

CONSENT TO SUBLEASE AGREEMENT

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

TORREY PINES HOTEL ASSOCIATES,
a California General Partnership

(LESSEE) and filed on the Office of the City Clerk as Document No. RR-269077-1, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

ACE PARKING MANAGEMENT, INC.

(SUBLESSEE) dated November 9, 1989. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and that all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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:

NONE

THE CITY OF SAN DIEGO

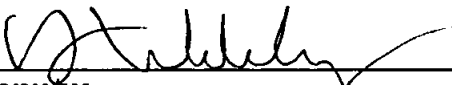
Dated 1-14-92

By 
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

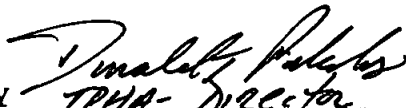
Dated 1/14/92

By 
Deputy

1-10-92
Consent to Sublease Agreement
PAGE -2-

TORREY PINES HOTEL ASSOCIATES,
a California General Partnership

DATED 2/4/92

BY 
TPHA- Director

ACE PARKING MANAGEMENT, INC.

DATED 2/6/92

BY 
LYON. VICE PRES

NRS:nrs

CONSENT TO SUBLEASE AGREEMENT

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

TORREY PINES HOTEL ASSOCIATES,
a California General Partnership

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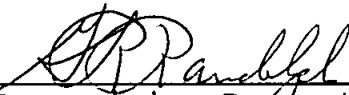
HAZELWOOD ENTERPRISES, INC.

(SUBLESSEE) dated July 29, 1991. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and that all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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:

NONE

THE CITY OF SAN DIEGO

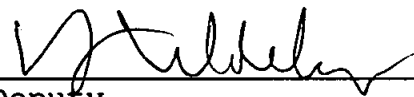
Dated 1-13-92

By 
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated 1/14/92

By 
Deputy

NRS:nrs

1-10-92
Consent to Sublease Agreement
PAGE -2-

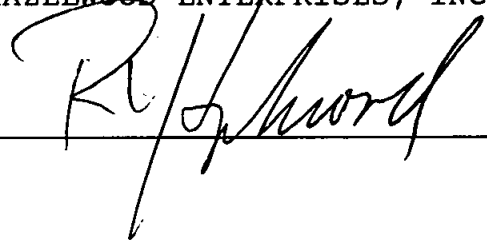
TORREY PINES HOTEL ASSOCIATES,
a California General Partnership

DATED 2/1/92

BY 
TPHA - Inc. Co.

HAZELWOOD ENTERPRISES, INC.

DATED 2/26/92

BY 

NRS:nrs

THE SHERATON GRANDE TORREY PINES HOTEL

HOTEL GIFT SHOP LEASE

BETWEEN

TORREY PINES HOTEL ASSOCIATES

AND

HAZELWOOD ENTERPRISES INCORPORATED

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LEASE AGREEMENT

THIS LEASE ("Lease") is made and entered into the 29th day of July, 1991, by and between TORREY PINES HOTEL ASSOCIATES, a California general partnership comprised of ITT Sheraton Corporation, a Delaware corporation, and ~~North American~~ **TAISEI AMERICA** ~~Taisei~~ Corporation, also a Delaware corporation, with offices at Sheraton Grande Torrey Pines Hotel, 10950 North Torrey Pines Road, La Jolla, California 92037 ("Lessor") and HAZELWOOD ENTERPRISES INCORPORATED, an Arizona corporation with offices at 402 North 32nd Street, Phoenix, Arizona 85008 ("Lessee").

WITNESSETH:

Premises:

Lessor hereby leases to Lessee, for the term and upon the conditions hereinafter set forth, all those premises situated in the Sheraton Grande Torrey Pines Hotel, located at 10950 North Torrey Pines Road, La Jolla, California 92037 ("Hotel"), which premises consist of a shop located in the main lobby of the Hotel across from the Hotel Registration Desk and which premises are comprised of approximately 600 square feet, more or less ("Demised Premises"). See Schedule B attached hereto for a plan which specifically designates by shading the location of the Demised Premises.

Use:

During the term hereof Lessee hereby covenants and agrees to operate the Demised Premises, subject to the limitations of Paragraph 11 hereof, only as a news, gift and non-prescription drug and sundry store and for no other purpose. The merchandise which Lessee shall offer for sale shall consist of tobacco products, candy, prepackaged snack foods, newspapers, magazines, paperback or hard cover books, publications, health and beauty aids, film, playing cards, combs, brushes, hair ornaments, post cards and greeting cards. The merchandise which Lessee may offer for sale shall include cosmetics, batteries, sundries, souvenirs, men's bathing suits (provided, however, that in no event shall more than ten such men's bathing suits be displayed at any one time), men's and women's T-Shirts, sweatshirts and sweatpants (including, without limitation, such men's and women's T-Shirts, sweatshirts and sweatpants as are made from cotton blend sheeting), American Southwest-theme souvenirs and American Southwest-theme men's and women's T-Shirts, sweatshirts and sweatpants (provided, however, that in no event shall the area for the sale, display, and storage of such American Southwest-theme merchandise exceed ten percent (10%) of the total area of the Demised Premises) and related convenience items for the Hotel guests.

The Demised Premises are leased together with the appurtenances including, without limitation, the right to use in common with others, subject to the regulations of Lessor, the lobbies, elevators and other public portions of the Hotel.

1. Term

TO HAVE AND TO HOLD the Demised Premises for a term of five (5) years commencing on the 1st day of August, 1991, ("Commencement Date") and terminating at the end of the day on the 31st day of July, 1996, ("Termination Date"), unless sooner terminated as is hereinafter provided.

Hazelwood Enterprises Incorporated
Lease Agreement

2. Lease Year

The term lease year ("Lease Year") shall mean:

- A. the period from the Commencement Date to the date which is one (1) day prior to the first anniversary of the Commencement Date, and
- B. each successive period of twelve calendar months thereafter.

3. Minimum Fixed Rent

Throughout the term hereof, Lessee shall pay to Lessor a minimum fixed rental ("Minimum Fixed Rent") according to the following schedule:

<u>TERM</u>	<u>ANNUAL RENT</u>	<u>MONTHLY RENT</u>
Year 1	\$29,400	\$2,450
Year 2	\$31,800	\$2,650
Year 3	\$35,100	\$2,925
Year 4	\$37,800	\$3,150
Year 5	\$39,300	\$3,275

The relevant Minimum Fixed Rent shall be due and payable in equal monthly installments in advance on the first day of each calendar month. In the event that this Lease commences and/or terminates other than on the first day of a month, then the first and/or last monthly installment of Minimum Fixed Rent payable shall be prorated for such first and/or last month by multiplying the monthly rental installment otherwise due by a fraction, the numerator of which is the number of days during such month that this Lease is in effect and the denominator of which is thirty (30).

4. Percentage Rent

- A. During the term of this Lease in addition to the aforesaid Minimum Fixed Rent, Lessee shall pay a percentage rent equal to the amount by which twelve percent (12%) of Lessee's gross sales in any Lease Year plus five percent (5%) of Lessee's Newspaper Sales (as such term is hereinafter defined) in any Lease Year exceeds the Minimum Fixed Rent for such Lease Year ("Percentage Rent"). Such Percentage Rent shall be computed each month on the basis of the amount by which twelve percent (12%) of Lessee's gross sales for such month plus five percent (5%) of and Lessee's Newspaper Sales for such month exceeds the monthly installment of the Minimum Fixed Rent, and shall be paid on the eighth (8th) day of the month following the month in which earned. The first monthly Percentage Rent payment hereunder shall be due on the eighth (8th) day of the month following the Commencement Date of this Lease, and if the Demised Premises do not open on the first day of a month then the first monthly payment of Percentage Rent shall be equal to the amount by which twelve percent (12%) of Lessee's gross sales for such month plus five percent (5%) of Lessee's Newspaper Sales for such month exceeds the prorated Minimum Fixed Rental for such month. Each payment of Percentage Rent shall be accompanied by a statement of Lessee's gross sales and Lessee's Newspaper Sales for the preceding month certified by an officer of Lessee approved by the Lessor. Lessee expressly agrees that it shall provide Lessor with such monthly gross sales statements and monthly Newspaper Sales statements regardless of whether or not Percentage Rent is due and owing for the month in question.

