

DUPLICATE

CONSENT TO SUBLEASE AGREEMENT

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

HILTON SAN DIEGO CORPORATION

(LESSEE) and filed in the Office of the City Clerk as Document RR-293815, hereby consents to that certain Sublease Agreement (Sublease) dated July 21, 2004, attached hereto, between the above LESSEE (SUBLESSOR) and

HAZELWOOD ENTERPRISES, INC.

(SUBLESSEE). The Sublease shall be subordinate to the Master Lease in all respects. CITY is merely approving SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. 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:

1. ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the Sublease or sublet the subleased premises or any part of the subleased premises without the prior written consent of CITY. An assignment by operation of law shall automatically terminate the Sublease.
2. HOLD HARMLESS: SUBLESSEE shall assume the defense of, indemnify, and hold harmless CITY, its elected officials, officers, employees, agents, and representatives from all claims, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the subleased premises, the condition of the subleased premises, or from any act or omission of SUBLESSEE, its agents and invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, employees, agents, and representatives.
3. INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to CITY against loss from public liability arising from the use or condition of or operation conducted on the subleased premises. Minimum coverage shall be two million dollars (\$2,000,000) combined single limit liability. A copy of the policy of insurance shall be filed with CITY and shall, by separate endorsement, name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds. The policy shall specify that the policy may not be terminated, altered, or canceled without thirty (30) days prior written notice to CITY by the insurance company.

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

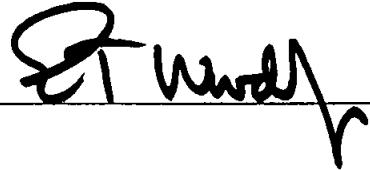
THE CITY OF SAN DIEGO

Date 9-30-04

By 
Deputy Director, Real Estate Assets Department

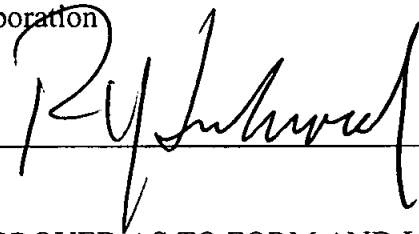
HILTON SAN DIEGO CORPORATION, a
California corporation

Date 9-27-04

By 

HAZELWOOD ENTERPRISES, INC., an Arizona
corporation

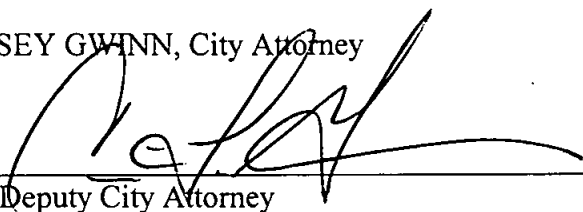
Date 9-27-04

By 

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, City Attorney

Date 11-8-04

By 
Deputy City Attorney

PTC/cdj
8/31/04

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**HILTON SAN DIEGO CORPORATION
SUBLEASE AGREEMENT
FOR
HAZELWOOD ENTERPRISES, INC.
AT THE HILTON SAN DIEGO RESORT**

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EXHIBITS

- Exhibit A Floor Plan of Premises
- Exhibit B Rules, Regulations and Additional Operating Covenants
- Exhibit C Americans With Disabilities Act

RIDERS

- Rider 1: Renewal Option Rider
- Rider ____: Landlord's Work Rider
- Rider 2: Tenant's Work Rider
- Rider ____: Improvement Deposit Rider
- Rider ____: Restaurant Use Rider
- Rider ____: Garage Use Rider
- Rider ____: Parking Terms, Rules and Regulations Rider
- Rider ____: Base Rent Adjustment Rider
- Rider 3: Percentage Rent Rider (Non-Restaurant Use)
- Rider ____: Percentage Rent Rider (Restaurant Use)
- Rider ____: Operating Costs Rider
- Rider ____: Additional Consideration Rider
- Rider ____: Tenant's Minimum Performance Standard Rider
- Rider ____: Additional Provisions Rider
- Rider ____: Guaranty

1 SCHEDULE OF TENANT-SPECIFIC TERMS

2

3

4

5 This Sublease is effective as of the Date of Sublease indicated in the following schedule
6 ("Schedule") and is between the Landlord and Tenant identified in the Schedule. For ease of
7 reference, Landlord is often referred to as "we," "us" or "our" and Tenant is often referred to as
8 "you" or "your."

