control Cables/Hydraulic Helm	\$3,200
Employee Cafeteria Rehab	\$7,760
A/C Telephone	\$4,500
Pool Deck Shower	\$2,100
Pool Heater	\$5,300
Tower Exhaust Fans	\$7,500
Ruud Hot Water Heater Tower	\$4,900
Ballroom Dimmers	13,770
Ice Machines	\$10,950
Spartan Jetter	\$2,700
Carpet Pavilion	\$13,550
Sewage Pump	\$5,650
Time Clocks	\$15,000
Pitney Bowes Mail Machine	\$10,000
Ping Pong Table	\$530
Heating Water Pump	\$3,250
AC Computer Room	\$4,500

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

AC Tennis Center	\$4,500
Carrier Chillers Controls	\$35,000
Windbreak Glass on Bar Patio	\$10,000
Total	\$4,066,850.00

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT J
LITIGATION

Pending Litigation (Non-Employment)	Pending Litigation (Employment-Related)	EEOC Charges
<u>Nieves Martin v. Hilton Hotels Corporation</u>. Superior Court of California, County of San Diego. Case No. GIC844756 Filing Date: 03/24/05. Slip & fall on tile; injury to left elbow; Accident Date: 12/28/2003	(WC) EE strained back while moving linen cart; Accident Date: 8/05/02	Race Discrimination Charge; filed 8/02/05.
	(WC) EE was pushing a cart when she felt strain in lower back. Accident Date: 9/14/2001	DLSE Wage & Hour Discrimination Complaint; filed 5/16/05.
	(WC) EE's back and knee began to hurt after jumping off bathtub; EE was cleaning ceiling. Accident Date: 11/25/1998	
	(WC) EE sitting on plastic chair, a leg broke and EE fell to floor, landed on right knee, straining knee. Accident Date: 9/14/2000	
	(WC) Elevator door closed on EE's right shoulder as she was getting out; sustained contusion. Accident Date: 4/01/2003	
	(WC) Injury to knees due to repetitive nature of work: bending; stooping, lifting. Accident Date: 6/01/1997	
	(WC) Repetitive stress in shoulders, neck due to pouring drinks. Accident Date: 8/06/2003	

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT K

LIQUOR ASSETS BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that HILTON SAN DIEGO CORPORATION, a California corporation, whose address is c/o Hilton Hotels Corporation, World Headquarters, 9336 Civic Center Drive, Beverly Hills, CA 90210, Attention: General Counsel, ("Seller"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, lawful money of the United States, paid by LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership, whose address is c/o LaSalle Hotel Properties, 3 Bethesda Metro Center, Suite 1200, Bethesda, Maryland 20814 ("Purchaser"), the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto Purchaser all the Liquor Assets as defined in that certain Purchase and Sale Agreement dated _____ ("Purchase Agreement") between Seller and Purchaser with respect to the Property as defined therein.

IN WITNESS WHEREOF, Seller has hereunto set its hand and seal by and through its duly authorized undersigned officer, this ____ day of _____, 2005.

HILTON SAN DIEGO CORPORATION,
a Delaware corporation

By: _____ EXHIBIT -DO NOT SIGN
Name: _____
Title: _____

EXHIBIT L

GUARANTY

THIS GUARANTY ("Guaranty") is entered into as of the ____ day of _____, 20____, by HILTON HOTELS CORPORATION, a Delaware corporation (the "Guarantor") for the benefit of LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership (the "Purchaser").

WITNESSETH:

WHEREAS, Hilton San Diego Corporation, a California corporation ("Seller"), and LHO Mission Bay Rosie Hotel, L.P., a Delaware limited partnership ("Purchaser"), entered into an Agreement of Purchase and Sale, dated as of October 31, 2005, as amended (the "Agreement"), pursuant to which Seller agreed to sell and Purchaser agreed to purchase the Hilton San Diego Resort, located at 1775 East Mission Bay Drive, San Diego, California 92109; and

WHEREAS, it is a condition of Purchaser's obligations under the Agreement that the Guarantor enter into this Guaranty for the benefit of Purchaser, and Guarantor has an interest in Seller and desires to have Purchaser perform its obligations under the Agreement;

NOW THEREFORE, to induce Purchaser to perform its obligations under the Agreement and for other good and valuable considerations, the receipt and sufficiency whereof are hereby irrevocably acknowledged, the undersigned unconditionally guarantees to Purchaser the full and faithful payment by the Seller of all of its obligations (the "Obligations") to Purchaser under and pursuant to the Agreement plus any reasonable, out-of-pocket and documented litigation expenses recoverable by Purchaser as the prevailing party in any litigation to enforce this Guaranty brought against Guarantor. As used herein, the term "Purchaser" shall include its successors and assigns.

1. Guarantor represents and warrants to Purchaser that (a) this Guaranty has been duly authorized, executed and delivered by it and constitutes the legal, valid and binding obligation of it enforceable against it in accordance with its terms, (b) neither the execution and delivery of this Guaranty, nor compliance with the terms and provisions hereof, will violate any presently existing provision of law or any presently existing regulation, order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality, or will conflict or will be inconsistent with, or will result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, any agreement, document or charter to which it is a party or by which it is bound, and (c) it has had access to the financial records of Seller and has fully satisfied itself with regard to those records prior to entering into this Guaranty.

2. The undersigned's obligations hereunder shall not be affected by any failure on the part of Purchaser to inform the undersigned concerning Seller's financial condition or notify the undersigned of any adverse change in the Seller's financial condition of which Purchaser becomes aware. Guarantor assumes the obligation to make such inquiries with respect to such financial condition as that Guarantor deems necessary or prudent in the circumstances. The liability of the undersigned hereunder shall in no way be affected, diminished or released by any extension of time or forbearance that may be granted by Purchaser to the Seller or by the acceptance by Purchaser of additional security for performance of the Agreement or any release, substitution or changes in any such security, or by any modifications, amendments or extensions of the Agreement agreed upon by Seller and Purchaser.

3. Purchaser, in its sole discretion, may waive or release any provision or provisions of the Agreement as Purchaser may deem proper or desirable, without any notice to or further assent from the undersigned and without in any manner impairing or affecting this Guaranty as to any provision(s) not so waived or released or any of the undersigned's obligations hereunder. The undersigned waives all rights and defenses arising out of an election of remedies by Purchaser, even though that election of remedies has destroyed the undersigned's rights of subrogation and reimbursement against the Seller. The undersigned waives all suretyship rights or defenses under applicable law.

4. Purchaser may enforce this Guaranty against the undersigned to the extent of its liability without the necessity at any time of resorting to or exhausting any other remedy or any other security or collateral and without the necessity at any time of having recourse to any of its rights or remedies under the Agreement, and without the necessity of proceeding against the Seller. This is a Guaranty of payment and performance and not merely of collection. The obligations of undersigned hereunder are absolute, primary, unconditional and irrevocable obligations, enforceable by Purchaser at Purchaser's election, simultaneously with or after proceeding against Seller or without the necessity of any suit or proceedings against Seller, and in any event, without the necessity of any notice of non-payment, non-performance or non-observance, or of any notice of acceptance of this Guaranty or any other notice or demand to which a undersigned might otherwise be entitled or that may be required to preserve any rights against a guarantor, all of which undersigned expressly waive.

5. In the event of a default under the Agreement, Purchaser may pursue, concurrently or successively, all rights and remedies available to it pursuant to the Agreement, and the exercise of any of its rights or the completion of any of its remedies shall not constitute a discharge of any obligations of the undersigned hereunder unless and until such default has been cured or remedied.

6. The liability of the undersigned hereunder or any remedy for the enforcement hereof shall in no way be affected by (a) the release or discharge of Seller in any creditors', receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liabilities of Seller to Purchaser or the estate of Seller or the other undersigned in bankruptcy, or of any remedy for the enforcement of Seller's said liability under the Agreement, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or (c) the rejection or disaffirmance of the Agreement or this Guaranty in any such proceedings.

7. No delay on the part of Purchaser in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Purchaser of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action of Purchaser permitted hereunder shall in any way affect or impair the rights of Purchaser and the obligations of the undersigned under this Guaranty.

8. Should Purchaser be obligated by any bankruptcy or other law to repay to Seller or the undersigned or to any trustee, receiver or other representative of any of them any amounts previously paid, then this Guaranty shall be reinstated in the amount of such repayment. Purchaser shall not be required to litigate or otherwise dispute its obligation to make such repayments if it in good faith and on the advice of counsel believes that such obligation exists.

9. This Guaranty shall in all respects be a continuing guaranty, and shall remain in full force and effect notwithstanding, without limitation, the dissolution of Seller or the undersigned until fulfillment of all of the Obligations.

10. This Guaranty constitutes the entire understanding of the parties respecting the subject matter hereof and supersedes all prior understandings, whether oral or written. This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever except by the express terms of a writing signed by the party or parties sought to be bound thereby.

11. Any notices that Purchaser or the undersigned may require, or may desire, to give hereunder shall be in writing and shall be deemed to have been given upon receipt. Such notices shall be sent in accordance with the notice requirements set forth in the Agreement. Unless otherwise notified in writing, the party giving the notice shall use the addresses of Purchaser and, in the case of the undersigned, the Seller set forth in the Agreement.

12. If there is any litigation based upon this Guaranty, the prevailing party in such litigation shall be entitled to recover its reasonable, out-of-pocket and documented expenses in such litigation, including court costs and reasonable attorneys' fees, from the other party. The undersigned and Purchaser waive trial by jury in any action, proceeding or counterclaim brought by either against the other on any matter arising out of or in any way connected with this Guaranty.

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

13. This Guaranty shall be binding upon the undersigned and its successors and assigns, and shall inure to the benefit of and may be enforced by the successors and assigns of Purchaser or by any person to whom Purchaser's interest in the Agreement or any part thereof, including may be assigned. Wherever in this Guaranty reference is made to either Seller, Purchaser or the undersigned, the same shall be deemed to refer also to the then successor or assign of Seller, Purchaser or the undersigned, as the case may be.

14. This Guaranty has been delivered in San Diego, California, and shall be construed in accordance with and governed by the laws of the State of California. Wherever possible each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed and delivered this ____ day of _____, 2005.