- (ii) the amount of the sales to Lessee's employees and Lessor's employees at a discount of not less than twenty-five percent (25%) of the retail price provided, however, that such excluded sales shall not exceed in the aggregate two percent (2%) of Lessee's gross sales (prior to reductions for excluded items) during any one Lease Year on a non-cumulative basis;
 - (iii) the amount of any sales of fixtures, equipment or property which is not carried in inventory;
 - (iv) the amount of any merchandise returned or transferred to the warehouses of Lessee, or to any other stores, departments or concessions operated by Lessee or any affiliate of Lessee, or merchandise returned to suppliers;
 - (v) the amount of Lessee's Newspaper Sales.
- D. The term "Newspaper Sales" as herein used shall include daily and weekly publications of local, national, and international newspapers.
- E. It is further understood and agreed, however, that although the additional Percentage Rent paid to Lessor is based on the gross sales of Lessee, nothing herein shall be deemed or construed to make Lessor a partner, associate or joint venturer with Lessee in the conduct of the Lessee's business.
- F. Anything herein contained to the contrary notwithstanding, and without in any way limiting the full force and effect of this provision or any other provision of this Lease, Lessee hereby covenants and agrees that its failure to strictly comply with the statement reporting and Percentage Rent payment provisions of this Paragraph 4 shall constitute a material default hereunder.

5. Operating Expenses

- A. Intentionally Omitted.
- B. In the event that the operating expenses of the Hotel (as such expenses are hereinafter defined but specifically excluding any operating expenses of the parking garage located beneath the Hotel, which parking garage is hereinafter referred to as the "Parking Garage") incurred by Lessor during any Lease Year shall be greater than the operating expenses incurred by Lessor during the calendar year 1990 ("base year"), then Lessee shall pay to Lessor as additional rent for the Lease Year in question, within thirty (30) days after the last day of such lease year, an amount equal to the product which is the result of multiplying the amount by which the operating expenses for the lease year in question exceed those for the base year by a fraction, the numerator of which is 600 and the denominator of which is 351,589 ("Additional Rent").

At Lessor's option, Lessor by notice to Lessee may increase the monthly rent payable at the commencement of the Lease Year in question based on Lessor's estimate of increases in operating expenses to be incurred in such Lease Year, subject to final adjustment upon determination of actual operating expenses for the Lease Year in question. Lessee agrees to pay such estimated monthly operating expense installments together with, and on the same terms as, the installments of Minimum Fixed Rent above provided for.

- C. The term "operating expenses" as herein used shall mean any or all of the following incurred by Lessor with respect to the Hotel of which the demised premises form a part: salaries, wages, medical, surgical and general welfare benefits (including group life insurance) and pension payments of employees of Lessor engaged in the operation and maintenance of the building of which the demised premises are a part, payroll taxes, workmen's compensation insurance, electricity, steam, utility taxes, water (including sewer rental), casualty and liability insurance, repairs and maintenance, building and cleaning supplies, uniforms and dry cleaning, window cleaning, service contracts with independent contractors, telephone, telegraph, stationary, advertising, and all other expenses paid in connection with the operation of said premises properly chargeable against income. Lessor, upon written demand by Lessee therefore, but not sooner than ninety (90) days after the expiration of a Lease Year, shall furnish Lessee with a summary schedule of such operating expenses for such Lease Year if there shall occur therein an increase in operating expenses as aforesaid.
- D. If the final Lease Year shall contain less than twelve months, any Additional Rent payable under either (A) or (B) for such Lease Year shall be prorated by multiplying the amount of Additional Rent which would have been payable (had the final Lease Year been a Lease Year of twelve months) by a fraction, the numerator of which is the number of days in such final Lease Year and the denominator of which is 360. The obligation for any amount of Additional Rent attributable to the final Lease Year shall survive the termination of this Lease, even though a final determination of the actual amount of such obligation may not be possible until after the Termination Date.

6. Additional Terms and Conditions

All other terms and conditions appearing on Schedules A and E attached hereto are hereby made a part hereof and are terms, covenants and conditions of this Lease with the same force and effect as if the same were set forth in full herein.

7. Time and Place of Payments

Unless otherwise specified herein, all payments of Minimum Fixed Rent, Percentage Rent, Additional Rent and/or other sums of money shall be made without deduction or offset at the office of Lessor at the Hotel, or at such other place as Lessor may from time to time designate in writing, and unless the time for payment is otherwise specified herein, the time for payment of any sum shall be within thirty (30) days of the date that such sum is due and payable. The covenants to pay Minimum Fixed Rent, Percentage Rent and Additional Rent shall be independent of any other covenants herein.

Interest shall accrue on unpaid sums at the lesser of

- A. fifteen percent (15%) per annum or
- B. the maximum legal rate from time to time in effect in the jurisdiction in which the Hotel is located, from and after the expiration of the cure period provided for in Paragraph 22(A) below.

8. Heating and Cooling

Subject to any limitations on energy consumption, temperature restrictions, time regulations, or other rules and regulations which may, from time to time, be imposed by any governmental authority or agency having jurisdiction, and further subject to the provisions of Paragraph 10 of this Lease, Lessor, at its sole cost, will furnish heat and air conditioning to provide a temperature and humidity condition required, in Lessor's judgment, for the operation of the Demised Premises under normal business operation and during the permitted business hours.

9. Utilities

Lessor shall make available to the Demised Premises electrical service and water in such quantities as Lessor shall reasonably deem to be necessary for the operation of the Demised Premises in accordance with the terms of this Lease. All utilities, including, without limitation, water and electricity, but specifically excluding telephone service, shall be paid for by Lessor.

10. Failure or Delay in Furnishing of Utilities or Services

Lessor and Lessee agree that Lessor shall not be in default hereunder and shall not be liable for damages, nor shall the rentals or any other payments hereinabove stipulated be abated, because of the failure or delay of Lessor to provide heat or air conditioning as provided for in Paragraph 8 above, when such failure or delay is due to any cause reasonably beyond the control of the Lessor, including, but not limited to accident, fire, failure of equipment, making of repairs, alterations or improvements, lock out or other labor controversy, governmental regulations or unavailability through the usual and normal channels of commerce, of fuel, electrical power, materials or supplies. Any such failure or delay in providing heat or air conditioning, or other utility or services which Lessor has agreed to provide as set forth herein, for causes reasonably beyond the control of Lessor, notwithstanding any statutory or case law to the contrary, now or hereafter in force, is agreed by Lessor and Lessee not to constitute, and shall not be construed to constitute, either an actual or constructive eviction of Lessee by Lessor nor as a disturbance, in any manner whatsoever, of Lessee's use and quiet possession of the Demised Premises, nor shall it operate to release Lessee from the prompt and punctual performance of each and every of its covenants and obligations pursuant to this Lease.

11. Conduct of Lessee's Business

- A. Lessee covenants and agrees, as an inducement to Lessor to enter into this Lease, that at all times throughout the term hereof, Lessee will operate Lessee's business on the Demised Premises in a first-class and businesslike manner, maintain adequate inventories of merchandise and furnish first class and efficient service to the patrons, guests, tenants and visitors of the Hotel. Lessee warrants and represents that Lessee's staffing, operation of its business, sale methods and all elements of merchandise display and advertising will be in conformity with standards of practice followed by superior stores, shops or concerns in the municipality in which the Hotel is located, dealing in the same or similar merchandise; that at all times, the appearance and conduct of Lessee's business will meet with Lessor's approval, and if same be disapproved at any time by Lessor, then Lessee agrees to

eliminate the grounds for such disapproval in the time and manner set forth in a written notice from Lessor to Lessee. Lessee further warrants and represents that personnel employed by Lessee in the Demised Premises shall be uniformed in a manner which strictly conforms to the terms of Schedule E attached hereto.

Lessee further covenants and agrees to conduct its business in the Demised Premises in a suitable manner so as not to interfere with the other tenants in the Hotel or with the conduct of the Lessor's business, and to treat the patrons, guests, tenants, visitors and licensees of the Hotel with courtesy and consideration.

- B. Lessee covenants and agrees that Lessee will observe and conform to, and take any action necessary to comply with, all laws, ordinances, rules, regulations or orders of all duly constituted authorities of all city, county, state and federal governments and agencies thereof, having jurisdiction, and with such rules and regulations as from time to time may be put into effect by Lessor for the general safety, comfort, and convenience of Lessor, the occupants and tenants of the Hotel. In this connection and in connection with all other covenants of Lessee, it is agreed that the standard of Lessee's conduct and care is an extraordinary one, commensurate with the protection and maintenance of the prestige, public reputation and good will of the Hotel and the name "Sheraton".
- C. In dealing with suppliers, customers, and all other persons, Lessee agrees to clearly indicate that it is a business on its own account, and that Lessor has no responsibility whatsoever for the obligations of Lessee.
- D. Lessee covenants and agrees that Lessee will throughout the term hereof,
 - (i) keep its business on the Demised Premises continuously open to the general public and doing business during the hours of 7 A.M. to 11 P.M. each day, seven (7) days per week, including, without limitation, during all holidays, or such other hours as may otherwise be agreed to in writing by the general manager of the Hotel,
 - (ii) conduct and operate its business in the entire Demised Premises,
 - (iii) adequately staff its business with sufficient numbers of employees to handle its maximum business volume and
 - (iv) at all times maintain a sufficient stock of merchandise of such size, character and quality as is commercially reasonable.