9

10 **A. INTRODUCTION**

11

12 The provisions appearing in this Schedule, in attached Exhibit A and in any attached Rider(s)
13 are, for the most part, specific to the transaction between you and us. If any attached Rider conflicts
14 or is otherwise inconsistent with this Schedule, the Rider shall control. The provisions appearing
15 elsewhere in this Sublease, including attached Exhibit B, apply generally to all our Subleases. If
16 they conflict or are otherwise inconsistent with this Schedule or any specific Rider provision, this
17 Schedule or the specific Rider in question shall control. The terms set forth below have the
18 meanings or are assigned amounts as follows:

19

20

21 **B. TENANT-SPECIFIC PROVISIONS**

22

- 23 1. **Landlord:** Hilton Hotels Corporation, as Managing Agent for
24 Hilton San Diego Corporation
- 25
- 26 2. **Tenant:** Hazelwood Enterprises, Inc., an Arizona corporation
- 27
- 28 3. **Guarantor:** ☐ See Guaranty.
29 ☒ Does not apply.
- 30
- 31 4. **Broker:** Does not apply.
- 32
- 33 5. **Date of Sublease:** July 21, 2004
- 34
- 35 6. **Commencement Date:** The earlier of (i) the date Tenant opens for business or (ii)
36 forty-five (45) days following the Date of Sublease.
- 37
- 38 7. **Early Possession Date:** ☐ _____
39 ☒ Does not apply.
- 40
- 41 8. **Expiration Date:** Four (4) years after the Commencement Date
- 42
- 43 9. **Renewal Option:** ☐ See Renewal Option Rider.
44 ☒ Does not apply.
- 45
- 46 10. **Property:** Hilton San Diego Resort
47 1775 East Mission Bay Drive
48 San Diego, CA 92109
- 49
- 50 11. **Premises:** Approximately 661.54 square feet of space located on the ground floor of
51 the Property known as the Gift Shop.
- 52
- 53 12. **Landlord's Work:** ☐ See Landlord's Work Rider.
54 ☒ Does not apply.
- 55
- 56 13. **Tenant's Work:** ☒ See Tenant's Work Rider.
57 ☐ Does not apply.
- 58
- 59 14. **Improvement Deposit:** ☐ See Improvement Deposit Rider.
60 ☒ Does not apply.

1
2 **15. Permitted Use of Premises:**

The Premises may be used only as a gift shop for the sale at retail of the following: reading materials such as newspapers, magazines, paperback and hardback books; health and beauty aids such as cosmetics, hosiery, non-prescription drugs and related sundry items; apparel limited to logo merchandise, sweatshirts, t-shirts, and men's and women's resort apparel; costume jewelry, sterling silver jewelry and accessories; souvenirs such as localized souvenir t-shirts and sweatshirts, sweatshirt accessories, team sports items (i.e. t-shirts, sweatshirts and memorabilia), special events merchandise, and gifts indigenous to the region the hotel is located; stationary; postcards; photographic films; batteries; cigarettes and related smoking accessories; food limited to ice cream, prepackaged snack foods and candy; drinks limited to non-alcoholic chilled beverages, soda and branded water and for no other purpose without our prior written consent.

20 **16. Minimum Hours of Operation:**

☒ Hours: 7:00 a.m. to 10:00 p.m.