HILTON HOTELS CORPORATION,
a Delaware corporation

By: _____

Name: _____

Title: _____

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT M

GIFT CERTIFICATES

(Attached)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
2275	-827	KAREN VAUSE		11/20/1995	(202.55)
2275	-20	KAY BURR		08/3/1995	(24.00)
2275	-813	LISA CANELA		09/28/1995	(40.00)
2275	-824	LOUIS MOLINARY		11/15/1995	(285.09)
2275	-817	LUCKY WINNER		10/15/1995	(224.23)
2275	-837	MON & DAD		12/14/1995	(47.00)
2275	-797	NO NAME ON CERT		07/25/1995	(229.00)
2275	-835	PAM SAKAMOTO		12/12/1995	(142.55)
2275	-777	PAUL FERNANDES		06/19/1995	(100.00)
2275	-736	PRIZE WINNER		03/21/1995	(289.95)
2275	-776	PRIZE WINNER		06/16/1995	(226.80)
2275	-811	PRIZE WINNER		09/25/1995	(131.50)
2275	-814	PRIZE WINNER		10/25/1995	(344.75)
2275	-818	PRIZE WINNER		10/19/1995	(380.21)
2275	-831	PRIZE WINNER		12/5/1995	(404.75)
2275	-764	ROBERT & MARYANN LUGENBEA		5/22/1995	(131.50)
2275	-22	ROBERT KLIDY		9/29/1995	(25.68)
2275	-21	SUNDAY BRUNCH		09/22/1995	(46.97)
2275	-23	SUNDAY BRUNCH		09/30/1995	(26.68)
2275	-24	SUNDAY BRUNCH		10/3/1995	(26.68)
2275	-10002	ADELE CHANDLER		11/25/1996	(230.00)
2275	-997	ALOHA PROMOTION		10/22/1996	(38.67)
2275	-898	AUCTION WINNER		10/27/1996	(419.90)
2275	-863	BARBARA NANCE		01/16/1996	(47.20)
2275	-891	BEA BRUTON		04/4/1996	(43.90)
2275	-892	BETH EGGERT		04/4/1996	(43.90)
2275	-879	BRIAN & DAWN DRENK		10/13/1996	(60.00)
2275	-10015	CALVIN L KNIGHT		12/15/1996	(449.30)
2275	-888	CHERYL HUGHES		03/28/1996	(142.55)
2275	-21809	CONGRATULATIONS		05/20/1996	(224.95)
2275	-5203	DENNIS & KIM TYLER		12/15/1996	(16.50)
2275	-5205	DENNIS & KIM TYLER		12/15/1996	(16.50)
2275	-10017	GIFT CERT		12/18/1996	(164.65)
2275	-865	GIFT CERT		02/1/1996	(50.00)
2275	-900	GIFT CERT		04/18/1996	(40.00)
2275	-974	GIFT CERT		09/25/1996	(40.84)
2275	-10025	GIFT CERT		12/25/1996	(164.84)
2275	-862	GIFT CERT		09/13/1996	(192.55)
2275	-10026	GIFT CERT		12/25/1996	(379.30)
2275	-873	HAPPY BIRTHDAY & HAPPY AN		02/19/1996	(47.20)
2275	-821	HAPPY FATHERS DAY		06/12/1996	(100.00)
2275	-5153	HAPPY HOLIDAYS		12/19/1996	(55.00)
2275	-5138	JACK & CHRISTINA DASHWOOD		12/15/1996	(30.00)
2275	-5202	JACK & CHRISTINA DASHWOOD		12/15/1996	(16.50)
2275	-5204	JACK & CHRISTINA DASHWOOD		12/15/1996	(16.50)
2275	-5218	JOANNE & BUD GRANT		12/23/1996	(33.00)
2275	-885	KELLY YI		03/28/1996	(142.55)
2275	-10032	KURT HANSEN		12/30/1996	(164.65)
2275	-973	LES COLLINS		09/25/1996	(50.00)
2275	-980	LOWELL AND ALDENA SPATH		10/13/1996	(25.00)
2275	-21101	M & M DAVID BETHARD		01/11/1996	(40.00)
2275	-5133	M/M JOE GALANTE		11/19/1996	(90.00)
2275	-884	MANUAL MOYA		03/28/1996	(76.00)
2275	-887	MARIE FRANCE		03/28/1996	(142.55)
2275	-904	MARILYN HUERTA		05/7/1996	(254.15)
2275	-10014	MARK & SHANA GONZELMAN		12/15/1996	(287.30)
2275	-866	MARY CONTRERAS		02/1/1996	(50.00)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
2275	-5135	MERRY CHRISTMAS DENIST &		12/2/1996	(30.00)
2275	-953	MIKE MUEHLHAUSEN		08/21/1996	(285.09)
2275	-926	MR & MRS RICHARD MENDOZA		07/2/1996	(395.60)
2275	-10029	NANCI WEBER		12/23/1996	(250.00)
2275	-10031	PHIL & LISA ENGLAND		12/26/1996	(100.00)
2275	-967	PRESENTED TO GERRY MONAHA		09/21/1996	(200.00)
2275	-876	PRIZE WINNER		02/27/1996	(285.09)
2275	-877	PRIZE WINNER		02/27/1996	(285.09)
2275	-879	PRIZE WINNER		03/15/1996	(373.49)
2275	-976	PRIZE WINNER		09/30/1996	(131.50)
2275	-977	PRIZE WINNER		10/6/1996	(175.00)
2275	-986	ROBIN BURGER		9/21/1996	(100.00)
2275	-5109	RON TUCK		11/21/1996	(80.00)
2275	-886	RUSS PARKER		03/28/1996	(142.55)
2275	-862	SAM ROSS		01/16/1996	(47.20)
2275	-1006	SAN DIEGO CHAMBER VIP		12/1/1996	(414.38)
2275	-10028	SAN DIEGO ROMANCE		12/23/1996	(189.00)
2275	-856	SANDRA SIEVER-FUNK		12/23/1996	(104.98)
2275	-864	SPRING BROOK ELEMENTARY S		01/22/1996	(395.60)
2275	-5213	SUNDAY BRUNCH		12/20/1996	(16.50)
2275	-5214	SUNDAY BRUNCH		12/20/1996	(16.50)
2275	-5215	SUNDAY BRUNCH		12/20/1996	(16.50)
2275	-10010	WERRY CHRISTMA FROM WEST		12/3/1996	(243.10)
2275	-267	BRUNCH CERT		10/8/1997	(36.00)
2275	-10050	BRUNCH FOR TWO		03/7/1997	(48.50)
2275	-290	CRAIG & KELLI LYFORD		12/17/1997	(30.00)
2275	-10055	DAVIS CRACROFT		04/11/1997	(45.00)
2275	-10073	DENNIS & DABRA DRYDEN		05/27/1997	(431.23)
2275	-23580	GIFT CERT		04/25/1997	(16.50)
2275	-260	GIFT CERT		09/11/1997	(50.00)
2275	-262	GIFT CERT		09/27/1997	(30.00)
2275	-263	GIFT CERT		10/6/1997	(219.80)
2275	-266	GIFT CERT		10/9/1997	(225.00)
2275	-270	GIFT CERT		10/9/1997	(30.00)
2275	-273	GIFT CERT		10/19/1997	(385.65)
2275	-274	GIFT CERT		10/20/1997	(45.90)
2275	-275	GIFT CERT		10/20/1997	(30.00)
2275	-281	GIFT CERT		10/29/1997	(20.00)
2275	-284	GIFT CERT		12/3/1997	(49.46)
2275	-287	GIFT CERT		12/7/1997	(30.00)
2275	-301	GIFT CERT		12/4/1997	(220.00)
2275	-302	GIFT CERT		12/7/1997	(60.00)
2275	-303	GIFT CERT		12/8/1997	(209.95)
2275	-305	GIFT CERT		12/8/1997	(225.42)
2275	-306	GIFT CERT		12/9/1997	(50.00)
2275	-308	GIFT CERT		12/12/1997	(198.90)
2275	-552	GIFT CERT		07/10/1997	(232.05)
2275	-23653	GIFT CERT		05/13/1997	(60.00)
2275	-5304	GIFT CERT		04/29/1997	(30.00)
2275	-10061	GIFT CERT		04/19/1997	(50.00)
2275	-23790	GIFT CERT		06/18/1997	(50.00)
2275	-317	GRANDPA RAY & GRANDMA EDI		12/21/1997	(47.30)
2275	-10049	HAPPY B-DAY DAD & MOM		02/24/1997	(50.00)
2275	-23421	HENRY & DINA RODRIGUEZ		03/18/1997	(30.00)
2275	-530	JAMES NASSAR		07/16/1997	(215.48)
2275	-844	JOHN & BETTY LIPTON		06/6/1997	(43.90)