Any change in the hours of operation agreed to by the general manager pursuant to (i) herein may be unilaterally revoked at any time by Lessor or the general manager.

- E. It is agreed by Lessor and Lessee that it is particularly important that the personnel employed in the Demised Premises shall be, in all respects, acceptable to Lessor as the operator of said Hotel. In the event, therefore, that any person employed by Lessee in the Demised Premises shall be deemed objectionable by Lessor, and Lessor shall so notify Lessee in writing, giving Lessor's reasons for its objections, then Lessee agrees, subject to any limitations imposed by labor

agreements or employment laws, to discontinue the employment of such employee in the Demised Premises within five (5) days after such notification by Lessor to Lessee, it being understood that Lessor's determination under this paragraph shall be final.

- F. If there be any strike or labor trouble involving the Lessee which Lessor shall consider detrimental to the operation of the Hotel, then upon seven (7) days' notice the Lessor shall have the right to terminate this Lease provided however that in the event of any such termination the Lessor shall give the Lessee at least seven (7) days' written notice prior to executing any lease with any other person or corporation for the Demised Premises, and that if the strike or trouble is non-existent at the expiration of the aforesaid seven (7) days, and at that time a renewal of same is not anticipated, then upon the written request of Lessee, the termination of the Lease shall be annulled and Lessor and Lessee restored to the same rights and obligations under this Lease as they would have had if the Lease had not been terminated.
- G. So long as Lessee is not in default under any of the terms and conditions of this Lease beyond any applicable cure period, Lessee shall have the exclusive right to sell (subject to the limitations provided for herein): newspapers, magazines, paperback books, cigarettes and tobacco products, prepackaged snack food, sundries, health and beauty aids, film and batteries, postcards, greeting cards and candy. Lessee acknowledges that this clause was placed in the Lease at Lessee's request and that it shall be Lessee's sole responsibility to enforce the same as to any other tenant. Lessee further agrees that nothing contained in this Lease shall be construed as obligating Lessor to enforce any "exclusivity" clause on behalf of Lessee against any other lessee in the Hotel and Lessee agrees that the failure or refusal of any court to enforce the provisions of any exclusivity on behalf of Lessee shall not constitute a default or grounds for termination of this Lease by Lessee. Lessor hereby agrees to provide such testimony and other assistance to Lessee as Lessee may reasonably request; provided however all costs and expenses incurred by Lessor in providing such assistance or testimony shall be an expense of Lessee. The exclusive rights granted to Lessee herein are limited by the following exceptions:
- (i) The provisions set forth herein shall not apply to any magazines, newspapers, candy or other items distributed or otherwise made available by Lessor, with or without charge, to the guests by the Hotel.
 - (ii) The provisions set forth herein shall not apply to the sale or distribution of cigarettes or cigars in the restaurant or lounge areas in the Hotel, including those located in the lobby level.
 - (iii) The provisions set forth herein shall not apply to the sale or distribution of candy or other food products in vending machines, "mini-bars" in the guest rooms, or at guest service areas (such as snack stands or towel distribution areas) located at the pool and/or other recreational areas of the Hotel.
 - (iv) The provisions set forth herein shall not apply to any merchandise which displays the Sheraton name or logo, or which displays the Hotel name or logo, when such merchandise is distributed or otherwise made available by Lessor, with or without charge, to the guests of and visitors of the Hotel.

- (v) The provisions set forth herein shall not apply to any suntan lotion which is sold or otherwise made available, with or without charge, by Lessor in the area which surrounds the Hotel swimming pool.
- H. Lessee recognizes that Lessor may heretofore, simultaneously herewith, or in the future, have granted or will grant, and agrees that Lessor may grant, exclusive rights to one or more lessees of space within the Hotel for the sale of particular items or types of items. Such exclusive rights shall not be inconsistent with any exclusive right to sell granted Lessee herein, or with Lessee's use as defined in the USE paragraph hereof. Lessee agrees that Lessee will at all times throughout the term hereof refrain from the sale of items on the Demised Premises which violate any such exclusive rights of sale of other lessees provided Lessor puts Lessee on notice of the existence of such rights.
- I. Lessee acknowledges that a golf pro provides services at the Hotel, which services include, without limitation, the sale at retail of certain merchandise to guests, visitors and patrons of both the Hotel and the Torrey Pines Golf Course. In connection therewith, and anything herein contained to the contrary notwithstanding, Lessee hereby covenants and agrees that it shall not sell or make available at either the Demised Premises or at the Hotel any of the following items: golf shoes, golf clubs, golf bags, golf balls and other golf equipment, men's and women's T-Shirts, sweatshirts and sweatpants which bear the name and/or logo of the Torrey Pines Golf Course, tennis equipment, men's and women's tennis wear, men's and women's aerobic wear and men's and women's swimwear provided, however, that Lessee shall have the right to sell men's bathing suits so long as it displays no more than ten such bathing suits at any one time and further provided, however, that the words "tennis wear", "aerobic wear" and "swimwear" shall in no way be construed to include men's and women's T-Shirts, sweatshirts and sweatpants (including, without limitation, such men's and women's T-Shirts, sweatshirts, and sweatpants as are made from cotton blend sheeting). Further, the terms and conditions of this Paragraph 11(I) shall in no way be construed to expand the specific list of items which Lessee is permitted to sell pursuant to the Paragraph titled "USE" on Page 1 of this Lease and Paragraph 11(G) hereof.
- J. Lessee's obligations under this Lease to do or not to do a specified act in the conduct of Lessee's business shall extend to and include Lessee's obligation to see to it that Lessee's employees and agents shall do or shall not do such acts, as the case may be.
- K. Lessee hereby covenants and agrees that Lessee's employees at the Hotel will attend and complete the Hotel's Sheraton Guest Satisfaction System ("SGSS") program. Lessee shall be responsible for all costs connected therewith including, without limitation, employee wages for the period during which any employee is attending the SGSS program. Lessor hereby agrees to waive any charges which it would otherwise charge Lessee's employees in connection with the SGSS program. Lessee's employees shall attend and complete the first SGSS program to be scheduled at the Hotel subsequent to the commencement of a given employee's employment at the Hotel, as well as each and every SGSS program which is thereafter presented at the Hotel.

12. Use of Name "Sheraton"

This Lease conveys no right to Lessee to the use of the name "Sheraton" with respect to any operations of Lessee, and upon the termination of this lease for any reason, Lessee shall have no right to indicate its relationship with Sheraton with respect to any of its operations.

13. Credit

It is understood and agreed that Lessor assumes no responsibility for any credit that may be extended by the Lessee to Lessor's patrons, guests, visitors, tenants or any other person, unless the extension of credit is to a registered guest of the Hotel pursuant to the specific provisions of a written credit agreement entered into between the Lessor and Lessee.

Should Lessor, at Lessee's request, decide in its sole discretion to permit charges incurred by registered Hotel guests to be paid through the central Hotel billing of said guest, then Lessee hereby agrees that it shall pay Lessor a four percent (4%) administrative fee on all such guest charges. Lessor shall have the right to deduct said administrative fee from its payment of Hotel guest charges to Lessee.

14. Landlord's Right of Access

- A. Lessee shall permit Lessor to erect, use and maintain pipes and conduits in and through the Demised Premises. Lessor's agents shall have the right to enter the Demised Premises at all times, to examine the same, to show the Demised Premises to prospective purchasers of the Hotel or lessees of the Demised Premises or the Hotel, and to make such decorations, repairs, alterations, improvements or additions as Lessor may deem necessary or desirable either to the Hotel or to the Demised Premises (including, without limitation, the right to place, replace, maintain or repair utility lines, conduits, ducts, tubing, columns, pipes, sprinkler systems, fire and smoke prevention, detection and suppressant systems or devices in, under, over and upon the Demised Premises) and Lessor shall be allowed to take all material into and upon the Demised Premises that may be required therefor without the same constituting an eviction of Lessee in whole or in part or being deemed a disturbance of Lessee's use or quiet possession, and the rent reserved shall in no way abate while the decorations, repairs, alterations, improvements or additions are being made and Lessor shall not be liable to Lessee by reason of loss of or interruption of the business of Lessee because of the prosecution of any such work or otherwise.
- B. Lessor may permit access to the Demised Premises, without incurring liability to Lessee, and whether or not the Lessee shall be present, upon demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal, court officer or government official entitled to, or reasonably purporting to be entitled to, such access, for the purpose of taking possession of or removing Lessee's property or for any other lawful purpose. This provision and any action by Lessor hereunder shall not be deemed a recognition by Lessor that the person or official making such demand has any right or interest in or to this Lease or in or to the Demised Premises.
- C. Lessor shall have the right to change the arrangement, and or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other public parts of the Hotel, and, after reasonable notice, to change the name, number, or designation by which the Hotel is commonly known.