Days per week: seven

Such hours may be adjusted upon mutual agreement of Landlord or Tenant to adequately meet the needs of the customer (e.g., periods of low traffic, national holidays, etc.).

☐ Holidays excluded.

☐ Does not apply.

30 **17. Hours for Which HVAC Provided:**

☒ Hours of operation.

☐ Holidays excluded.

33 **18. Garage Use:**

☐ See Garage Use Rider.

☒ Does not apply.

36 **19. Parking Terms, Rules and Regulations:**

☐ See Parking Terms, Rules and Regulations Rider.

☒ Does not apply.

40 **20. Rent:**

(a) Base Rent: Six Thousand and 00/100 dollars (\$6,000.00) per month (\$72,000 per year).

(b) Base Rent Adjustment: ☐ See Base Rent Adjustment Rider.

☒ Does not apply.

(c) Percentage Rent: ☒ See Percentage Rent Rider.

☐ Does not apply.

(d) Operating Costs: ☐ See Operating Costs Rider.

☒ Does not apply.

(e) HVAC, Water, Electricity Charges, Rubbish Removal and Janitor:

HVAC: ☐ \$_____ per month. Subject to increase (see Section 4.1(a)).

☒ Does not apply unless disproportionate use (see Section 4.1(a)).

Water: ☐ \$_____ per month. Subject to increase (see

- 1 Section 4.1(c)).
2 [X] Does not apply unless disproportionate use (see
3 Section 4.1(c)).
4
5 Electricity: ☐ \$ _____ per month. Subject to increase (see
6 Section 4.1(d)).
7 [X] Does not apply unless disproportionate use (see
8 Section 4.1(d)).
9
10 Rubbish Removal: ☐ \$ _____ per month. Subject to increase.
11 [X] Does not apply.
12
13 Janitor: ☐ \$ _____ per month. Subject to increase.
14 [X] Does not apply.
15
16 (f) Additional Consideration for Sublease: ☐ See Additional Consideration
17 Rider.
18 [X] Does not apply.
19
20 21. **Tenant's Minimum Performance Standard:** ☐ See Tenant's Minimum
21 Performance Standard Rider.
22 [X] Does not apply.
23
24 22. **Security Deposit:** ☐ \$ _____. Subject to increase (see Section 3.2(h)).
25 [X] None
26
27 23. **Additional Parties:** The Additional Parties referred to in Section 8.1 of this Sublease
28 and elsewhere in this Sublease are:
29
30 [X] Hilton Hotels Corporation, a Delaware corporation, and its officers, directors,
31 employees, independent contractors and agents
32 [X] Owner (if not Landlord): Hilton San Diego Corporation
33 ☐ Mortgagee(s)/Beneficiary(ies): _____
34
35 ☐ Ground Lessor: _____
36
37 ☐ Other:
38
39 ☐ Does not apply.
40
41 24. **Landlord's Address for Notices:** Hilton San Diego Resort
42 1775 East Mission Bay Drive
43 San Diego, California 92109
44 Attention: General Manager
45
46 25. **Tenant's Address For Notices:** Hazelwood Enterprises, Inc.
47 402 North 32nd Street
48 Phoenix, Arizona 85008
49
50 26. **Additional Provisions to Sublease:** ☐ See Additional Provisions Rider.
51 [X] Does not apply.
52
53

54 **C. ADDITIONAL DEFINED TERMS**
55

56 The following additional terms used in this Sublease have the following meanings:
57

58 1. "Must," "will," "shall" and "agree to." If this Sublease provides that either you or we
59 "must," "will," "shall," or "agree to" do or not do a particular act, it means that the party in question
60 is legally obligated to do or not do that act.
61

2. "Applicable law" means the laws (including, without limitation, controlling judicial precedent), rules, regulations and administrative requirements of all federal, state and municipal governmental bodies and agencies having jurisdiction of or over the Property, the parties hereto and/or the acts required to be performed under this Sublease (all as applicable). It also includes controlling judicial precedent of the state or commonwealth in which the Property is located.