PURCHASED GIFT CERTIFICATES

Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
2275	-10069	JOHN COLLINS		05/27/1997	(149.18)
2275	-10067	M/M DAN MOLINARI		05/12/1997	(182.33)
2275	-10033	M/M JOSEPH HOLLAND		01/2/1997	(208.85)
2275	-309	MARC & BARBARA		12/15/1997	(142.55)
2275	-293	MERRY CHRISTMAS		12/21/1997	(30.00)
2275	-294	MERRY CHRISTMAS		12/21/1997	(30.00)
2275	-10065	MR CRAIG SHELL		05/4/1997	(414.66)
2275	-10057	MR GAYLE ANDERSON		04/17/1997	(50.00)
2275	-529	NICK & ALICE		08/25/1997	(30.00)
2275	-10075	OASIS IPA		06/11/1997	(397.80)
2275	-10071	PEGGY YASUMOTO		05/27/1997	(381.23)
2275	-284	PRIZE WINNER		10/9/1997	(407.75)
2275	-549	PRIZE WINNER		05/30/1997	(131.00)
2275	-872	PRIZE WINNER		06/6/1997	(43.89)
2275	-24120	RAUL DELGADO		08/27/1997	(50.00)
2275	-321	ROBERT & JAN		12/23/1997	(50.00)
2275	-314	SAL MOCERI		12/18/1997	(30.00)
2275	-316	SALLY & MIKE EDWARDS		12/18/1997	(178.80)
2275	-23774	SUNDAY BRUNCH		06/12/1997	(132.00)
2275	-319	THOMAS & CHRIS DOWNS		12/23/1997	(535.15)
2275	-64	ALICE RYAN		05/30/1998	(125.35)
2275	-242	ART AND LILA MORGAN		05/30/1998	(162.41)
2275	-361	AUTO CLUB OF SO. CALIF		08/10/1998	(438.92)
2275	-243	BOB & JOYCE BLYTH		05/30/1998	(546.90)
2275	-588	CHUCK & CAROLINE FREDERIC		05/30/1998	(325.00)
2275	-227	CHUCK & JAMIL SCHWITZ		05/30/1998	(151.17)
2275	-300	DENNIS TYLER		01/22/1998	(30.00)
2275	-224	ERIC AND TRACY FILLMORE		05/30/1998	(215.82)
2275	-231	GARY KITAGAWA		05/30/1998	(431.64)
2275	-712	GERAD & KIM MARSH		05/30/1998	(131.50)
2275	-333	GIFT CERT		10/30/1998	(64.54)
2275	-337	GIFT CERT		04/8/1998	(50.00)
2275	-338	GIFT CERT		04/6/1998	(50.00)
2275	-339	GIFT CERT		04/6/1998	(50.00)
2275	-345	GIFT CERT		04/19/1998	(353.60)
2275	-358	GIFT CERT		07/3/1998	(100.29)
2275	-363	GIFT CERT		08/14/1998	(30.00)
2275	-376	GIFT CERT		08/28/1998	(50.00)
2275	-397	GIFT CERT		11/13/1998	(442.20)
2275	-421	GIFT CERT		10/15/1998	(25.00)
2275	-427	GIFT CERT		11/25/1998	(50.00)
2275	-444	GIFT CERT		12/21/1998	(15.00)
2275	-677	GIFT CERT		05/30/1998	(218.80)
2275	-26058	GIFT CERT		12/27/1998	(164.72)
2275	-446	GIFT CERT		12/18/1998	(214.47)
2275	-447	GIFT CERT		12/27/1998	(200.00)
2275	-448	GIFT CERT		12/27/1998	(300.00)
2275	-453	GIFT CERT		12/27/1998	(90.00)
2275	-287	GIFT CERT		01/20/1998	(90.00)
2275	-433	GIFT CERT		12/17/1998	(17.57)
2275	-435	GIFT CERT		12/7/1998	(200.00)
2275	-449	GIFT CERT		12/27/1998	(53.76)
2275	-450	GIFT CERT		12/27/1998	(53.77)
2275	-245	GREG AND DENISE HELI		05/30/1998	(170.00)
2275	-396	GST TELCOM		10/20/1998	(214.47)
2275	-328	HAPPY ANNIVERSARY MARK		02/8/1998	(30.00)
2275	-323	HOLYOAK FAMILY		01/2/1998	(176.80)
2275	-393	INEZ AND CHARLES SMILEY		09/30/1998	(33.00)
2275	-702	JIM & DONNA NISBET		05/30/1998	(262.99)
2275	-465	JOE & ROSE BURKE		05/30/1998	(151.51)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
2275	-674	JOHN & JO ANN BARRETT		05/30/1998	(131.50)
2275	-324	JOHN WILLIAMSON		01/4/1998	(100.00)
2275	-624	JOSE VELASCO		05/30/1998	(324.70)
2275	-392	KAREN AND MEL SPENCER		09/25/1998	(33.00)
2275	-720	LESTER & WANDA RIEHLMAN		05/30/1998	(175.70)
2275	-334	MM DAVID BEATHARD		03/24/1998	(50.00)
2275	-360	MM JOE LETKO		08/6/1998	(100.00)
2275	-371	MM RICHARD GREENE		08/26/1998	(517.37)
2275	-359	MM RICHARD O' DONNELL		07/14/1998	(50.00)
2275	-379	MARK BETHARD		09/8/1998	(50.00)
2275	-671	MERRY CHRISTMAS		05/30/1998	(131.50)
2275	-709	MERRY CHRISTMAS		05/30/1998	(131.50)
2275	-696	MITCH PRICE		05/30/1998	(60.00)
2275	-715	MON & DAD		05/30/1998	(131.50)
2275	-63	MR & MRS JAVIER VERA		05/30/1998	(175.35)
2275	-219	MR & MRS PETE ASHLOCK		05/30/1998	(125.35)
2275	-233	MR & MRS PETER FREIDKIN		05/30/1998	(670.35)
2275	-329	MR & MRS URSINO		02/14/1998	(70.00)
2275	-327	PAM AND DARREN ALCALAY		02/5/1998	(176.80)
2275	-364	PAUL AND JANET BUQUET		08/24/1998	(650.03)
2275	-25549	PHYLLIS / HAPPY B-DAY		08/10/1998	(25.00)
2275	-575	PRIZE WINNER		05/30/1998	(173.81)
2275	-627	PRIZE WINNER		05/30/1998	(195.59)
2275	-646	PRIZE WINNER		05/30/1998	(131.46)
2275	-648	PRIZE WINNER		05/30/1998	(131.50)
2275	-650	PRIZE WINNER		05/30/1998	(131.50)
2275	-651	PRIZE WINNER		05/30/1998	(131.50)
2275	-666	PRIZE WINNER		05/30/1998	(131.50)
2275	-948	PRIZE WINNER		05/30/1998	(446.90)
2275	-460	RAY AND ALTAMAE TUFTLAND		05/30/1998	(134.07)
2275	-244	RICHARD GREENE		05/30/1998	(223.45)
2275	-585	ROBIN MAIN		5/30/1998	(228.90)
2275	-5103	SUNDAY BRUNCH		01/22/1998	(33.00)
2275	-226	TONY & SHELLIE AVILA		05/30/1998	(114.82)
2275	-241	WILLIAM & CATHI CLARK		05/30/1998	(179.85)
2275	-488	BILL GRANA		05/30/1999	(100.00)
2275	-312	SDCCU		05/30/1999	(60.00)
2275	-408	GIFT CERT		08/11/1999	(48.79)
2275	-60607	GIFT CERT		07/25/1999	(38.61)
2275	-60632	GIFT CERT		07/27/1999	(33.00)
2275	-60633	GIFT CERT		07/27/1999	(175.00)
2275	-61639	GIFT CERT		10/8/1999	(50.00)
2275	-61875	GIFT CERT		10/16/1999	(50.00)
2275	-62153	GIFT CERT		10/24/1999	(40.00)
2275	-62463	GIFT CERT		11/10/1999	(30.00)
2275	-62545	GIFT CERT		11/15/1999	(100.00)
2275	-62602	GIFT CERT		11/23/1999	(150.00)
2275	-62603	GIFT CERT		11/23/1999	(26.00)
2275	-62604	GIFT CERT		11/23/1999	(125.00)
2275	-62605	GIFT CERT		11/23/1999	(125.00)
2275	-62627	GIFT CERT		11/29/1999	(250.00)
2275	-62630	GIFT CERT		11/29/1999	(500.00)
2275	-62631	GIFT CERT		11/29/1999	(50.00)
2275	-62650	GIFT CERT		11/29/1999	(30.00)
2275	-62770	GIFT CERT		12/13/1999	(276.38)
2275	-501	GIFT CERT		08/1/1999	(33.00)
2275	-494	GIFT CERT		06/16/1999	(380.29)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
2275	-405	GIFT CERT		05/21/1999	(50.00)
2275	-482	GIFT CERT		05/17/1999	(235.00)
2275	-493	GIFT CERT		06/14/1999	(53.77)
2275	-402	GIFT CERT		04/16/1999	(500.00)
2275	-404	GIFT CERT		04/17/1999	(33.00)
2275	-406	GIFT CERT		05/21/1999	(50.00)
2275	-1742	GIFT CERT		11/19/1999	(350.00)
2275	-1744	GIFT CERT		11/16/1999	(42.96)
2275	-1853	GIFT CERT		11/18/1999	(200.00)
2275	-63027	JAMES DARROW		12/26/1999	(300.00)
2275	-62413	JOHN & TAMI DULLAM		11/8/1999	(200.00)
2275	-61209	KELLI AND CRAIG LYFORD		09/13/1999	(50.00)
2275	-61170	M/M KRUGER		09/11/1999	(105.02)
2275	-60894	M/M RIC & SUZY REYES		08/24/1999	(50.00)
2275	-62431	MAGDALENA BATRES		11/9/1999	(304.00)
2275	-62269	MIKE & SUZANNE BULLEN		11/6/1999	(700.00)
2275	-489	PAT CLARE 5-89		05/30/1999	(100.00)
2275	-61208	PAT MORRIS		09/13/1999	(204.52)
2275	-500	REVEREND NED KELLOGG PART		08/1/1999	(49.41)
2275	-61696	ROI JOSSY FUNK		10/9/1999	(150.00)
2275	-61607	THE BEARER		10/5/1999	(50.00)
2275	-487	TODD MOSELY		05/30/1999	(100.00)
2275	-403	VICTORIA BAILEY		04/16/1999	(357.95)
2275	-66070	MIKE BROWN		04/31/2000	(50.00)
2275	-1864	ALEX FITZPATRICK		12/20/2000	(50.00)
2275	-1854	CHRISTENSEN, DEBBIE		11/21/2000	(125.00)
2275	-1543	GIFT CERT		07/12/2000	(50.00)
2275	-1739	GIFT CERT		11/5/2000	(250.00)
2275	-1749	GIFT CERT		11/6/2000	(30.00)
2275	-64167	GIFT CERT		01/29/2000	(46.00)
2275	-65898	GIFT CERT		04/11/2000	(600.00)
2275	-66077	GIFT CERT		05/1/2000	(128.88)
2275	-1654	GIFT CERT		08/7/2000	(128.83)
2275	-1658	GIFT CERT		08/22/2000	(95.47)
2275	-1946	JOHN & SANDRA LAVINE		11/29/2000	(500.00)
2275	-66115	LINDA BROWN		5/9/2000	(100.00)
2275	-1947	PETER & LISA AERIA		11/23/2000	(100.00)
2275	-1860	RICHARD MORRISON		11/24/2000	(100.00)
2275	-1688	THE BEARER		09/21/2000	(100.00)
2275	-1690	THE BEARER		09/13/2000	(100.00)
2275	-1691	THE BEARER		09/13/2000	(100.00)
2275	-1699	THE BEARER		09/13/2000	(100.00)
2275	-1702	THE BEARER		09/13/2000	(100.00)
2275	-1707	THE BEARER		09/13/2000	(100.00)
2275	-1710	THE BEARER		09/13/2000	(100.00)
2275	-1711	THE BEARER		09/13/2000	(100.00)
2275	-1718	THE BEARER		09/13/2000	(100.00)
2275	-1719	THE BEARER		09/13/2000	(100.00)
2275	-1721	THE BEARER		09/13/2000	(100.00)
2275	-1724	THE BEARER		09/20/2000	(56.90)
2275	-1726	THE BEARER		09/13/2000	(100.00)
2275	-1727	THE BEARER		09/13/2000	(100.00)
2275	-1728	THE BEARER		09/13/2000	(100.00)
2275	-1729	THE BEARER		09/13/2000	(100.00)
2275	-1730	THE BEARER		09/13/2000	(100.00)
2275	-1731	THE BEARER		09/13/2000	(100.00)
2275	-1750	THE BEARER		10/30/2000	(400.00)
2275	-1903	BEARER		10/30/2001	(50.00)
2275	-1904	BEARER		10/30/2001	(50.00)
2275	-1905	BEARER		10/30/2001	(50.00)
2275	-1906	BEARER		10/30/2001	(50.00)
2275	-1907	BEARER		10/30/2001	(50.00)