- D. In the event of a refusal by Lessee to permit an entry upon the Demised Premises as in this article provided, Lessor and Lessor's agents may forcibly enter the same nevertheless without incurring any liability by reason thereof.

15. Maintenance, Repair and Alteration

Lessee agrees that it shall:

- A. Keep the non-structural portions of the Demised Premises in good order and condition; replace all broken glass with glass of the same quality as that broken and commit no waste on the Demised Premises; and maintain the Demised Premises in a neat and clean condition and in good repair at all times, at the expense of Lessee, to a standard of quality equal to that in existence at the Commencement Date or such higher standard as thereafter put in by Lessor or Lessee, all subject to the approval of Lessor. The Demised Premises are leased to Lessee in an "as is" condition and Lessor shall have no obligation in regard to the maintenance or repair thereof except as in this Lease specifically assumed by Lessor. See Paragraph 1 of Schedule A for additional terms and conditions relative to Lessor's delivery of the Demised Premises to Lessee.

Lessee will, throughout the term hereof, at its own expense, comply with the requirements of all governmental authorities having jurisdiction, including the making of any non-structural alterations or repairs to the Demised Premises required by rules, regulations and codes of such governmental authorities now or hereafter in effect.

Upon the termination of this Lease in any manner whatsoever, Lessee shall remove its furniture, trade fixtures, personal property, goods and effects and those of any other person claiming under Lessee, and quit and deliver up the Demised Premises to Lessor peaceably and quietly in as good an order and condition as the same were on the Commencement Date or such higher standard as they were thereafter put in by Lessor or Lessee, reasonable use and wear thereof excepted. Goods and effects not removed by Lessee at the termination of this Lease, however terminated, shall be considered abandoned and Lessor may dispose of the same as it deems expedient, at Lessee's expense. If any alterations or additions to the premises have been made by Lessee with the Lessor's written approval, then such alterations and additions shall not be removed unless so provided by written agreement with Lessor at the time such additions or alterations were made or, unless Lessor shall, by written notice delivered to Lessee at the time of termination, require that such alterations and additions be removed. Lessee shall have thirty (30) days from and after the date of such notice from Lessor to remove all alterations and additions specified therein at Lessee's sole cost and expense.

- C. Submit any proposed signs or displays to the Lessor for its prior written approval and consent as to style, form, contents, character and size, and if not so approved, not use such signs or displays. It is understood and agreed that Lessor's failure or refusal to approve such proposed signs or displays shall be final.
- D. Not overload, damage or deface the Demised Premises or do any act which may make void or voidable any insurance on the Demised Premises or the Hotel or which may render an increased or extra premium payable for insurance.

- E. Not make any alteration or addition to the Demised Premises without the prior written approval of the Lessor, and if such approval is given, all such work shall be done in a first class workmanlike manner by competent contractors acceptable to Lessor. Before any such work is commenced, Lessee shall furnish proof to the Lessor's satisfaction that adequate liability and workman's compensation insurance is in force and effect and that no liens will accrue by reason of such work.

16. Fire or Casualty Damage

Lessee shall give prompt notice to Lessor of any fire in, accident to, or defective condition in any part of the Demised Premises, including but not limited to the sanitary, electrical, heating, air conditioning, cooling and other systems located in, or passing through, the Demised Premises.

If the Demised Premises shall be partially damaged by fire or other unavoidable cause without the fault or neglect of Lessee, Lessee's servants, employees, agents, visitors or licensees, then the damage shall be repaired by and at the expense of Lessor and the Minimum Fixed Rent, until such repairs shall be made, shall be apportioned according to the part of the Demised Premises which is usable by Lessee.

Subject to the waivers of subrogation, if any such partial damage is due to the fault or neglect of Lessee, Lessee's servants, employees, agents, visitors or licensee, then any repairs voluntarily made by Lessor shall be without prejudice to any right and remedies of Lessor on account of such fault or neglect, including the right to recover for the cost of the repairs, and there shall be no apportionment or abatement of rent. Except to the extent that Minimum Fixed Rent is abated as aforesaid, Lessor shall be under no liability whatsoever for any delay in making repairs or restoration. Lessee shall repair, restore and replace all fixtures or other property installed in or upon the Demised Premises by Lessee without any responsibility of Lessor therefor.

Anything herein contained to the contrary notwithstanding, in the event that any damage to the Demised Premises or the Hotel by fire or other cause shall be so extensive that Lessor shall decide not to repair or rebuild, or if, under such circumstances, Lessor shall determine to rebuild but to eliminate or substantially alter the space allocated to commercial tenants, this Lease shall, at the option of the Lessor, be terminated as of the date of such damage by written notice from the Lessor to Lessee, given at any time after the occurrence of such damage, and the Minimum Fixed Rent and other sums herein provided to be paid by Lessee shall be adjusted to the date of such damage and Lessee shall thereupon promptly vacate the Demised Premises.

Nothing herein contained shall be deemed or construed to impose upon Lessor any obligation, responsibility, or liability whatsoever for the care, supervision or repair of the Hotel or any part thereof, unless herein otherwise provided.

17. Condemnation or Taking

If the whole or any part of the Demised Premises shall be taken by any public authority under the power of eminent domain, the term of this Lease shall cease as of the day possession shall be taken by such public authority, and the Minimum Fixed Rent, Percentage Rent, Additional Rent and other payments herein provided for shall be paid up to the date of such

taking with a proportionate refund by Lessor of such Minimum Fixed Rent or other payments as shall have been paid in advance. If any other portion of the Hotel is so taken under the power of eminent domain, the Lessor shall have the right to terminate this lease as of the day possession shall be taken by such public authority by giving Lessee written notice of termination within thirty (30) days after the taking of possession by such public authority. The entire amount of any award shall belong solely to the Lessor and Lessee shall have the right to make a separate claim with the condemning authority for, and to receive therefrom

- A. any moving expenses incurred by Lessee as a result of such condemnation;
- B. any costs incurred or paid by Lessee in connection with any alteration or improvement made by Lessee to the Demised Premises;
- C. the value of any of Lessee's personal property taken; and
- D. any other separate claim which Lessee may be permitted to make under applicable law; provided, however, that such other separate claim shall not reduce or adversely affect the amount of Lessor's award.

18. Insurance

- A. Lessee shall maintain adequate workman's compensation insurance covering its employees, make all proper reports to the United States Government and to the State in which the Hotel is located, and to any other governmental authority having jurisdiction, pursuant to any existing Social Security, Fair Labor Standards, unemployment insurance or other similar legislation, and pay all taxes, insurance premiums or contributions called for by any such legislation.
- B. Lessee shall carry, at its own expense:
 - (i) Comprehensive general liability insurance for personal injury and property damage, and such other coverages as shall be requested by Lessor, in principal amounts deemed satisfactory to Lessor but not less than Two Million and no/00 Dollars (\$2,000,000) per occurrence;
 - (ii) Fire insurance on fixtures and equipment in the Demised Premises to the amount of their full insurable value; and
 - (iii) Plate glass insurance in an amount and type satisfactory to Lessor.
- C. In the policies for such insurance, Lessor and Lessor's affiliates, ITT Sheraton Corporation, ~~North American Taisei~~ Corporation, Sheraton Operating Corporation and ITT Corporation, any owner of the Hotel if different than the aforesaid, and their respective subsidiaries and affiliates shall be named jointly with Lessee as insureds as their interests may appear. In the event that Lessee elects to carry any other type or any further amount of general liability insurance or insurance against risks in which Lessor is directly concerned, Lessee agrees that policies for any such insurance shall be written in the joint names of Lessee and Lessor and the said affiliates and owner so that Lessor and said affiliates and owner will be protected as their interests may appear.

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- D. Lessee shall deliver certificates of insurance to Lessor prior to taking possession of the Demised Premises, evidencing that the above policies are in full force and effect and shall deliver to Lessor new certificates thirty (30) days prior to the expiration of any theretofore delivered. All policies of insurance shall provide that they cannot be terminated or modified as to coverage without thirty (30) days prior written notice to Lessor.
- E. Anything herein contained to the contrary notwithstanding, and without in any way limiting the full force and effect of this provision or any other provision of this Lease, Lessee hereby covenants and agrees that its failure to strictly comply with the terms and conditions of this Paragraph 18 including, without limitation, the requirements that Lessee secure and maintain insurance coverage and deliver to Lessor certificates of insurance, shall constitute a material default hereunder.
- F. Lessor and Lessee hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible. Further, this release shall be applicable and in force and effect only with respect to loss or damage covered by the releasor's policies.
- G. Lessor and Lessee each agrees that it will request its insurance carriers to include in its policies such a clause or endorsement.