D. OTHER TERMS DEFINED ELSEWHERE IN SUBLEASE

Other terms used in the Sublease have been defined in various sections of this Sublease. Those definitions apply to those terms whenever those terms are used in the Sublease.

E. EXHIBITS AND RIDERS

1. Exhibits: The following Exhibits are attached to and are incorporated into this Sublease by this reference:

- ☒ Exhibit A: Floor Plan of Premises
- ☒ Exhibit B: Rules, Regulations and Additional Operating Covenants
- ☒ Exhibit C: Americans with Disabilities Act

2. Riders: The following Riders are attached to and are incorporated into this Sublease by this reference:

- ☐ Rider 1: Renewal Option Rider
☐ Rider ____: Landlord's Work Rider
☒ Rider 2: Tenant's Work Rider
☐ Rider ____: Improvement Deposit Rider
☐ Rider ____: Restaurant Use Rider
☐ Rider ____: Garage Use Rider
☐ Rider ____: Parking Terms, Rules and Regulations Rider
☐ Rider ____: Base Rent Adjustment Rider
☒ Rider 3: Percentage Rent Rider (Non-Restaurant Use)
☐ Rider ____: Percentage Rent Rider (Restaurant Use)
☐ Rider ____: Operating Costs Rider
☐ Rider ____: Additional Consideration Rider
☐ Rider ____: Tenant's Minimum Performance Standard Rider
☐ Rider ____: Additional Provisions Rider
☐ Rider ____: Guaranty

When you sign this Sublease, you acknowledge that you have received and read the Sublease, including this Schedule, and all of the Exhibits and Riders identified immediately above, that each of the Schedule and such Exhibits and Riders is an important part of this Sublease and that you expressly agree to observe and perform all of their respective terms, conditions and agreements.

1 SUBLEASE

2
3
4
5 The Landlord and Tenant identified in the Schedule agree as follows:
6
7

8 ARTICLE 1
9 AGREEMENT TO SUBLEASE

10
11 We Sublease the Premises to you, and you accept them, for the Term, at the rental, and upon
12 the terms and conditions provided in this Sublease. No rights to light or air over any property
13 owned by us or any other person are granted by this Sublease.
14

15
16 ARTICLE 2
17 TERM

18
19 2.1 Term. The "Term" consists of the period of time beginning with the Early
20 Possession Date or the Commencement Date (whichever first occurs) and ending on the Expiration
21 Date, as specified in the Schedule.
22

23 2.2 Failure to Give Possession. We will give you possession of the Premises by the
24 Early Possession Date, if one is specified in the Schedule, or by the Commencement Date. We will
25 not be responsible to you, nor will the Term be extended, if we cannot do so for any cause beyond
26 our reasonable control. In that case, your obligation to pay Rent will be suspended until we give you
27 possession and this Sublease will continue in effect, without modification of any other kind. If our
28 inability to give you possession continues for 90 days beyond the Commencement Date, you may
29 terminate this Sublease by giving us notice within ten days following this 90 day period unless we
30 have delivered possession to you in the interim. If you elect to terminate, we and you will be
31 discharged from any further obligations under this Sublease and we will then promptly refund any
32 unapplied Security Deposit. If you do not give us this notice within the time required, you lose the
33 right to terminate this Sublease. If the Property is located in New York, the provisions of this
34 Section are intended to constitute "an express provision to the contrary" within the meaning of
35 Section 223-a of the New York Real Property Law.
36

37 2.3 Early Possession. If we give you possession of the Premises prior to the
38 Commencement Date, you will not have to pay us Rent for that period. You will, however, be
39 obligated to observe and perform all other provisions of this Sublease during that period. Early
40 possession shall not accelerate the Expiration Date.
41

42 2.4 Early Termination.