PURCHASED GIFT CERTIFICATES

Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
2275	-1908	BEARER		10/30/2001	(50.00)
2275	-1909	BEARER		10/30/2001	(50.00)
2275	-1867	BETH SWANDTZ		03/17/2001	(210.00)
2275	-1867	EDIE AND KLAUS		07/20/2001	(50.00)
2275	-1888	EDIE AND KLAUS		07/20/2001	(50.00)
2275	-1891	EDIE AND KLAUS		07/20/2001	(50.00)
2275	-1893	EDIE AND KLAUS		07/20/2001	(50.00)
2275	-1866	GIFT CERT		03/6/2001	(200.00)
2275	-1872	GIFT CERT		05/14/2001	(636.51)
2275	-1945	GIFT CERT		02/1/2001	(70.00)
2275	-73433	GIFT CERT		09/2/2001	(60.00)
2275	-1918	GIFT CERT		11/9/2001	(250.00)
2275	-1919	GIFT CERT		11/9/2001	(250.00)
2275	-73461	GIFT CERT		09/3/2001	(65.22)
2275	-1821	HUGHES, ALLAN		11/14/2001	(40.00)
2275	-1889	JOHN BURGAR		07/20/2001	(200.00)
2275	-1901	JURMAN, JOAN		09/6/2001	(250.00)
2275	-1885	KAREN BULLER		07/17/2001	(200.00)
2275	-1865	KELLY AND BRIAN		03/3/2001	(45.00)
2275	-1886	KLAUS AND EDITH		07/17/2001	(50.00)
2275	-1878	MICHAEL LANGIS		06/11/2001	(60.00)
2275	-1896	MR AND MRS JOHN CHAVEZ		08/11/2001	(100.00)
2275	-1895	MR. AND MRS. TORSIELLO		08/10/2001	(50.00)
2275	-2450	RICK		11/24/2001	(200.00)
2275	-1942	SUZIE&DONNA		03/20/2001	(45.00)
2275	-1880	THE BEARER		06/24/2001	(380.00)
2275	-1898	THE BEARER		08/25/2001	(400.00)
2275	-1939	THE BEARER		05/10/2001	(50.00)
2275	-1943	THE BEARER		02/14/2001	(400.00)
2275	-2469			07/2/2002	(25.00)
2275	-2474	Fidelity National		08/2/2002	(117.44)
2275	-2478	Fidelity National		08/2/2002	(117.44)
2275	-2498	White, Mindy		09/2/2002	(300.00)
2275	-2465	Brancato, Julie		10/2/2002	(500.00)
2275	-2489	Bearer		11/15/2002	(250.00)
2275	-2272	Bearer		12/13/2002	(100.00)
2275	-2492	Bearer		12/18/2002	(100.00)
2275	-2493	Bearer		12/18/2002	(100.00)
2275	-2494	Bearer		12/18/2002	(100.00)
2275	-2495	Bearer		12/18/2002	(100.00)
2275	-2496	Bearer		12/18/2002	(100.00)
2275	-3546	Bearer		12/18/2002	(100.00)
2275	-3547	Bearer		12/18/2002	(100.00)
2275	-3548	Bearer		12/18/2002	(100.00)
2275	-3549	Bearer		12/18/2002	(100.00)
2275	-3550	Bearer		12/18/2002	(100.00)
2275	-3553	Bearer		12/19/2002	(524.20)
2275	-3555	Bearer		12/19/2002	(574.20)
2275	-3557	Bearer		12/19/2002	(574.20)
2275	-3558	Bearer		12/19/2002	(574.20)
2275	-3559	Bearer		12/19/2002	(574.20)
2275	-3560	Bearer		12/28/2002	(700.00)
2275	-2490	Bearer		1/7/2003	(200.00)
2275	-10052	bearer		2/24/2003	(299.00)
2275	-2618	bearer		3/11/2003	(300.00)
2275	-70103	bearer		3/20/2003	(173.31)
2275	-10054	bearer		4/22/2003	(200.00)
2275	-10055	Jim & Lynne Marian		4/29/2003	(100.00)
2275	-10060			4/30/2003	(225.00)
2275	-70131	bearer		4/22/2003	(250.00)
2275	-10061	Debra Hill or Bob Titus		6/7/2003	(250.00)
2275	-10065	Scott Hetterbrand		8/12/2003	(150.00)
2275	-10066	Debbie Paysinger		9/2/2003	(100.00)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
2275	?	Unknown		09/09/03	(250.00)
2275	?	Unknown		09/17/03	(100.00)
2275	-10070			9/29/2003	(100.00)
2275	-10072	Dr. Fairley		10/8/2003	(54.12)
2275	-10073			10/14/2003	(150.00)
2275	-10080	Impact Sciences		12/12/2003	(661.08)
2275	-10085	Hennig		12/19/2003	(200.00)
2275	-10087	Krouse		12/22/2003	(20.00)
2275	-10092			1/4/2004	(30.00)
2275	-10093	Rex and Leslie Werner		2/7/2004	(100.00)
2275	-10095	Sigmund Burke		3/18/2004	(200.00)
2275	-10096			4/1/2004	(299.00)
2275	-10097	Deoncia Maldonado		04/10/04	(60.00)
2275	-10262	Patty and Kermit		04/23/04	(100.00)
2275	-10263			5/1/2004	(173.93)
		no information and no #			(200.00)
2275	-10267			5/28/2004	(200.00)
2275	-10270			6/15/2004	0.00
2275	-10272	George and Kay Whitehead		6/22/2004	0.00
2275	-10273			6/23/2004	(275.00)
2275	-10274	Patricia Vazquez		6/25/2004	(1300.00)
2275	-10280	Rick and Lorie Baldwin		7/31/2004	0.00
2275	-10281	Bearer		8/6/2004	(500.00)
2275	-10282	Eileen Rodgers		8/12/2004	(500.00)
2275	-10285			8/25/2004	(200.00)
2275	-10286	no information and no #		8/26/2004	(20.00)
2275	10287			9/2/2004	(500.00)
2275	-10416	Cathie Hogan		9/14/2004	(600.00)
2275	-10417	Cathie Hogan		9/14/2004	(600.00)
2275	-1504			9/22/2004	(1000.00)
2275	-513			9/24/2004	(1000.00)
2275	-10418	Randy Cook		10/2/2004	(400.00)
2275	-10419	Bearer		11/4/2004	(250.00)
2275	-10423	Kristen & Dale Henderson		11/25/2004	(50.00)
2275	-10424	Sudduth fam		11/28/2004	(689.00)
2275	-10425			12/11/2004	(150.00)
2275	-10427			12/13/2004	(300.00)
2275	-10428			12/13/2004	(300.00)
2275	-10429	Larry & sandy Minor		12/18/2004	(200.00)
2275	-10430	David & Shannon Garner		12/18/2004	(300.00)
2275	-10433	Ruth Lippit		12/23/2004	(150.00)
2275	-10434			12/24/2004	(300.00)
2275	-10435	Alberto Bravo		12/24/2004	(150.00)
2275	-10437	Sonny Shah		1/2/2005	(138.89)
2275	-10439	Paul & Gene Martin		1/10/2005	(50.00)
2275	-10440	Jose & Millie de Leo		1/7/2005	(75.00)
2275	-10593	Steve Ballinger		1/26/2005	(60.00)
2275	-10594			2/3/2005	(150.00)
2275	-10595			2/3/2005	(200.00)
2275	-10596			2/3/2005	(50.00)
2275	-10597	Credit Card		3/30/2005	(400.00)
2275	-10598			4/18/2005	(150.00)
2275	-10560			4/29/2005	(90.59)
2275	10610			5/31/2005	(200.00)
2275	10611			6/8/2005	(200.00)
2275	10612			6/9/2005	(200.00)
2275	10613			6/10/2005	(428.29)
2275	10614			6/28/2005	(300.00)
2275	10560	Balance left		7/4/2005	(2.48)
2275	10095			7/12/2005	(200.00)
2275	10717	Fidelity National		7/15/2005	(183.08)
2275	10718	Fidelity National		7/15/2005	(164.65)
2275	10719	VOID			0.00
2275	10720	Fidelity National			(164.65)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
2275	10721	Mara Katz		9/9/2005	(225.00)
2275	10722	VOID			0.00
2275	10723	Cynthia Windsor		9/21/2005	(750.00)
2275	10724	J. Moore		9/27/2005	(250.00)
2275	10725	Charm Lee		10/14/2005	(125.00)
2275	10726	Charm Lee		10/14/2005	(125.00)
2275	10727	Retirement Strategies		10/20/2005	(50.00)
2275	101405				(125.00)
2275	101415				(125.00)
2275					(50.00)
	2113	Susan	Escape Package plus grat	8/21/2000	(269.62)
	2139	Pilar	Services (@50% off - staff)	2/19/2000	(50.82)
	2146	Jane	Services	4/9/2000	(100.00)
	2152	Patricia	Services	4/9/2000	(100.00)
	2154	Jennifer	Escape	8/21/2000	(234.00)
	2188	Maria	Services (@50% off - staff)	1/25/2000	(25.00)
	2382	Marl Bonham	Services	4/9/2000	(15.00)
	2364	Ann Geissler	Services	4/9/2000	(15.00)
	2368	Debbie Kommaier	Services	4/9/2000	(15.00)
	2395	Ana Lyom	Stone Massage	4/19/2000	(110.50)
	2396	Yaki	Services	5/29/2000	(150.00)
	701	Sylest Garcia	Services	4/9/2000	(100.00)
	714	Bonnie	Massage	4/9/2000	(100.00)
	722	Katie	Services	4/9/2000	(100.00)
	747	Elicia Young	services	1/20/2000	(20.00)
	572	Randi	facial	3/6/2000	(81.51)
	577	Nicole	\$100 massage-empl disc	3/10/2000	(90.00)
	583	Lisa		2/21/2000	(52.50)
	589	Kelly	38.50 swed massage-empl disc	2/7/2000	(38.50)
	595	Kathy Prough	man/facial-\$90 empl disc	3/3/2000	(63.00)
	10001	Jody Oehl	services	8/22/2000	(279.60)
	10006	Linda	services	7/18/2000	(200.00)
	10008	Tanya	Services	3/15/2000	(75.00)
	10014	Tracy	Tennis clinic	1/15/2000	(15.00)
	10015	Tracy	Tennis clinic	1/15/2000	(15.00)
	10016	Marc	services	2/29/2000	(60.00)
	10021	Pilar	massage-\$90 empl disc	3/3/2000	(63.00)
	10026	Tracey	massage	3/25/2000	(85.00)
	10029	Sandra	Escape Package	9/28/2000	(272.00)
	10030	Rosemary and Tina	2 escape Packages	8/27/2001	(544.00)
	10033	bearer	services	2/24/2000	(55.00)
	10038	Claire	services	3/15/2000	(75.00)
	10038	Mark		2/3/2000	(34.00)
	10042	Cel	massage-\$100 empl disc	3/10/2000	(70.00)
	10045	bearer	massage	2/29/2000	(60.00)
	10049	Lisa	services	3/16/2000	(76.00)
	10108	Nancy Anderson	microabrasion	5/4/2000	(125.00)
	10148	Taylor Black	services	5/29/2000	(150.00)
	10149	Celia	services	1/25/2000	(25.00)
	10153	Monica Bell	facial and massage	7/18/2000	(200.00)
	10155	Denise Garcia	massage	4/24/2000	(115.00)
	10166		Massage (Staff Rate)	2/23/2000	(54.00)
	10168	Pamela Soyster	Massage (Staff Rate)	2/29/2000	(60.00)
	10178	Laurie	Massage	2/20/2000	(80.00)
	10183	Anne	1/2 Mass (Staff rate)	2/5/2000	(36.00)
	10192	Francis	Body treatment (staff rate)	1/15/2000	(15.00)
	10193	Evelyn	Manicure (HH 10%)	2/14/2000	(45.00)
	10197	Frances	Facial (staff rate)	2/29/2000	(60.00)
	10198	Cati	Services	1/10/2000	(10.00)
	10199	Sue Smith	Services (TC 15%)	4/6/2000	(97.75)
	10205	Staci	Services	4/29/2000	(120.00)
	10210	Beverly Thomas	Services	2/29/2000	(60.00)
	10212	Lydia DeMaria	Aromatherapy Massage	3/15/2000	(75.00)
	10214	R. Patacel	Escape	9/28/2000	(272.00)
	10215	Elizabeth	Services	10/16/2000	(290.00)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
	10216	L.J.	Services	2/29/2000	(60.00)
	10220	Maria Elena Amazeou	Massage and Mani	5/9/2000	(130.00)
	10221	Mark	Services	7/18/2000	(200.00)
	10224	Elizabeth	Massage	4/9/2000	(100.00)
	10226	Samara Al-Gharabell	Facial and Pedi	7/28/2000	(210.00)
	10234	Lynne Morris	Services	1/20/2000	(20.00)
	10240	Jeannette	Massage	2/29/2000	(60.00)
	10241	Karen	Massage	2/29/2000	(60.00)
	10242	BB Lawrence	Massage	2/29/2000	(60.00)
	10248	Stephanie	Ultimate	4/17/2001	(473.00)
	10250	Janine	Massage	4/18/2000	(110.00)
	10251			2/19/2000	(50.00)
	10253	Cynthia	Escape	9/28/2000	(272.00)
	10264		Escape	9/28/2000	(272.00)
	10258	Sandi	Escape	9/28/2000	(272.00)
	10259	Sally Avila	Services	4/9/2000	(100.00)
	10295		Escape	9/28/2000	(272.00)
	10296	Susan Duffy	massage and facial (staff rate)	5/19/2000	(140.00)
	10298	Michelle	Mani and Pedi (member rate)	3/3/2000	(63.75)
	10299	Susie	massage/grat (member rate)	3/25/2000	(100.00)
	10301	Pat Demarco	Massage, Facial, pedi	8/22/2000	(235.00)
	10303	Elaine Turnbull	services	4/9/2000	(100.00)
	10306		services	4/9/2000	(100.00)
	10307	Jim McCahill	massage and grat	4/9/2000	(100.00)
	10308	Madison Rosen	2 1/2 h massages & facials	10/26/2000	(300.00)
	10312	Barry Kelleher	Sports Mass	5/29/2000	(150.00)
	10313	Ms. Rosa	1 1/2 mass (staff rate)	2/11/2000	(42.00)
	10314	Ms. Jasmine	1/2 mass (staff rate)	2/11/2000	(42.00)
	10316	Raffle Winner	massage	3/25/2000	(85.00)
	10317	Ron Carico	massage and grat	3/27/2000	(87.97)
	10320		services	1/15/2000	(15.00)
	10321		Escape	9/28/2000	(272.00)
	10322	Dana	\$175 svc (staff rate) + grat	6/23/2000	(175.00)
	10323	David Taylor	1 hr facial/pedicure + grat	6/14/2000	(166.00)
	10324	Mary	services	4/9/2000	(100.00)
	10334	no info		10/31/2000	(305.00)
	10339	Michael Nalu	series of 6 tennis lessons	9/1/2000	(245.80)
	10340	Carmina Esteban	ultimate hydration facial	5/29/2000	(150.00)
	10373	Kreeker "Kris"	services (tennis member discount)	2/11/2000	(42.50)
	10375	Ryan	Pedicure	1/31/2000	(38.25)
	10384			4/24/2000	(115.00)
	10385	Jaime Hartman		2/4/2000	(35.00)
	10387	Yong Kern		2/29/2000	(60.00)
	10388	Nicole	facial	3/27/2000	(87.71)
	10390	Nicole	facial	3/25/2000	(85.71)
	10391	Nicole	facial	3/25/2000	(85.71)
	10394	Dawn	\$100 services @ 15% discount	3/25/2000	(85.00)
	10401	Dentice	Mani/Pedi and Tip	1/0/2000	0.00
	10402	Kendall	VDL spa package	11/5/2000	(310.00)
	10404	Stephanie Stevens	VDL spa package	11/5/2000	(310.00)
	10405	Kim Wynn	mass & grat @ 30% disc	3/10/2000	0.00
	10406	Christina Wypart	mass & grat	3/16/2000	(91.50)
	10407	Judy	vit C facial @ 15% disc	2/24/2000	(55.25)
	10412			10/31/2000	(305.00)
	10413	Jennifer	services	5/9/2000	(130.00)
	10415		Services - staff rate	1/20/2000	(20.00)
	10429			7/18/2000	(200.00)
	10444	Judy	Massage	4/29/2000	(120.00)
	10447	Konnie Amick	Massage - 40% off	2/23/2000	(67.50)
	10448	Foster	VDL part 2	7/26/2000	(208.80)
	10450	Tanja	massage	4/9/2000	(100.00)
	10451	Linda	massage	4/9/2000	(100.00)
	10461	Mark & Elena	couples massage & grat	8/27/2000	(240.00)
	10463	Janet	pedi & tip	1/31/2000	(37.50)
	10465			1/4/2000	(4.50)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
	10485	Theresa	services	4/9/2000	(100.00)
	10486	Valerie	services	5/29/2000	(150.00)
	10487		facial - 40% off	2/29/2000	(60.00)
	10488		facial - 40% off	2/29/2000	(60.00)
	10497	Laura	massage or facial - 40% off	2/29/2000	(60.00)
	10512	Malia Empron	services	1/22/2000	(22.18)
	10514	Kelley Bernard	mass, mani, pedi, & grat	7/19/2000	(201.00)
	10516	Leslie Allen	massage	4/29/2000	(120.00)
	10515	Jenny Curtis	man/pedi	2/21/2000	(64.50)
	10518	Judith & Melinda	lesson	1/29/2000	(29.75)
	10521		services	4/9/2000	(100.00)
	10524	Inez Winter	facial/pedi/grat @ 20% off	6/22/2000	(174.00)
	10525	Jennifer	services	4/9/2000	(100.00)
	10526	Enginee Montero	Escape Pkg	10/31/2000	(305.00)
	10528			2/8/2000	(40.00)
	10530	Jill	VDL Package	4/19/2000	(110.00)
	10533	Karen	Escape Package	10/31/2000	(305.00)
	10537			4/17/2000	(108.00)
	10538			4/17/2000	(108.00)
	10539			4/17/2000	(108.00)
	10540			4/17/2000	(108.00)
	10541			4/17/2000	(108.00)
	10543			10/31/2000	(305.00)
	10551			5/29/2000	(150.00)
	10559			5/14/2001	(500.00)
	10563			5/19/2000	(140.00)
	10564			5/19/2000	(140.00)
	10574			2/19/2000	(50.00)
	10576			5/25/2000	(146.00)
	10577			4/24/2000	(115.00)
	10578			3/26/2000	(88.25)
	10588			3/25/2000	(85.00)
	10587			11/5/2000	(310.00)
	10581			7/18/2000	(200.00)
	10582			4/9/2000	(100.00)
	10583			2/22/2000	(53.62)
	10584			10/26/2000	(300.00)
	10585			11/5/2000	(310.00)
	10588			6/8/2000	(160.00)
	10587			9/6/2001	(615.00)
	10588			3/25/2000	(85.00)
	10588			3/25/2000	(85.00)
	10588			2/14/2000	(45.50)
	10591			4/9/2000	(100.00)
	10617			4/9/2000	(100.00)
	10619			3/25/2000	(85.00)
	10621			3/24/2000	(84.58)
	10622			3/10/2000	(70.00)
	10582			4/9/2000	(100.00)
	10623			2/11/2000	(42.00)
	10624			4/9/2000	(100.00)
	10625			4/9/2000	(100.00)
	10626			4/9/2000	(100.00)
	10627			5/29/2000	(150.00)
	10628			5/29/2000	(150.00)
	10629			5/29/2000	(150.00)
				3/25/2001	(450.00)
				5/29/2000	(150.00)
				5/9/2000	(130.00)
	10632			3/25/2000	(85.00)
	10630			4/9/2000	(100.00)
	10631			4/9/2000	(100.00)
	10634			4/9/2000	(100.00)
				4/9/2000	(100.00)
	10636			4/9/2000	(100.00)
	10635			2/11/2000	(42.00)