19. Indemnification

Without regard to types or limits of insurance coverage, Lessee will save Lessor, ~~North American Taisei Corporation~~, ITT Sheraton Corporation, Sheraton Operating Corporation, ITT Corporation, and any owner of the Hotel if different from the aforesaid (collectively the "Indemnitees") harmless and indemnified from all loss, damage, liability or expense incurred, suffered or claimed by reason of any injury, loss or damage to the Demised Premises or to any person or property on the Demised Premises, and will also save the Indemnitees harmless and indemnified from and for any loss, damage, liability or expense suffered or claimed by reason of any injury, loss or damage to the Hotel or to any person or property in or about the Hotel or the approaches thereto, or wherever occurring, and arising out of the Lessee's neglect or use of the Demised Premises or the bursting of any pipes on the Demised Premises or the use or misuse of any fixtures, apparatus or any other thing therein or the escape of water therefrom; and further covenants and agrees that no claim shall be made against the Indemnitees by Lessee or any person claiming the right to be in the Demised Premises or the Hotel through or under Lessee for any injury, loss or damage to any person or property occurring for any cause upon the Demised Premises or in the Hotel whereof it is a part; provided that the foregoing provisions of this paragraph shall not apply to any injury, loss, damage or liability arising from any omission, fault, negligence or other misconduct of the Indemnitees, their agents or employees in or about the Hotel or in or about any elevators, stairways, hallways, or other appurtenance used in connection therewith and not within the exclusive control of Lessee.

Lessee and Lessor warrant to the other that it has had no dealings with any broker or agent in connection with this Lease and covenants to pay, hold harmless, and indemnify the other from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any other broker or agent with respect to this Lease or the negotiation thereof claiming to have dealt with the indemnifying party.

Lessee agrees that the Indemnitees, the Hotel manager and officers and employees of Owner, shall not be liable to Lessee or others claiming through or under Lessee for any damage to or loss of personal property, fixtures or equipment in the Demised Premises; provided that the foregoing provisions of this paragraph shall not apply to any injury, loss, damage or liability arising from any omission, fault, negligence or other misconduct of the Indemnitees, their agents or employees in or about the Hotel or in or about any elevators, stairways, hallways or other appurtenance used in connection therewith, and not within the exclusive control of Lessee.

20. Assignment and Subletting

Lessee shall not without the prior written consent of Lessor, which Lessor may in Lessor's sole discretion withhold for any reason or no reason and even though such withholding of consent may be deemed unreasonable, assign, mortgage or pledge this Lease or under-let, sub-let the Demised Premises or license or permit any other person, partnership, firm or corporation to use or occupy the Demised Premises or any part thereof, nor shall any approved assignee or sub-lessee assign, mortgage or pledge this Lease or such sub-lease or further under-let, sub-let, or license the use of the Demised Premises without an additional prior written consent of Lessor, which may, likewise, be unreasonably withheld. Without such prior written consent any attempted assignment, mortgage, pledge, sublease or license shall be null, void and of no force and effect ab initio.

Any transfer of the capital stock of Lessee or of the capital stock of any corporation owning any portion of the capital stock of Lessee, if a corporation, other than a transfer between the shareholders of Lessee as of the date hereof and/or members of their immediate families shall be deemed an assignment of this Lease for the purposes of this paragraph. If Lessee is a partnership, any transfer, sale or grant of any partnership interest or a transfer of the capital stock of a corporate partner, to any person, other than such persons who hold a partnership interest as of the date of execution hereof and/or members of their immediate families shall be deemed an assignment of this Lease for the purposes of this paragraph.

21. Notices

All bills, statements, notices or communications which the Lessor may desire or be required to give to Lessee shall be deemed sufficiently given or rendered if in writing and either delivered to Lessee personally or sent by registered or certified mail or by Federal Express or other similar overnight delivery service, addressed to Lessee at the address set forth on Page 1 and the time of rendition thereof or the giving of such notice or communication shall be deemed to be the time when the same is delivered to Lessee or within three days after the same is deposited in the mail addressed to Lessee, whichever occurs first. Notices to Lessor shall be in writing and addressed to the address where the last previous rental hereunder was payable, or in the case Lessor has given written notice of change, to the latest address furnished, in each case, with a copy to ITT Sheraton Corporation, Sixty State Street, Boston, Massachusetts 02109 Attention: General Counsel.

22. Defaults

Lessee shall be in default hereunder if:

- A. Lessee shall fail to make any payment of any sum of money including, but not limited to, Minimum Fixed Rent, Percentage Rent and Additional Rent, or fail to provide Lessor with a monthly statement of Lessee's gross sales pursuant to Paragraph 4(A) hereof, within eight (8) days after the same is due and/or payable to Lessor by Lessee pursuant hereto;
- B. Lessee shall breach or fail to keep, abide by and/or perform any other covenant, agreement, term or condition of this Lease and such breach or failure on the part of Lessee has not been remedied within thirty (30) days after written notice thereof from Lessor to Lessee;
- C. Lessee makes an assignment for the benefit of creditors or otherwise files a voluntary petition in bankruptcy for protection from creditors;
- D. A petition is filed asking for the dissolution, reorganization or declaration of the bankruptcy of Lessee under any applicable federal or state law and such petition is not dismissed within sixty (60) days;
- E. A writ of execution or attachment is levied on or against the property of Lessee;
- F. The Lessee does or permits to be done any act which creates a mechanic's lien or claim therefor against the Hotel of which the Demised Premises are a part, which lien is not removed by Lessee, by bonding or otherwise, within thirty (30) days of the date of filing;
- G. Lessee attempts to remove Lessee's goods from the Demised Premises other than in the ordinary course of business;
- H. Except in the case of a substantial casualty or condemnation, Lessee vacates or deserts the Demised Premises or permits the same to remain empty and unoccupied continuously for five (5) days;
- I. Notwithstanding any provision in this Lease permitting Lessee to cure any default within a specified period of time, if Lessee shall default
 - (i) In the timely payment of any or all of Minimum Fixed Rent, Percentage Rent, or Additional Rent three or more times in any period of twelve consecutive calendar months, or
 - (ii) In the performance of any particular term, condition or covenant of this Lease three or more times in any period of six consecutive calendar months,

then, notwithstanding that such defaults shall have each been cured within any applicable cure period after notice, if any, as provided in this Lease, any further similar default (including, without limitation, with respect to non-payment of any kind of rent payable under this Lease) shall not be curable by Lessee and Lessor shall have all of the remedies provided in this Lease (including, without limitation, any and all remedies at law and in equity) for a default hereunder.

23. Remedies

If Lessee is in default as defined in Paragraph 22 then by that fact, thereupon, without notice, entry or action by Lessor:

- A. This Lease and the term created hereby shall determine and shall become absolutely void without any right on the part of the Lessee to cure the default or reinstate the Lease;
- B. The Minimum Fixed Rent and the Additional Rent for the entire unexpired balance of the term of the Lease, as well as all other rent charges, payments and costs herein agreed to be paid by Lessee (collectively the "other charges"), or at the option of the Lessor any part thereof, shall, in addition to any and all installments of Minimum Fixed Rent and Additional Rent or other charges already due and payable and in arrears, accelerate and become due and payable as if, under the terms hereof, that entire balance was on that date payable in advance, and as if the Lease had not determined; and
- C. Lessor shall be entitled to recover damages on account of such default in an amount equal to the Minimum Fixed Rent, Additional Rent and other charges reserved for the balance of the term of this Lease and so accelerated less the fair rental value of the Demised Premises for the balance of the term.

Lessee specifically acknowledges that neither the acceptance of rent by Lessor, with or without knowledge of Lessee's default, nor the failure of Lessor to take action on account of any default to enforce its rights hereunder, shall be deemed a waiver of any default and any said default shall be deemed a continuing one. No waiver of any default or any agreement for the extension or modification of any of the terms, covenants or conditions of this Lease shall be binding on Lessor unless evidenced by a writing signed by Lessor.

If Lessee is in default as aforesaid, in addition to the consequences set forth in (A) and (B) above, then Lessor, at Lessor's option, may do any or all of the following:

- D. Immediately, without notice or demand, enter the Demised Premises forcibly, if necessary, and expel all persons from the Demised Premises and remove all Lessee's personal property therefrom, all without liability for trespass or damages for such entry or the manner of such entry;
- E. Elect within ninety (90) days of the date of termination, in lieu of damages as measured by (A), (B) and (C) above, to require Lessee to pay, and Lessee hereby covenants and agrees to pay to Lessor at Lessor's election:
 - (i) sums equal to the Minimum Fixed Rent, Additional Rent and other charges or payments herein specified to be paid, at the same times and in the same installments as if this Lease had not been terminated, or if the Demised Premises have been relet, sums equal to the difference between the installments aforesaid and the sums actually received by Lessor; or
 - (ii) as liquidated damages and not as a penalty, a sum equal to twenty-five percent (25%) of the total amount of Minimum Fixed Rent which would have been payable during the residue of the term of this Lease.