43
44 (a) We reserve the right to terminate this Sublease upon 90 days' notice if: (i)
45 we propose or are required to demolish the Property or any substantial portion of the Property
46 which includes the Premises, (ii) we sell the Property or our interest in any ground Sublease
47 covering the Property, (iii) we close or abandon the Property, or determine to use a substantial
48 portion of the Property for non-hotel purposes, or (iv) an unrelated third party acquires the power to
49 determine our management policies by acquiring our voting securities, by contract or otherwise.
50

51 (b) If we elect to terminate this Sublease, we shall pay you a sum equal to your
52 actual cost of constructing Tenant's Work and/or other improvements placed on the Premises by
53 you during the Term with our express written consent (except for those which you have the right to
54 remove upon termination), less depreciation based on straight-line depreciation from the date of
55 installation of the Tenant's Work and/or improvements to the Expiration Date.
56

57 2.5 Holding Over.

58
59 (a) If, without our consent, you remain in possession of the Premises after the
60 Expiration Date or after any earlier termination of the Term or your right of possession (all as
61 provided hereunder), you agree to pay us double the amount of Base Rent specified in the Schedule

1 for each day you remain in possession, plus all costs, expenses, reasonable attorneys' fees and
2 damages we incur because you failed to surrender possession to us when required. You also agree
3 to pay Percentage Rent, if any, and all other Rent due in accordance with this Sublease. Acceptance
4 by us of any holdover rental payments will not reinstate or renew this Sublease, and will not
5 prohibit us from electing to exercise any other remedy we have under this Sublease.
6

7 (b) Alternatively, but only if we first notify you, we may elect to have your
8 retention of possession constitute a renewal of this Sublease for one year upon the terms and
9 conditions which would have been in effect had that additional year been included in the original
10 Term.
11

12 13 **ARTICLE 3** 14 **PREMISES** 15

16 **3.1 Condition.** On the Commencement Date or any earlier Early Possession Date
17 indicated in the Schedule, we will deliver the Premises to you in their current condition. You
18 acknowledge that we have made no statements or promises to you about the physical condition or
19 use of the Premises or any other part of the Property. **YOU FURTHER ACKNOWLEDGE**
20 **THAT YOU HAVE INSPECTED THE PREMISES, THAT UNLESS OTHERWISE SET**
21 **FORTH IN LANDLORD'S WORK RIDER WE HAVE NO OBLIGATION TO TAKE ANY**
22 **ACTION CONCERNING THEIR CONDITION AS OF THE COMMENCEMENT DATE,**
23 **AND THAT YOU HAVE AGREED TO ACCEPT THEM "AS IS."**
24

25 **3.2 Tenant's Alterations.** You, at your own cost, are entirely responsible for readying
26 the Premises for your occupancy and the conduct of your business except to the extent (if any) to
27 which we are required to perform any work as set forth in the Landlord's Work Rider. Your
28 responsibility includes, at our option, the installation of meters or sub-meters to measure your
29 consumption of water and electricity and if a Tenant's Work Rider is attached to this Sublease, the
30 work described in that Rider. You agree to use only union contractors to perform Tenant's Work if
31 required by us due to labor relations at the Hotel. You are also responsible for all "readily
32 achievable" changes to remove architectural barriers in the Premises whenever they are required by
33 the Americans With Disabilities Act. You understand and agree that you must not make any
34 changes, alterations or installations in the Premises without our prior consent. This applies both
35 before and during the Term. We will consider any proposed changes, alterations and installations
36 in and to the Premises ("Tenant's Work") if you give us the following information about Tenant's
37 Work, you give us sufficient time to review it and consult with you about it before you plan to start
38 Tenant's Work, and all of the information is in form and substance reasonably acceptable to us:
39

40 (a) Detailed plans and specifications describing each aspect of Tenant's Work;
41