PURCHASED GIFT CERTIFICATES

Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
	10637			8/7/2000	(220.00)
	10638			7/18/2000	(200.00)
	10639			4/9/2000	(100.00)
	10640			10/31/2000	(305.00)
	10641			2/11/2000	(42.00)
	10642			3/24/2000	(84.94)
	10643			7/26/2000	(208.29)
	10651	Laura Furlington	Swed massage and Grat	3/3/2000	(73.00)
				2/29/2000	(60.00)
	10662			2/19/2000	(50.00)
	10664	Nadeem	VDL Massage	4/9/2000	(115.00)
	10666	lynn	VDL Massage	2/13/2001	(410.00)
	10685	norma	1 1/2 hr massage	3/9/2000	(69.00)
	10670			5/20/2000	(141.00)
	10671			8/3/2000	(155.25)
	1488			6/18/2000	(81.08)
	1572			6/27/2000	(85.00)
	0653			7/2/2000	(50.00)
	0656			7/6/2000	(127.50)
	1574			6/28/2000	(50.00)
	1598			7/20/2000	(38.50)
	1599			7/20/2000	(38.50)
	1554			5/21/2000	(100.00)
	1555			5/20/2000	(75.00)
	1556			5/18/2000	(35.00)
	1552			6/13/2000	(100.00)
	1589			8/21/2000	(45.00)
	1591			8/11/2000	(158.50)
	1582			8/14/2000	(50.00)
	1595			8/19/2000	(120.00)
	1496			8/12/2000	(120.00)
	1495			8/12/2000	(120.00)
	1497			8/23/2000	(41.00)
	1602			9/2/2000	(21.25)
	1605			9/5/2000	(40.00)
	1610			9/22/2000	(55.00)
	1611			9/22/2000	(55.00)
	1625			10/27/2000	(100.00)
	1644			11/24/2000	(150.00)
	1645			11/30/2000	(100.00)
	1648			12/3/2000	(60.00)
	1651			12/4/2000	(17.50)
	1755			12/7/2000	(45.00)
	1782			12/9/2000	(50.00)
	1767			12/13/2000	(50.00)
	1770			12/14/2000	(50.00)
	1775			12/15/2000	(32.50)
	1786			12/17/2000	(42.50)
	1788			12/18/2000	(100.00)
	1793			12/19/2000	(195.00)
	1799			12/20/2000	(87.75)
	1811			12/22/2000	(224.25)
	1813			12/12/2000	(12.50)
	1838			1/5/2001	(135.00)
	1964			2/23/2001	(100.00)
	1965			2/23/2001	(100.00)
	1968			3/7/2001	(273.98)
	1973			3/12/2001	(91.50)
	1974			3/14/2001	(46.00)
	1976			3/15/2001	(90.00)
	1985			3/23/2001	(60.00)
	0618			4/24/2001	(35.00)
	0619			4/27/2001	(100.00)
	0621			5/4/2001	(63.00)
	0623			5/10/2001	(70.00)