- F. Cure Lessee's default at the expense of Lessee and reinstate this Lease, and in such event, Lessee agrees to pay Lessor the amount of Lessor's costs and expenses, including reasonable attorney's fees, and any sums paid out by Lessor to effect the cure, together with interest on such total sum at the rate of fifteen percent (15%) per annum or the maximum legal interest rate from time to time in effect in the jurisdiction in which the Hotel is located if such maximum legal rate shall be less than fifteen percent (15%) per annum.
- G. Lease the Demised Premises or any part or parts thereof to such person or persons as Lessor shall deem advisable and Lessee shall be liable for any loss of rent for the balance of the term of the Lease.

All remedies hereinabove set forth in this Paragraph 23 shall, unless otherwise specified, be cumulative and concurrent and in addition to and not in derogation of any and all remedies available to Lessor at law or in equity. No determination of this Lease or the taking or recovering of the Demised Premises shall deprive Lessor of his remedies or actions for Minimum Fixed Rent, Additional Rent or other charges or payments due, nor shall an action for rent or damages preclude Lessor's simultaneous or subsequent taking possession of the Demised Premises.

24. Attorney's Fees

Lessee agrees to pay Lessor all reasonable costs and expenses incurred by Lessor in enforcing any of the terms, covenants or conditions of this Lease, including attorney's fees, provided Lessor ultimately prevails in such litigation.

25. Security Deposit

Prior to the Commencement Date of this Lease, Lessee shall deposit with Lessor the sum of Four Thousand Nine Hundred Dollars (\$4,900) as security for Years 1-3 of the term hereof and shall, as of the first day of the fourth year of the term hereof, deposit with Lessor an additional One Thousand Six Hundred and Fifty Dollars (\$1,650) for an aggregate deposit of Six Thousand Five Hundred and Fifty Dollars (\$6,550) as security for Years 4-5 of the term hereof for the faithful performance and observance by Lessee of the terms, provisions and conditions of this Lease. It is agreed that in the event that Lessee fails to perform in respect of any of the terms, provisions and conditions of this Lease, including, but not being limited to, the payment of Minimum Fixed Rent, Percentage Rent and Additional Rent, then Lessor may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any Minimum Fixed Rent, Additional Rent and Percentage Rent or any other sum as to which Lessee is in arrears or for any sum which Lessor may expend or may be required to expend by reason of Lessee's default in respect of any of the terms, covenants and conditions of this Lease, including, but not being limited to, any damages or deficiency in the reletting of the Demised Premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Lessor. In the event that Lessee shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, then the security shall be returned to Lessee after the date fixed as the end of the Lease and after delivery of possession of the entire Demised Premises to Lessor.

In the event of a sale of the Hotel or leasing or subleasing of the Hotel of which the Demised Premises forms a part, or assignment of Lessor's leasehold interest therein, Lessor shall have the right to transfer the security to the vendee or lessee, and Lessor shall thereupon be released by Lessee from all liability for the return of such security and Lessee agrees to look to the new Lessor solely for the return of said security and its agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Lessor. Lessee further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Lessor nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

26. Demolition or Conversion of Hotel

Lessor, its successors or assigns shall have the absolute right to terminate this Lease, or any extended term thereof, in the event that the Hotel in which the Demised Premises are located is to be demolished or converted to other use, provided that Lessor gives Lessee one hundred and eighty (180) days' prior written notice terminating this Lease. The notice by Lessor shall specify the reason for termination and the approximate date for demolition or conversion. On delivery of said notice to the Lessee, the term of the Lease shall expire as fully and completely on the date specified therein as if that date were the Termination Date set forth in this Lease.

27. Lease and Mortgages

This Lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the Demised Premises are a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any ground lessor or mortgagee. In confirmation of such subordination, Lessee shall execute promptly any certificate that Lessor may request. Lessee hereby constitutes and appoints Lessor the Lessee's attorney-in-fact to execute any such certificate or certificates for and on behalf of Lessee. It is a further condition of this Lease that in the event of any foreclosure sale or sales, this Lease shall continue in full force and effect and Lessee hereunder agrees, upon request, to attorn to and acknowledge the foreclosure purchaser or purchasers as Lessor, unless the note holder or trustees under the first deed of trust or such foreclosure purchaser or purchasers shall at or prior to the time of such sale or within sixty (60) days thereafter, notify Lessee in writing to vacate and surrender the Demised Premises within ninety (90) days from the date of sale, in which event this Lease shall fully terminate and expire at the end of the said period of ninety (90) days from and after the day of the foreclosure sale.

28. Estoppel Certificates

Lessee agrees, at any time, and from time to time, upon not less than ten (10) days' prior notice by Lessor, to execute, acknowledge, and deliver to Lessor a statement in writing addressed to Lessor, or to such person as shall be designated by Lessor, certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the Minimum Fixed Rent, Additional Rent, Percentage Rent and other charges have been paid, and

stating whether or not to the best knowledge of the signer of such certificate, there exists any default on the part of Lessor in the performance of any covenant, agreement, term, provision, or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge; it being intended that any such statement delivered pursuant hereto may be relied upon by Lessor and by any mortgagee or prospective mortgagee of any mortgage affecting the Hotel or by any purchaser or prospective purchaser of the Hotel or of Lessor's interest in this Lease, and by any landlord under a ground or underlying lease affecting the Hotel, or both.

29. Lessor's Right To Relocate

Lessor, its successors and assigns, shall have the absolute right for any reason throughout the term hereof to require Lessee upon thirty (30) days' prior written notice from Lessor to Lessee to move Lessee's business to equivalent retail space within the Hotel, provided that Lessor shall bear all costs and expense of such relocation. In the event such relocation is requested, Lessee agrees to promptly and diligently cooperate in such move, and this Lease shall remain in full force and effect upon the same terms and conditions herein contained and Lessor and Lessee agree to execute an amendment hereto modifying the description of the Demised Premises.

30. Holdover

This Lease shall terminate automatically upon the expiration of the term without notice to Lessee from Lessor and/or demand by Lessor that Lessee vacate the Demised Premises. If for any reason, with or without the consent of Lessor, Lessee continues in occupancy after the date of expiration, then such holdover by Lessee shall be deemed to constitute a tenancy from month to month, terminable at the end of any month on fifteen (15) days' prior written notice. Such tenancy from month to month shall be on the same terms and conditions herein contained, except that during such month to month tenancy, all Minimum Fixed Rent, Additional Rent, Percentage Rent and other costs and payments agreed to be paid by Lessee to Lessor herein shall be payable at the rates herein provided for multiplied by three (3).

31. Successors and Assigns Bound

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors and assigns of said parties; no rights, however, shall inure to the benefit of any assignee of Lessee unless the assignment to such assignee has been approved by Lessor in writing as aforesaid.

32. Construction

If there shall be more than one Lessee, they shall all be bound jointly and severally by the terms, covenants, and agreements herein. The word "Lessee" shall be deemed and taken to mean each and every person or party mentioned as a Lessee herein, be the same one or more, and if there shall be more than one Lessee, then any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The words "his" and "him" wherever stated herein shall be deemed to refer to "Lessor" and "Lessee" whether such Lessor or Lessee be singular or plural and irrespective of gender. Wherever reference is made herein to the "term" of this Lease, "term" shall mean and include any renewal or extension of the term hereof.

Any headings preceding the text of the several paragraphs and sub-paragraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

33. Entire Agreement

This Lease constitutes the entire agreement between Lessor and Lessee and all prior agreements, representations, and understandings are superseded hereby and there are no agreements not contained herein. Lessee acknowledges that Lessee, in entering into this Lease, does so solely in consideration of the terms and conditions hereof, and is not relying on any representation or understandings not set out in this Lease.

34. Amendments To Lease

This Lease may be modified, amended or surrendered only by an instrument in writing duly executed by Lessor and Lessee.