42 (b) The identity of the contractor(s) who will perform Tenant's Work;
43

44 (c) A good faith estimate of the cost of Tenant's Work; and
45

46 (d) The identity of the insurance companies and amount of coverages for
47 builder's risk or property, comprehensive general liability, and worker's compensation insurance
48 which will be in effect while Tenant's Work is being performed.
49

50 If we consent, you agree not to start Tenant's Work, until you have obtained and given to us:
51

52 (e) Copies of all required governmental permits and approvals for Tenant's
53 Work;
54

55 (f) Copies of the agreements with the contractor(s) who will perform Tenant's
56 Work containing, to the extent enforceable under applicable law, covenants prohibiting the filing of
57 construction-related liens against the Premises or the Property;
58

59 (g) An architect's certificate stating that Tenant's Work complies with the
60 requirements of the Americans With Disabilities Act;
61

1 (h) Assurances satisfactory to us that the cost of Tenant's Work will be timely
2 paid which, at our option, may include providing us with either a lien and completion bond (or
3 equivalent), or an additional Security Deposit under Section 7.1 of this Sublease, equal, in each
4 case, to at least one hundred twenty percent (120%) of the estimated cost of the Tenant's Work, or if
5 an Improvement Deposit Rider is attached to this Sublease, a cash deposit in the amount indicated
6 in that Rider; and
7

8 (i) Certificates evidencing the coverages referred to above naming us and the
9 Additional Parties identified in the Schedule as additional insureds and otherwise meeting the
10 requirements of Section 8.1 of this Sublease.
11

12 All of Tenant's Work must be performed in a good and workmanlike manner and in
13 compliance with applicable law. When you complete Tenant's Work, we may enter the Premises to
14 photograph or videotape its then condition and appearance. If we do so, we may use those
15 photographs or videotapes to determine the necessity, frequency and scope of any periodic upgrade
16 we may require pursuant to this Sublease. In addition, you must keep the Premises and Property
17 free of any liens attributable to Tenant's Work, and within ten days after Tenant's Work is
18 completed, you must give us original final waivers of lien from all contractor(s) who performed
19 Tenant's Work. Where permitted by applicable law, we reserve the right to post notices of non-
20 responsibility in or on the Premises.
21

22 **3.3 Maintenance and Repairs.**

23

24 (a) Landlord's Obligations. You acknowledge that except (i) as provided in
25 Sections 12.1 and 12.2 of this Sublease relating to damage to or destruction of the Premises, (ii) for
26 structural repairs to the Property roof, foundation and exterior and load-bearing walls, and (iii) for
27 "readily achievable" changes, if any, required to remove architectural barriers in Property common
28 areas whenever they are required by the Americans With Disabilities Act, this Sublease does not
29 obligate us, in any way, to repair or maintain all or any portion of the Premises and the
30 improvements and equipment located therein and any Tenant's Work and that those obligations are
31 intended to be yours under subsection (b) immediately following.
32

33 (b) Tenant's Obligations. With the exception of the matters expressly required
34 to be maintained and repaired by us pursuant to Section 3.3(a), you, at your own cost and at all
35 times during the Term, must keep the Premises in an attractive, safe, clean and sanitary state, and in
36 good order, condition and repair. All repairs and maintenance must be performed in a good and
37 workmanlike manner. You must keep the Premises and the Property free of any liens attributable to
38 your repairs and maintenance.
39

40 (c) Sublease Controls. You and we agree that this Sublease is intended to
41 allocate to you exclusively the obligation to maintain and repair the Premises. For this reason and
42 to the extent enforceable, you and we waive the benefit of applicable law to the extent it is
43 inconsistent with this stated intention, especially if applicable law purports to afford you the right to
44 make repairs to the Premises at our expense or to terminate this Sublease by reason of any needed
45 repairs.
46