PURCHASED GIFT CERTIFICATES
Hilton San Diego Resort

CUST ID	GIFT CERTIFICATE No.	NAME	SERVICE PROVIDED	DATE PURCHASED	AMOUNT
	0624			5/9/2001	(241.50)
	0627			5/11/2001	(46.75)
	0640			3/30/2001	(200.00)
	0663			6/7/2001	(269.10)
	0646			6/19/2001	(48.75)
	0682			8/17/2001	(69.00)
	0683			8/17/2001	(69.00)
	0684			8/19/2001	(230.00)
	0688			8/22/2001	(55.00)
	0691			9/7/2001	(85.00)
	0692			9/11/2001	(103.50)
	0695			9/25/2001	(70.00)
	0699			10/4/2001	(172.50)
	2100			10/12/2001	(289.62)
	0662			10/17/2001	(110.00)
	2104			10/20/2001	(109.50)
	2106			10/31/2001	(126.00)
			total		(106,123.17)

COMPLIMENTARY GIFT CERTIFICATES
Hilton San Diego Resort

Gift Certificate No.	Organization	Date Issued	Service Provided	Value
70728	SD Press Club	2/14/2005	Dinner for 2	\$75.00
70729	Town Hall	2/11/2005	Dinner for 2	\$75.00
70730	Town Hall	2/11/2005	Dinner for 2	\$75.00
70731	Chaminade College Prep	2/14/2005	2 night stay	\$500.00
70732	Scripps Ranch High - Girls Athletic Booster	2/12/2005	2 night stay	\$500.00
70733	Carlson Wagonlit Travel	1/27/2005	2 night stay	\$500.00
70734	MPI Cascadia Conference	2/10/2005	2 night stay	\$500.00
70735	Doubletree Guest Suites Doheny	2/8/2005	2 night stay	\$500.00
70736	Am. Heart Assn - 46th	11/24/2004	2 night stay	\$500.00
70737	Franklin School PTA	1/24/2005	2 night stay	\$500.00
70738	In-N-Out Burger Foundation	2/3/2005	2 night stay	\$500.00
70739	Friends of Childhelp USA - Gala Dinner	2/1/2005	2 night stay	\$500.00
70740	Am. Assn of University Women - Tennis for TOTS	Jan-05	2 night stay	\$500.00
70741	Serra High School Foundation	2/11/2005	1 dinner for 2	\$75.00
70742	CA. Hotel & Lodging Assn	1/24/2005	60 min spa treatment	\$100.00
70743	Academy of Friends	2/22/2005	2 night stay	\$500.00
70744	Turning Point Pregnancy Resource Center	1/27/2005	60 min spa treatment	\$100.00
70745	Point Loma High School Band Boosters	1/10/2005	Dinner for 2	\$75.00
70746	Smith & Nephew	2/23/2005	1 night stay	\$250.00
70747	James Samuel Rogers Foundation - Am Cancer Soc	2/22/2005	2 night stay	\$500.00
70748	British Colonial Hilton	2/24/2005	3 night stay	\$750.00
70749	Junior Seau	2/21/2005	Couples massage	\$200.00

COMPLIMENTARY GIFT CERTIFICATES
Hilton San Diego Resort

Gift Certificate No.	Organization	Date Issued	Service Provided	Value
70750	Junior Achievement	2/11/2005	2 night stay	\$500.00
70751	CA Restaurant Assn-Gold Medallion 05 Awards Banquet	2/14/2005	2 night stay	\$500.00
70752	Junior League of San Diego	2/22/2005	3 night stay	\$750.00
70753	Make a Wish Foundation - Winter Wine Fest	3/2/2005	2 night stay	\$500.00
70754	Carden Arbor View	3/2/2005	2 night stay	\$500.00
70755	Carden Arbor View	3/2/2005	Dinner for 2	\$75.00
70756	Holland America FAM	3/2/2005	1 night stay	\$250.00
70757	Whispering Winds Catholic	3/3/2005	1 night stay	\$250.00
70758	Hilton Seattle - Annual Employee	3/8/2005	2 night stay	\$500.00
70759	Cty of SD/Health & Human Services - Banquet to Honor Foster Parents	2/15/2005	2 night stay	\$500.00
70760	Maryknoll School	2/25/2005	3 night stay	\$750.00
70761	SeaWorld SD	3/4/2005	2 night stay	\$500.00
70762	LA Firemen's Relief Assn - 8th annual	2/22/2005	2 night stay	\$500.00
70763	Assumption Alumnae Assn Abroad - Triennial Reunion	3/7/2005	2 night stay	\$500.00
70764	SSPE Golf Tournament for Girls Dance Studio	3/17/2005	Wkend 2nts	\$500.00
70765	Marin Catholic School	3/2/2005	2 night stay	\$500.00
70766	Marin Catholic School	3/2/2005	Bkfst for 4 ppl	\$40.00
70767	YMCA - Fairfax Cty this is to replace GC#70618 that was lost	3/17/2005	2 night stay	\$500.00
70768	DJ Services for Sales Team	3/18/2005		\$500.00
70769	Assn of CA School Administrators	3/15/2005	2 night stay	\$500.00
70770	KTEH Silicon Valley Public TV	3/3/2005	2 night stay	\$500.00
70771	Silver Strand Elementary School	3/18/2005	1 night stay	\$250.00

COMPLIMENTARY GIFT CERTIFICATES
Hilton San Diego Resort

Gift Certificate No.	Organization	Date Issued	Service Provided	Value
70772	OPEUI, Local 30, 3rd annual scholarship golf tournament	3/7/2005	2 night stay	\$500.00
70773	NJ Chapter/Leukemia&Lymphoma Soc.	3/4/2005	2 night stay	\$500.00
70774	ASCE-annual awards dinner	3/10/2005	6 minute massage	\$100.00
70775	Harvest Meat Company - program Concession	3/30/2005	2 night stay	\$500.00
70776	Harvest Meat Company - program Concession	3/30/2005	2 night stay	\$500.00
70777	HRW - 50th anniv	3/18/2005	2 night stay	\$500.00
70778	Teri's 17th Annual Tourm. Gala	3/31/2005	2 night stay	\$500.00
70779	Congregation Beth Israel		2 night stay	\$500.00
70780	T.H.E Champions	3/29/2005	Meal for 2 \$75 value excluding alcohol	\$75.00
70781	T.H.E Champions	3/29/2005	Meal for 2 \$75 value excluding alcohol	\$75.00
70782	T.H.E Champions	3/29/2005	Meal for 2 \$75 value excluding alcohol	\$75.00
70783	T.H.E Champions	3/29/2005	Meal for 2 \$75 value excluding alcohol	\$75.00
70784	T.H.E Champions	3/29/2005	Meal for 2 \$75 value excluding alcohol	\$75.00
70785	T.H.E Champions	3/29/2005	Meal for 2 \$75 value excluding alcohol	\$75.00
70786	T.H.E Champions	3/29/2005	Meal for 2 \$75 value excluding alcohol	\$75.00
70787	La Costa Canyon-Athletic Dept fudraiser	4/5/2005	2 night stay	\$500.00
70788	Embassy Suites Anaheim-Empl Picnic	3/25/2005	1 night stay	\$250.00
70789	Sharp HospiceCare-Benefit-Regatta	3/15/2005	60 min Spa Treatment	\$100.00
70790	United Cerebral Palsy 22nd Annual	3/22/2005	60 min Spa Treatment	\$100.00
70791	Nazareth School - annual action	Mar-05	2 night stay	\$500.00
70792	SD Imperial Cty Labor Cnd AFL-CIO 17th annual	3/24/2005	1 night stay	\$250.00
70793	SD Imperial Cty Labor Cnd AFL-CIO 17th annual	3/24/2005	Dinner for 2 \$75	\$75.00

COMPLIMENTARY GIFT CERTIFICATES
Hilton San Diego Resort

Gift Certificate No.	Organization	Date Issued	Service Provided	Value
70794	MDA - 13th Annual Black&Blue Ball	Mar-05	2 night stay	\$500.00
70795	DT-SDMV	Mar-05	2 night stay	\$500.00
70796	DT-SDMV	Mar-05	60 min Spa Treatment	\$100.00
70797	SDMesa College-Annl Scholar Awards	4/8/2005	1 night stay	\$250.00
70798	Palomar College Foundation 10th wine	3/7/2005	60 min Spa Treatment	\$100.00
70799	Skyline Wesleyan Church	4/12/2005	Meal for 2 \$50 value	\$50.00
70800	Vista Grande Elementary PTA - country fair	4/11/2005	1 night stay	\$250.00
70801	Boston Ntl Sales - Client Event 5/18	4/12/2005	1 night stay	\$250.00
70802	Western Farm Services	4/15/2005	1 night stay	\$250.00
70803	Western Farm Services	4/15/2005	1 night stay	\$250.00
70804	Western Farm Services	4/15/2005	1 night stay	\$250.00
70805	Western Farm Services	4/15/2005	1 night stay	\$250.00
70806	SD JR Theater	4/18/2005	1 night stay	\$250.00
70807	Scripps Hospital - Parent Connection Auction 4/23/05	4/18/2005	1 night stay	\$250.00
70808	Sharp Events - Anniv Event	4/18/2005	2 night stay	\$500.00
70809	Charlie Joiner 16th annu golf invita.	4/19/2005	2 night stay	\$500.00
70810	Children Hospital	4/19/2005	2 night stay	\$500.00
70811	Rio Norte School	4/20/2005	1 night stay	\$250
70812	Ntl Academy Found. - 21st Annual	4/5/2005	2 night stay	\$500.00
70813	Embassy Suites Buena Park Beach Party	4/12/2005	1 night stay	\$250.00
70814	San Diego Zoo	4/18/2005	2 month Resort Club Membership	\$180
70815	Make A Wish Foundation	4/26/2005	1 night stay	\$250.00

**COMPLIMENTARY GIFT CERTIFICATES
Hilton San Diego Resort**

Gift Certificate No.	Organization	Date Issued	Service Provided	Value
70816	Embassy Suites Hotel	4/25/2005	2 night stay	\$500.00
70817	Hilton Waikoloa Village	4/27/2005	2 night stay	\$500.00
70818	Hannover Fairs USA Inc - ISCe Welcome raffle	4/27/2005	2 night stay	\$500.00
70819	Mission Bay Yacht Club - Junior Sailing	5/4/2005	60 min massage	\$100
70820	DT Del Mar 5 de Mayo Client event	5/5/2005	lunch for 2	\$50
70821	Partners I School Innovation	5/10/2005	2 night	\$500.00
70822	Hampton Inn&Suites	5/6/205	1 night	\$250.00
70823	El Camino High School	5/6/2005	Dinner for 2	\$75
70824	NCSAE	5/6/2005	2 night	\$500.00
70825	Explorer Elementary Charter School	5/16/2005	1 night	\$250.00
70826	Scripps Ranch High School	5/7/2004	1 night, dinner for 2 \$100, 50 min couples massage	\$200.00
70827	Hilton LA/University City	5/20/2005	1 night	\$250.00
70828	Southwest Student Services Corporation	5/18/2005	1 night	\$250.00
70829	HRW - Hemet Annual Employee Picnic	5/24/2005	2 night	\$500.00
70830	Hilton Times Square - Client Reception	5/24/2005	2 night	\$500.00
70831	Hope Heart Institute - Cocktail Party/Silent Auction	4/12/2005	2 night	\$500.00
70832	Honolulu Publishing - Spirit of Aloha	5/19/2005	3 nights	\$750
70833	MAAC Project - Gala 40th Anniv Sunset Cruise	6/6/2005	1 night	\$250.00
70834	Veteran's Museum & Memorial Center		1nt or Sunset Cruise on the Lady Hilton for up to 6 guests	\$250.00
70835	Chabad of Santa Clarita Valley	6/2/2005	1night	\$250.00
70836	Scripps Ranch High School Foundation	Jun-05	2 nights	\$500.00
70837	MAAC Project - Gala 40th Anniv Sunset Cruise	6/6/2005	Sunset Cruise on the Lady Hilton for up to 6 guests	0