35. Inability To Deliver Possession

- A. If Lessor shall be unable to give possession of the Demised Premises on the Commencement Date by reason of the fact that the Demised Premises are located in a building being constructed and which has not been sufficiently completed to make the Demised Premises ready for occupancy, or by reason of the fact that a certificate of occupancy has not been procured, or by reason of the fact that the Hotel is not open to receive guests, or for any other reason whatsoever, then Lessor shall not be subject to any liability for the failure to give possession on said Commencement Date. Under such circumstances, the rent reserved and covenanted to be paid herein shall not commence until the possession of the Demised Premises is given or the Demised Premises are available for occupancy by Lessee, whichever is earlier, and no such failure to give possession on the Commencement Date shall in any way affect the validity of this Lease or the obligations of Lessee hereunder, nor shall same be construed in any way to extend the term of this Lease, or alter the Termination Date above provided.
- B. If the building in which the Demised Premises are located is not in course of construction, and Lessor is unable to give possession of the Demised Premises on the Commencement Date hereof by reason of the holding over or retention of possession of any tenant, tenants or occupants or for any other reason, or if repairs, improvements or decorations of the Demised Premises or of the building of which the Demised Premises form a part are not completed, rent shall not commence until possession is given or the Demised Premises are available for occupancy by Lessee, whichever is earlier, but the validity of this Lease shall not be impaired under such circumstances nor shall same be construed in any way to extend the term of this Lease, or alter the Termination Date above provided.
- C. If permission is given to Lessee to enter into the possession of the Demised Premises or to occupy premises other than the Demised Premises prior to the Commencement Date, then Lessee covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Lease, except as to the covenant to pay rent, which shall be as agreed by Lessor and Lessee at the time permission is granted. Lessee hereby covenants and agrees that in the

event that such permission is given, then, with respect to the period from the date of possession through the date which is one (1) day prior to the Commencement Date, Lessee shall pay Lessor rent in an amount equal to Two Thousand Four Hundred and Fifty and no/00 Dollars (\$2,450) multiplied by a fraction, the numerator of which is the number of days that Lessee is in possession of the Demised Premises prior to the Commencement Date and the denominator of which is 31. There shall be no change in the Termination Date.

- D. In the event that the Lessor is unable to deliver possession of the Demised Premises on the Commencement Date or the same are not available for occupancy by Lessee for reasons set forth in (A) and (B) above, then the date on which Lessee actually takes possession of the Demised Premises or the date when the same are first available for occupancy by Lessee, whichever is earlier, shall become the Commencement Date for all purposes where reference to the Commencement Date is hereinafter made. There shall be no change in the Termination Date.

36. Guaranty (Intentionally Omitted)

37. Renovations By Lessor (Intentionally Omitted)

38. Waste Management

Without limiting its obligations under Paragraph 11(B) of this Lease, Lessee covenants and agrees to comply with all laws, rules, regulations and guidelines now or hereafter made applicable to the Demised Premises respecting the disposal of waste, trash, garbage and other matter (liquid or solid), generated by Lessee, the disposal of which is not otherwise the express obligation of Lessor under this Lease, including, but not limited to, laws, rules, regulations and guidelines respecting recycling and other forms of reclamation (all of which are herein collectively referred to as "Waste Management Requirements"). Lessee covenants and agrees to comply with all rules and regulations established by Lessor to enable Lessor from time to time to comply with Waste Management Requirements applicable to Lessor (i) as owner or operator of the building in which the Demised Premises are located, as the case may be, and (ii) in performing Lessor's obligations under this Lease, if any. Lessee covenants and agrees to indemnify, defend, protect and hold Lessor harmless (in accordance with Paragraph 19 of this Lease) from and against all liability (including costs, expenses and attorney's fees) that Lessor may sustain by reason of Lessee's breach of its obligations under this Paragraph 38. Lessee's obligations under this Paragraph 38 shall survive the termination of this Lease.

39. Exculpation

It is expressly understood and agreed that nothing in this Lease, or any of the Schedules and other documents executed pursuant hereto, shall be construed as creating any liability whatsoever against Lessor personally. In particular, without limiting the generality of the foregoing, there shall be no personal liability to pay any amount due hereunder or thereunder or to perform any covenant, either express or implied, herein or therein contained, or to keep, preserve or sequester any property, and that all personal liability of said Lessor of every sort is hereby expressly waived by Lessee, and by every person now or hereafter claiming under Lessee or claiming any right hereunder or thereunder, and that Lessee and such other persons shall look solely to the interest of Lessor in the Hotel for payment of any amount due hereunder or thereunder or for the performance of any such covenant herein or therein contained.

40. Severability

The invalidity or unenforceability of any provision hereof shall not affect or impair any other provision hereof.

41. Governing Law

This Lease shall be governed by and construed pursuant to the laws of the State of California.

42. Lease Preparation

Lessor and Lessee hereby agree that this Lease shall not be construed more strictly against one party than the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Lessor and Lessee have contributed substantially and materially to the preparation of this Lease.

43. Recording

Lessee shall not record this Lease without the prior written consent of Lessor.

44. Surrender of Lease

Lessor and Lessee do hereby acknowledge and agree that anything herein contained to the contrary notwithstanding, this Lease shall not be enforceable against either of the parties hereto until such time as Lessor has received a fully-executed Surrender of Lease Agreement from Bacher Enterprises Inc., such agreement to be identical in form and substance to that which is attached hereto as Schedule C.

45. Lessee's Representation/Accountant's Affidavit

Lessee hereby acknowledges and represents that it has paid Bacher Enterprises Inc. ("Bacher") the amount of Eighty and no/00 Thousand Dollars (\$80,000) for the purchase of (a) Bacher's fixtures in the Demised Premises and (b) good will in connection with Bacher's operation of a gift shop at the Demised Premises. Lessee acknowledges that Lessor has relied upon the foregoing representation by Lessee and that Lessor considers said representation to be a material part of the Lease.

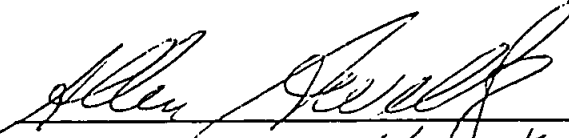
Lessor and Lessee do hereby further acknowledge and agree that anything herein contained to the contrary notwithstanding, this Lease shall not be enforceable against either of the parties hereto until such time as Lessor has received a fully-executed affidavit from Lessee's accountant, such agreement to be identical in form and substance to that which is attached hereto as Schedule D.

Hazelwood Enterprises Incorporated
Lease Agreement

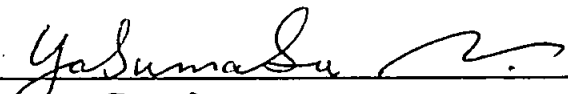
IN WITNESS WHEREOF, the parties hereto have executed this Lease under seal the day and year first above written.

Lessor: TORREY PINES HOTEL ASSOCIATES

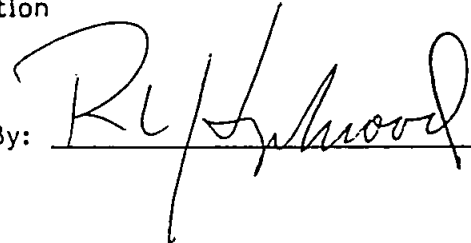
By: ITT Sheraton Corporation, a Delaware corporation

By: 
Vice President

By: ~~North American Taisei~~  Corporation, a Delaware corporation

By: 
EVP.

Lessee: HAZELWOOD ENTERPRISES INCORPORATED, an Arizona corporation

By: 

This Lease is not valid and conveys no rights until executed by an authorized agent of Lessor and until approved by the Hotel Controller and the Sheraton Real Estate Department.