47 **3.4 Ownership, Removal, Surrender and Restoration.**

48

49 (a) Ownership and Removal. Tenant's Work will belong to you and will be
50 performed and placed in the Premises (as applicable) at your risk until the Expiration Date or earlier
51 termination of this Sublease. At that time, and unless we request that you remove all or part of it,
52 Tenant's Work and all improvements, fixtures, machinery and equipment (excluding trade fixtures,
53 machinery and equipment which can be removed without damage to the Premises) will
54 automatically become our property and you must surrender it with the Premises. You are
55 responsible for all taxes imposed upon Tenant's Work and upon all (or any part) of your personal
56 property and equipment in the Premises.
57

58 (b) Surrender and Restoration. You must surrender the Premises, including
59 Tenant's Work and all improvements, fixtures, machinery and equipment (excluding trade fixtures,
60 machinery and equipment which can be removed without damage to the Premises) upon the
61 Expiration Date or earlier termination of this Sublease in good operating condition and repair,

1 except for ordinary wear and tear, and in a "broom-clean" condition.

2
3 **3.5 Right to Relocate.** We reserve the right upon 90 days' notice to relocate you to
4 comparable premises in the Property. If the new premises designated by us are smaller in area than
5 the Premises, the monthly Base Rent (and, if a Percentage Rental Rider is attached to this Sublease,
6 the "Gross Receipts" threshold) will be adjusted as we deem reasonably appropriate. We will bear
7 all expenses reasonably associated with any relocation including the direct costs of making
8 improvements similar to Tenant's Work or other improvements that you placed on the Premises
9 during the Term with our express written approval. If you do not agree to so relocate, you may
10 terminate this Sublease by giving us notice to that effect within 15 days after our relocation notice.
11 If you do so, the termination will be effective 60 days after the date of our relocation notice.
12

13 14 **ARTICLE 4** 15 **SERVICES** 16

17 **4.1 Our Services.** We agree to furnish the following services:
18

19 (a) Heating, ventilating and air-conditioning from existing Property systems
20 when necessary, in our reasonable judgment, to provide comfortable occupancy of the Premises
21 under normal business conditions. This service shall be provided on the days and hours set forth in
22 the Schedule. You must pay us the monthly amount set forth in the Schedule for the use of these
23 systems and you agree that we may make reasonable periodic adjustments to that monthly amount
24 to reflect increases in cost from our suppliers and/or increased usage on your part. If no monthly
25 amount is set forth in the Schedule, there will be no additional charge to you for use of these
26 systems unless, in our reasonable judgment, your use of one or more of these systems is
27 disproportionate to the use of such systems made by other tenants. In that event, you agree to pay
28 us all charges we deem reasonably appropriate within seven (7) days of the date we send you
29 notification of these charges. Alternatively, we may require you to install at your expense sufficient
30 supplemental heating, ventilating or air-conditioning units.
31

32 (b) Customary passenger and freight elevator service in common with us and
33 other tenants, occupants, employees and patrons of the Property.
34

35 (c) Water from municipal mains for drinking, lavatory and toilet purposes
36 drawn through existing fixtures (if any are located in your Premises) or fixtures you install with our
37 consent. You must pay us the monthly amount set forth in the Schedule for the use of the water,
38 and you agree that we may make reasonable periodic adjustments to that monthly amount to reflect
39 increases in costs from our suppliers and/or increased usage on your part. If no monthly amount is
40 set forth in the Schedule, there will be no additional charge to you for use of the water unless, in our
41 reasonable judgment, your use of the water is disproportionate to the use of water by other tenants.
42 In that event, you agree to pay us all charges we deem reasonably appropriate within seven (7) days
43 of the date we send you notification of these charges.
44