COMPLIMENTARY GIFT CERTIFICATES
Hilton San Diego Resort

Gift Certificate No.	Organization	Date Issued	Service Provided	Value
70838	The Foundation for Diabetes Research	6/21/2005	2 nights	\$500.00
70839	HSW - SD Summer client event	6/24/2005	2 nights	\$500.00
70840	Ca Narcotic Officer's Assn - Golf Tour.	6/29/2005	2 nights	\$500.00
70841	SeaScapes: Home Tour 2005 - Jr League of SF	7/5/2005	2 night	\$500.00
70842	Fidelity Natl Title - Holiday Party	7/5/2005	1 night	\$250.00
70843	SDCVB - Mixer	7/13/2005	60min Spa Treatment	\$100.00
70844	SDCVB - Mixer	7/13/2005	60min Spa Treatment	\$100.00
70845	SDCVB - Mixer	7/13/2005	60min Spa Treatment	\$100.00
70846	Robert Varela - Service Recovery	7/15/2005	1 night	\$250.00
70847	Anthony Kearns - Service Recovery	7/15/2005	1 night	\$250.00
70848	Hilton Burbank Airport & Conv Ctr	6/24/2005	2 night	\$500.00
70849	Hilton London	7/18/2005	4 nights	\$1,000.00
70850	Pointe Hilton Resorts - Arizona	7/11/2005	2 night	\$500.00
70851	San Diego Catholic Worker	7/1/2005	1 night	\$250.00
70852	Treadaway - Bishop Wedding Celebration	7/20/2005	1nt, Bkfst for 2	\$270.00
70853	DT Club Hotel	7/19/2005	1 night	\$250.00
70854	Hilton Resort Club Member Party	7/22/2005	Dinner for 2ppl \$75	\$75.00
70855	Rancho Bernardo Inn	7/25/2005	1 night	\$250.00
70856	California Escrow Assn 50th Conf	7/26/2005	2 night	\$500.00
70857	UCSD Staff Assn	7/24/2005	1 night	\$250.00
70858	Mission Valley YMCA - KSWB Cares for Kds/Margaritaville	7/25/2005	2 night	\$500.00
70859	Hilton Pointe Resorts	7/18/2005	2 nts stay	\$500.00

COMPLIMENTARY GIFT CERTIFICATES
Hilton San Diego Resort

Gift Certificate No.	Organization	Date Issued	Service Provided	Value
70860	Hilton Hotels Corp.	8/1/2005	2 nts stay	\$500.00
70861	Ronald McDonald House - San Francisco	7/31/2005	2 nts stay	\$500.00
70862	Hilton SD Resorts		1 nt stay	\$250.00
70863	Charlies Buddies	8/2/2005	2 nts stay	\$500.00
70864	Charlies Buddies	8/2/2005	1 - 60 min spa treatment fo 2 ppl	\$200.00
70865	Charlies Buddies	8/2/2005	Bkfst for 2 \$75	\$75.00
70866	Honorary Deputy Sheriff's Assn	8/11/2005	Lady Hilton Sunset Cruise for 6 ppl	\$150.00
70867	Musical Theatre West	8/5/2005	1 nt stay	\$250.00
70868	Service Recovery	8/12/2005	1 nt stay	\$250.00
70869	Service Recovery	8/15/2005	1 nt stay	\$250.00
70870	The Knott - Trade	8/15/2005	2 nts stay	\$500.00
70871	James R. Role	8/19/2005	2 nts stay	\$500.00
70872	Hilton Waterfront Beach Resort	8/19/2005	1 nt stay	\$250.00
70873	Southern CA SITE Holiday Luncheon	8/11/2004	2 nts stay	\$500.00
70874	Meeting Sites Pro	8/17/2005	60min Spa	\$100.00
70875	TMR	8/25/2005	lunch for 2 \$50	\$50.00
70876	TMR	8/25/2005	dinner for 2 \$100	\$100.00
70877	Cornell Hotel Society Event	8/24/2005	2 nts stay	\$500.00
70878	Hilton Waterfront Beach Resort	8/19/2005	1 nt stay	\$250.00
70879	Mission Bay Yacht Club - annual fund raiser	9/1/2005	2 nts	\$500.00
70880	KTEH & PBS National Marketing - Trade	9/2/2005	2 nts	\$500.00
70881	Alex Roberts - DJ Trade			

COMPLIMENTARY GIFT CERTIFICATES
Hilton San Diego Resort

Gift Certificate No.	Organization	Date Issued	Service Provided	Value
70882	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70883	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70884	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70885	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70886	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70887	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70888	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70889	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70890	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70891	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70892	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70893	Anthony Garcia - Service Recovery	9/7/2005	2 nts	\$500.00
70894	Baggage Claimers	9/8/2005	1 nt	\$250.00
70895	Baggage Claimers	9/8/2005	1 nt	\$250.00
70896	Candlelighters - Childhood Cancer Foundation	9/1/2005	2 nts	\$500.00
70897	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70898	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70899	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70900	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70901	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70902	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00
70903	Music As You Like It -Team Member Picnic Trace of Services	9/6/2005	\$50 dining for 2ppl	\$50.00

Hilton San Diego Resort

Total	\$58,740.00
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Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

EXHIBIT N

SALES OFFICE LEASE

THIS LEASE is made as of _____, 20____, by and between LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership ("Landlord") and HILTON HOTELS CORPORATION, a Delaware corporation ("Tenant").

W I T N E S S E T H:

WHEREAS, Landlord owns the building known as the Hilton San Diego Resort located at 1775 East Mission Bay Road in San Diego, California (the "Hotel"); and

WHEREAS, Tenant desires to lease certain space in the Hotel shown on Exhibit A attached hereto and made a part hereof (the "Premises") which Landlord is willing to do on the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable considerations, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1) Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord the Premises, commencing on _____, 20____, and ending on _____, 20____ ("Term"). After the expiration of the Term of this Agreement, this Lease will convert to a month-to-month tenancy and will be terminable by either party with thirty (30) days' prior written notice. Tenant agrees that it is leasing the Premises "as is" without any representations or warranties by Landlord, and in no event shall Tenant be entitled to any allowances or concessions with respect to the Premises except as expressly set forth in this Lease. If Landlord cannot deliver the Premises to Tenant on the date the term of this Lease is scheduled to commence, this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom. In such case, the rent provided herein shall not commence until Landlord can deliver possession of the Premises to Tenant.

2) The monthly rental for the Premises shall be \$1.50 per square foot for a total of \$_____ (the "Rent"), payable in advance on the first day of each and every calendar month during the term hereof, without offset or deduction, at such location as Landlord may designate. In the event the term of this Lease commences on other than the first day of the month or ends other than on the last day of the month, the Rent shall be prorated for such month based on the number of days of the lease term falling in such month. If any installment of the Rent is not paid within five (5) days of written notice of non-payment, Tenant shall pay Landlord a late charge of five percent (5%) of the amount past due.

3) The Premises shall only be used for office space. Tenant shall: a) not store inflammable, combustible or other dangerous or hazardous materials in the Premises or store any items the storage of which is illegal or would cause Landlord's insurance to be cancelled or its cost to be increased; b) keep the Premises clean and orderly and in good condition and repair; c) deliver to Landlord a duplicate key for any locks placed on the Premises; d) at all times comply with all applicable laws, rules, regulations and ordinances, including Landlord's rules and regulations for the Building; e) not make any modifications or alterations to the Premises without Landlord's prior consent, which will not be unreasonably withheld.

4) Landlord shall have the option at any time during the Lease term to substitute for the space depicted on Exhibit A attached hereto other comparable space located in the Building. If the Landlord shall exercise such option, Landlord shall pay all reasonable moving costs associated with the relocation of Tenant's property to the substituted space.

5) Upon termination of this Lease, Tenant shall remove all of its property from the Premises and leave the Premises in broom-clean condition; and if Tenant does not remove such property, Tenant shall be conclusively presumed to have conveyed the same to Landlord under this Lease as a bill of sale without further payment or credit by Landlord to Tenant, or at Landlord's sole option Landlord may cause such property to be removed and stored at the risk and cost of Tenant.

6) To the extent permitted by law, Tenant waives all claims it may have against Landlord, its agent or employees for damage to person or property sustained by Tenant or any occupant or other person resulting from any part of the Premises or Building becoming out of repair or resulting from any accident within or adjacent to the Premises or Building or resulting directly or indirectly from any act or omission of Landlord or any occupant of the Premises or Building or any other person while on the Premises or Building, except to the extent caused by Landlord's gross negligence or willful misconduct. Particularly, but not in limitation of the foregoing, all property belonging to Tenant or any occupant of the Premises that is in the Building or the Premises shall be there at the risk of Tenant or other person only, and Landlord or its agents or employees shall not be liable for damage to or theft of or misappropriation of such property, nor for any injury to persons resulting from any cause whatsoever, including defects in the condition of the Building or the Premises, except to the extent caused by Landlord's gross negligence or willful misconduct.

7) Tenant agrees to maintain in full force and effect at all times during the term of this Lease, at no expense to Landlord, for the protection of Tenant and Landlord, as their interests may appear, property insurance and liability insurance with such reasonable coverages, amounts and carriers as Landlord may approve. Certificates evidencing all such insurance coverages, naming Landlord as an additional insured, shall be delivered to Landlord on the date the term of this Lease commences. Each such certificate of insurance will provide for thirty (30) days advance notice to Landlord in the event of cancellation, nonrenewal or modification of such insurance.

8) If any damage to the Building results from any act or negligence of Tenant, Landlord may at Landlord's option repair such damage, and Tenant shall thereupon pay to Landlord the total cost of such repairs and damages to the Building; provided, however, that Landlord waives any right of action against Tenant for any loss or damage to the Building, including the Premises, resulting from fire or other casualty if Landlord's insurance policy covers such loss or damage and permits such a waiver. In addition, Tenant will indemnify, defend and hold harmless Landlord and its agents or employees against any claims or costs, including reasonable attorney's fees, arising from Tenant's conduct or from any breach or default on the part of Tenant during the term of this Lease or from such acts or conduct of any subtenant, employee, agent, servant, customer or contractor of Tenant.