 7.29.91
Sheraton Real Estate Department Approval


Hotel Controller

Schedule A

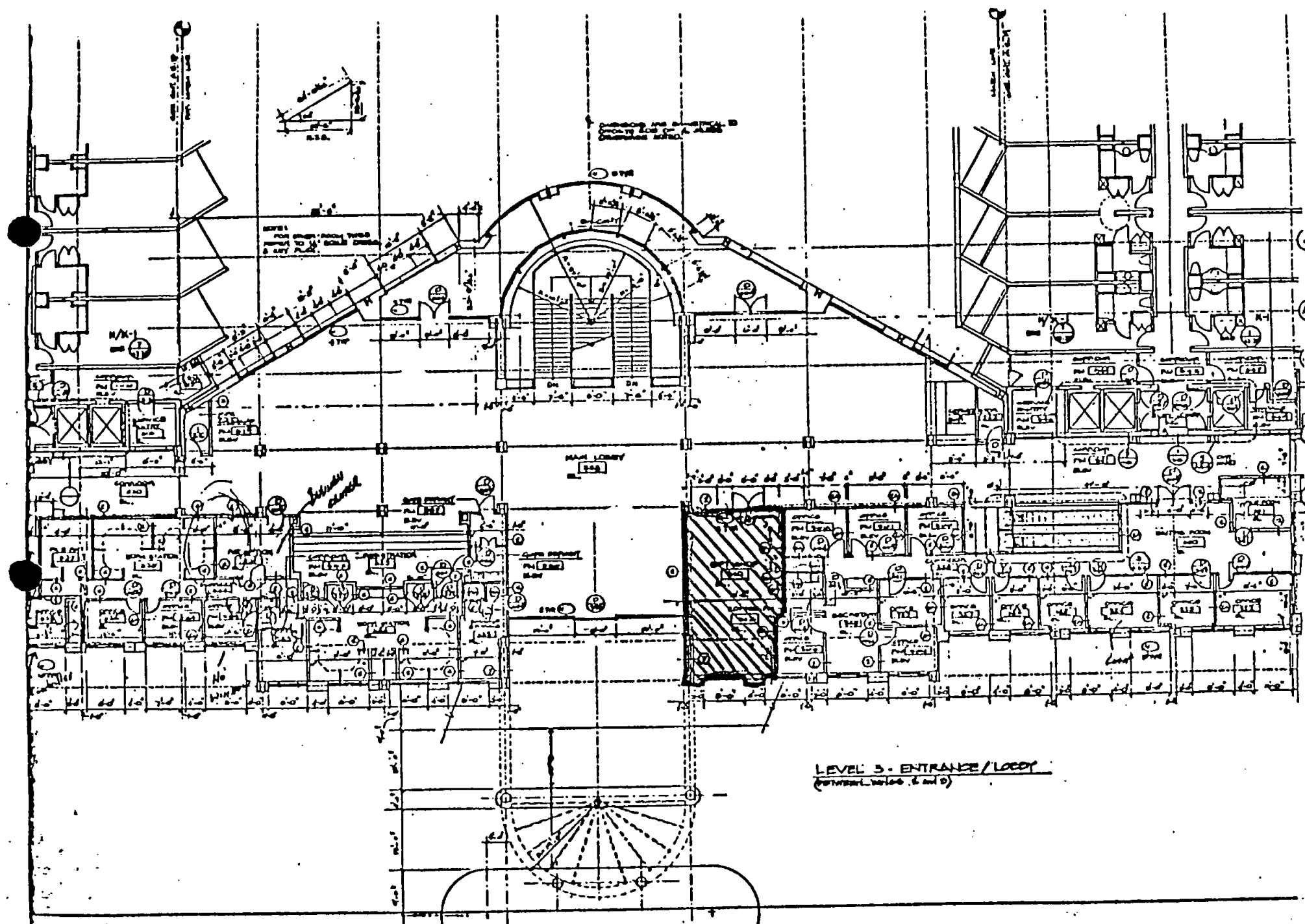
1. Lessee's Improvements.

Lessee shall make all Improvements to the Demised Premises including, without limitation, all ceiling, lighting, wall covering, floor covering, fixturing and signage requirements (collectively "Lessee's Improvements") which it may require at its sole cost and expense. Lessee's Improvements shall be completed within sixty (60) days after possession of the Demised Premises has been made available to Lessee by Lessor (said 60 day period being hereinafter referred to as the "Construction Period").

Any and all such Improvements made by Lessee shall be completed in accord with plans and/or specifications which have been prior approved by Lessor in writing. Lessee hereby acknowledges that Lessor shall have the absolute right to disapprove such plans and/or specifications in Lessor's sole and unfettered discretion. Lessor therefore suggests that Lessee submit any such plans and/or specifications to Lessor prior to Lessee's execution of this Lease.

2. Early Termination.

Throughout the term of the Lease, and anything in the Lease contained to the contrary notwithstanding, Lessor shall have the right to terminate the Lease for any reason or no reason so long as (a) the effective date of termination is not earlier than August 1, 1993, (b) Lessor has provided Lessee with at least ninety (90) days' prior written notice of its intention to terminate the Lease and (c) Lessor, on the effective date of termination, pays Lessee Thirty Thousand and no/00 Dollars (\$30,000) plus the amount which results from multiplying Fifty Thousand and no/00 Dollars (\$50,000) by a fraction, the numerator of which is the number of days from the effective date of termination until July 31, 1996, and the denominator of which is 1825 (such sum being hereinafter referred to as the "Termination Penalty"). Notwithstanding the foregoing, Lessee hereby acknowledges and agrees that Lessor shall not be required to pay Lessee any such Termination Penalty in the event that Lessor elects to terminate the Lease pursuant to Paragraph 23 thereof.



LEVEL 3 - ENTRANCE / LOBBY
(between Levels 2 and 4)

Schedule C

Termination of Lease Agreement

This Termination of Lease Agreement ("Agreement") is executed this 12th day of July, 1991, by and between TORREY PINES HOTEL ASSOCIATES, a California general partnership comprised of ITT Sheraton Corporation, a Delaware corporation, and ~~North American Taisei~~ Corporation, also a Delaware corporation ("Lessor") and BACHER ENTERPRISES, INC. a California corporation ("Lessee").

TAISEI
AMERICA

WHEREAS, prior to the date hereof, Lessor and Lessee executed a LEASE AGREEMENT ("Lease") dated August 31, 1989; and

WHEREAS, said Lease covered that certain gift shop consisting of approximately 600 square feet located in the lobby of the Sheraton Grande Torrey Pines Hotel (such gift shop being hereinafter referred to as the "Leased Premises"); and

WHEREAS, Lessor and Lessee desire to cancel and terminate the Lease;

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

1. Surrender

Lessee does hereby surrender possession of the Leased Premises to Lessor, and Lessor does hereby accept the surrender thereof effective as of July 31st, 1991, and the parties hereto further agree that the Lease shall be and is cancelled and terminated for all purposes effective as of July 31st, 1991. Such termination shall take effect with the same force and effect as if July 31st, 1991 were the last day of the term of the Lease.

2. Release

The respective parties hereto hereby release each other of and from any and all debts, claims, demands, accounts, actions, causes of action, suits, damages and liabilities whatsoever of every name and nature, both in law and in equity, which either party may now owe to the other or might ever have against the other arising out of the Lease or in connection with the Leased Premises.

3. Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns.

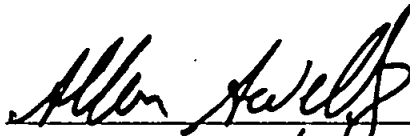
EXECUTED this day and year first hereinabove written.

Lessor:

TAISEI
AMERICA

TORREY PINES HOTEL ASSOCIATES, a
California general partnership comprised of ITT
Sheraton Corporation, a Delaware corporation, and
~~North American Taisei Corporation~~, also a
Delaware corporation

By:


Independent

By:


F.V. P

Lessee:

BACHER ENTERPRISES INC., a California
corporation

By:

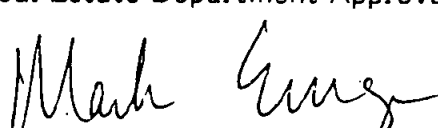


Louis Bacher, President

This Agreement is not valid and conveys no rights until executed by an authorized
agent of Lessor and until approved by the Hotel Controller, and the Sheraton Real
Estate Department.


Sheraton Real Estate Department Approval

7.27.91


Hotel Controller

Schedule D

Affidavit In Support
Of Lessee's Representation
As To Amount Of Purchase
Price

CARL HINTZE, JR., being duly sworn, hereby warrants and represents,
under the pains and penalty of perjury, that:

1. I am the accountant for Hazelwood Enterprises Incorporated, an Arizona corporation ("Lessee"), in connection with Lessee's purchase of fixtures and good will from Bacher Enterprises Inc., a California corporation ("Bacher").
2. I have reviewed all of the financial documentation related to Lessee's purchase of Bacher's fixtures located in the gift shop at the Sheraton Grande Torrey Pines Hotel, 10950 North Torrey Pines Road, La Jolla, California 92037 ("Hotel"), as well as Lessee's purchase of good will in connection with the operation of Bacher's business at the Hotel (such fixtures and good will being hereinafter referred to as "Bacher's Business").
3. My review was conducted in accordance with generally accepted accounting standards.
4. My review has included examining evidence supporting Lessee's representation to Torrey Pines Hotel Associates, a California general partnership ("Lessor") that Lessee has paid Bacher the amount of Eighty Thousand and no/00 Dollars (\$80,000) for the purchase of Bacher's Business.
5. In my opinion, based upon generally acceptable accounting standards, the financial documentation referred to above accurately supports Lessee's representation to Lessor that Lessee has purchased Bacher's Business for an amount which is equal to at least Eighty Thousand and no/00 Dollars (\$80,000).
6. In my opinion, based upon generally acceptable accounting standards, Lessee's determination that Eighty Thousand and no/00 Dollars (\$80,000) of the total purchase price are allocable towards the purchase of Bacher's Business is fair and reasonable.

Sworn to before me this 29th day of July, 1991

Marie Auger

Notary Public

My Commission Expires April 30, 1992

My commission expires _____

Carl Hintze CPA