9) If Tenant retains possession of the Premises or any part thereof after the termination of the term or any extension thereof, Tenant shall become a tenant from month-to-month only upon each and all of the terms herein provided as may be applicable to such month-to-month tenancy and any such hold over shall not constitute an extension of this Lease; provided, however, during such holding over, Tenant shall pay Rent at one hundred and fifty percent of the rate payable for the month immediately preceding said holding over for the time Tenant thus remains in possession; and, in addition, Tenant shall pay Landlord all damages, consequential as well as direct, sustained by reason of Tenant's holding over. The provisions of this paragraph do not waive Landlord's right of re-entry or right to regain possession by actions at law or in equity.

10) This Lease shall be subordinated to any and all mortgages and ground leases now or hereafter in force with respect to the Building at the election of each such mortgagee or ground lessor; provided, however, upon request of any ground lessor or mortgagee, Tenant shall attorn to such ground lessor or mortgagee pursuant to an agreement satisfactory to Tenant and such mortgagee or ground lessor.

11) Tenant shall not assign this Lease, or any interest therein, and shall not sublet the Premises, or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person to occupy or use the Premises, or any portion thereof without the prior written consent of Landlord.

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

12) In the event of any default by Tenant under this Lease which default continues for five (5) days after written notice to Tenant, Landlord shall have all rights and remedies as provided by law.

13) Tenant shall look solely to Landlord's estate and interest in the Building for the satisfaction of any right of Tenant for the collection of a judgment or other judicial process against Landlord, and no other property of Landlord shall be subject to levy, lien, execution or attachment for satisfaction of Tenant's right or remedies hereunder.

[Signature Page Follows]

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LANDLORD:

LHO MISSION BAY ROSIE HOTEL, L.P.,
a Delaware partnership

By: LHO Mission Bay Rosie Hotel, L.L.C.,
a Delaware limited liability company,
its General Partner

By: LaSalle Hotel Operating Partnership, L.P.,
a Delaware limited partnership
its managing member

By: LaSalle Hotel Properties,
a Maryland real estate investment trust
Its General Partner

By: _____ **EXHIBIT – DO NOT SIGN**
Name: _____
Title: _____

TENANT:

HILTON HOTELS CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT O

LAUNDRY SERVICES AGREEMENT

This Agreement is made and entered into as of _____ by and among _____ (the "Company"), and HILTON HOTELS CORPORATION, a Delaware corporation, as managing agent for CHH Torrey Pines Tenant Corp. (the "Provider"). The Company and the Provider are sometimes referred to herein as the "Parties" and individually referred to as a "Party."

RECITALS

WHEREAS, the Company operates the Hilton San Diego Resort (the "Hotel") located at 1775 East Mission Bay Drive, San Diego, California 92109; and

WHEREAS, Provider, or an affiliate of Provider, has contracted to sell the Hotel to LHO Mission Bay Rosie Hotel, L.P., a Delaware limited partnership ("Purchaser") pursuant to that certain Purchase and Sale Agreement by and between Hilton San Diego Corporation, a California corporation ("Seller") and Purchaser; and

WHEREAS, merely as an accommodation to Purchaser, Seller has agreed to provide certain laundry services to the Hotel in the manner and pursuant to the terms and conditions as set forth herein;

NOW, THEREFORE, in consideration of the agreements and obligations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. Services. Provider will perform for the Hotel laundering services, including laundering, inspection, reclaiming, and packaging, all as currently provided to the Hotel for Seller (as defined therein, the "Services"). The Company agrees to purchase the Services from Provider at the rate set forth on Schedule A attached hereto and incorporated herein by this reference.

2. Textiles. Company and Provider acknowledge and agree that as of the effective date of this Agreement, the Hotel has an adequate inventory of textiles to meet the Hotels' requirements. All textiles provided by the Company hereunder shall remain the property of the Company. The Company will remain responsible for purchasing replacement textiles (except to the extent replacing damaged or lost textiles is the result of negligent acts or omissions by Provider) and additional textiles during the term of this Agreement as are required to maintain the Company's initial textile inventory estimates of 3.5 pars or additional inventories to the extent required by the Hotel.

3. Standard of Care. The Provider will perform or cause to be performed the Services in a timely, efficient, and workmanlike manner. The Provider makes no other guarantee, representation, or warranty of any kind regarding any Services provided hereunder, and expressly disclaims all such guarantees, representations, and warranties of any nature whatsoever, whether statutory, oral, written, express or implied, including, without limitation, any warranties of merchantability or fitness for a particular purpose and any warranties arising from course of dealing or usage of trade. The Provider may, in its discretion, retain third parties to provide any or all of the Services hereunder.

4. Payment.

(a) Dispute Over Fees. No payment by the Company or acceptance of payment by the Provider shall prejudice the right of such Party to question the correctness of any invoice or payment; provided, that the Provider shall not be required to adjust any invoice or payment unless a written claim therefor is presented to it within three (3) months from the date on which such invoice or payment was received by the Company.

(b) Late Payment Charge. Any amount not received by fifteen (15) days after the due date therefor shall be subject to a late payment charge. The late payment charge shall be the balance overdue multiplied by the lower of (i) 1.0% per month, or (ii) if lower than the rate of interest specified in clause (i) above, the highest legal stated interest rate (in decimal value) allowed by applicable law for the number of calendar days from the day following the payment due date up to and including the date payment is actually made.

(c) Timing. Late payment charges shall not be levied on disputed amounts until resolution. If the claim is resolved in the Provider's favor, the Company shall pay the late payment charges on any amount resolved in the Provider's favor and not previously paid by the Company from the date such payment was due.

(d) Exceptions. Late payment charges shall not be applied to late payments caused by bank or third-party errors; rather, any discrepancy shall be resolved by the banks or third parties involved. The Parties shall notify the banks or third parties involved and coordinate resolution thereof.

(e) Billing. Late payment charges shall be included with the next payment, but shall be excluded in calculating new late payment charges.

5. Term and Termination. See Schedule "A."

6. Indemnification.

(a) General. Each Party (the "Indemnitor") shall defend, indemnify and hold harmless the other Party and its directors, officers, agents, employees, representatives, successors, assigns, shareholders, and affiliates (each, an "Indemnitee") from and against any loss, liability, damage, or claim, including reasonable attorney's fees, in connection with any claim, action, suit, or proceeding or threat thereof arising from the Indemnitor's gross negligence or willful misconduct in connection with this Agreement.

(b) Procedures. In each instance in which indemnity is claimed hereunder, the Indemnitee shall give prompt written notice to the Indemnitor of any claim, action, or proceeding in respect of which indemnity is claimed, together with photocopies of any and all letters, pleadings, or other documents in the Indemnitee's possession which are alleged to form the material basis of any such claim or action; provided, that the failure to provide such notice in a timely fashion shall not affect the Indemnitor's obligations hereunder except and only to the extent that any delay in providing such notice results in actual prejudice to the Indemnitor. In any case, the Indemnitee shall cooperate with the Indemnitor in the defense of any such claim or action to the extent that the Indemnitor and Indemnitee are not adverse parties or have adverse interests therein. The Indemnitor shall have the right to control the defense of any such claim or action by counsel of the Indemnitor's choice, at the Indemnitor's sole cost and expense. To the extent that the Indemnitor and Indemnitee may be adverse parties or may have adverse interests therein, the Indemnitee shall have the right to participate in the defense of any such claim or action with separate counsel of the Indemnitee's choice, at the Indemnitor's sole cost and expense, which choice of counsel shall be subject to the Indemnitor's reasonable consent.

(c) Survival. This Section shall survive the termination or cancellation of this Agreement.

7. Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its applicable Commercial Arbitration rules and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

8. Assignment. Subject to Section 3, no Party may assign or otherwise dispose of all or any portion of its right, title, or interest herein to any person without the prior written consent of the other Party, which consent may be given or withheld in such other Party's sole and absolute discretion except that Provider, in its sole discretion (and without any requirement to obtain Company's consent to such assignment), may assign this Agreement or any rights, obligations or benefits hereunder to its owners, successors or affiliates, whether now in being or formed at some future time. Any

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

assignment in violation of this section shall be void. Subject to the foregoing, the Agreement shall be binding upon and shall inure to the benefit of the Parties, and each of their respective successors and permitted assigns.

9. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER OR LOSS OF INCOME, PROFIT OR SAVINGS OF ANY PARTY. EXCEPT FOR AMOUNTS DUE FOR SERVICES RENDERED AND GOODS DELIVERED, IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF EITHER PARTY RELATING TO THIS AGREEMENT EXCEED THE TOTAL FEES PAYABLE BY COMPANY UNDER THIS AGREEMENT FOR THE TERM.

10. Notices. Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been delivered, given, and received for all purposes (i) if delivered personally to the person or to an officer of the person to whom the same is directed, or (ii) when the same is actually received, if sent either by registered or certified mail, postage and charges prepaid, return receipt requested, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent promptly thereafter by registered or certified mail, postage and charges prepaid, return receipt requested, addressed as follows, or to such other address as such person may from time to time specify by due notice:

To the Provider: HILTON HOTELS CORPORATION
9336 Civic Center Drive
Beverly Hills, California 90210
Attn: _____
Telephone: _____
Fax: _____

With a copy to:

General Counsel
9336 Civic Center Drive
Beverly Hills, CA 90210
Fax: 310-205-7694

To the Company: _____

Attn: _____
Telephone: _____
Fax: _____

11. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Each Party agrees that personal jurisdiction over it may be effected by service of process by registered or certified mail addressed as provided in Section 10, and that when so made shall be as if served upon it personally within the State of California.

12. Severability. Except as otherwise provided in the succeeding sentence, every provision of this Agreement is intended to be severable, and, if any term or provision herein is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement. The preceding sentence of this Section shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any Party to lose the material benefit of its economic bargain.

Purchase and Sale Agreement
Hilton San Diego Resort
1775 East Mission Bay Road

13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if both Parties had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

14. Section Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements, whether written or oral, regarding the subject matter hereof.

16. Amendments and Waivers.

(a) No amendment, modification, or supplement to this Agreement shall be binding on either Party unless it is in writing and duly executed by each Party.

(b) None of the provisions of this Agreement shall be considered waived by either Party unless such waiver is given in writing by or on behalf of such Party against whom such waiver is claimed. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. Waiver by a Party of any default under this Agreement shall not be deemed a waiver of any other default.

17. Construction. Every covenant, term, and provision of this Agreement shall be construed and interpreted simply according to its fair meaning and shall not be construed or interpreted for or against any Party that drafted or caused its legal representative to draft such covenant, term, or provision.

18. Force Majeure. Neither Party shall be held liable or responsible for delay or failure to perform its obligations under this Agreement occasioned by force majeure or any cause beyond its control, including, but not limited to, civil disturbance, fire, flood, earthquake, windstorm, unusually severe weather, act of labor trouble, lack of or inability to obtain raw materials, transportation, labor, fuel or supplies or governmental laws, acts, regulations, embargoes, or orders (whether or not such later prove to be invalid).

19. Third-Party Beneficiaries. The provisions of this Agreement are for the benefit of the Provider and the Company and not for any other person. However, should any third party institute proceedings, this Agreement shall not provide any such person with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those provided herein.

[Signature Page Follows]