45 (d) We will have no responsibility for furnishing electricity which, instead, shall
46 be furnished by the approved electric utility company then serving the Property. We will, however,
47 permit our wire and conduits, to the extent available, suitable and safely capable, to be used by you
48 to receive electrical service. At our option, you will be responsible for metering your electricity
49 usage on the Premises and for paying the associated charges directly to the furnishing utility
50 company. In this event, you agree, at our request, to provide us with copies of all paid electric bills
51 for the Premises. If your electricity consumption is not separately metered, you must pay us the
52 monthly electricity charge set forth in the Schedule and you agree that we may make reasonable
53 periodic adjustments to that charge to reflect increased costs from our suppliers or increased usage
54 on your part. If no monthly electricity charge is set forth in the Schedule, there will be no additional
55 charge to you for use of the electricity unless, in our reasonable judgment, your use of the electricity
56 is disproportionate to the use of the electricity by other tenants. In that event, you agree to pay us all
57 charges we deem reasonably appropriate within seven (7) days of the date we send you notification
58 of these charges.
59

60 (e) If you desire telephonic, burglar alarm or computer installations, all of which
61 shall be installed at your expense, we will, at your request, direct where and how all associated

connections and wiring must be introduced and run. We reserve the right to approve or disapprove all plans and specifications for those additional services prior to their installation and to reject any additional service if we reasonably believe that it will adversely affect an existing system.

(f) We have no obligation to provide janitor, unless otherwise set forth in the Schedule, or security services to or for the Premises. If we agree to provide janitor services, you must pay us the monthly amount set forth in the Schedule, and you agree that we may make reasonable periodic adjustments to that monthly amount to reflect increases in cost from our suppliers and/or increased usage on your part.

(g) Rubbish removal from the Hotel by an approved waste management company. You must pay us the monthly amount set forth in the Schedule for the removal of your rubbish from the Hotel and you agree that we may make reasonable periodic adjustments to that monthly amount to reflect increases in cost from our suppliers and/or increased usage on your part. You are responsible for the transfer of rubbish from the Premises to the area designated by us for removal of rubbish from the Hotel using the routes and in the manner approved by us.

4.2 Your Failure to Pay for Our Services. In the event of a Repeated Default (as defined in Section 11.5 of this Sublease), we reserve the right, if permitted by applicable law and in addition to all other remedies then available to us, to discontinue furnishing all services which we have agreed to furnish you. If we do, it will not constitute an eviction or disturbance of your possession of the Premises, we will not be responsible to you for damages, and you must continue to perform your other obligations under this Sublease.

4.3 Interruption of Our Services. We will have no responsibility for interruption, curtailment or failure to provide any service which we are required to provide unless such interruption, curtailment or failure is caused by our own willful misconduct. No such service interruption shall constitute an eviction or disturbance of your possession of the Premises, or entitle you to any compensation from us or rent abatement, or excuse you from performing your other obligations under this Sublease. Instead, you must look solely to the proceeds of the business interruption insurance you are required to maintain under Section 8.1(d) of this Sublease for compensation.

ARTICLE 5 USE

5.1 Permitted Uses. You agree to use the Premises during the Term only for the purposes specified in the Schedule and for no other use or purposes without our prior written consent, which may be granted or withheld in our sole and absolute discretion. You have been advised and acknowledge that any change in use, however slight, first must be consented to by us in writing and that any such change made without our consent will be a material breach of this Sublease. We reserve the right, in our discretion, to determine the uses to which other space at the Property may be put. You understand and agree that under no circumstances do you have an exclusive right to conduct a particular business or to sell particular goods at the Property.

5.2 Rules, Regulations and Additional Operating Covenants. You agree to use the Premises in compliance with the provisions of attached Exhibit B entitled "Rules, Regulations and Additional Operating Covenants." Certain provisions of Exhibit B apply specifically to your employees at the Property. You agree to provide them with copies of those provisions and to take appropriate action to assure that they observe and comply with them. We reserve the right to make reasonable additions and changes to Exhibit B as long as they apply to, and are enforced uniformly against, all of our retail and commercial tenants at the Property and, at our option, to restrain their violation by appropriate legal proceedings.

ARTICLE 6 RENT AND OTHER CHARGES

You agree to pay the following Rent when and as due as set forth herein. For purposes of this Sublease, the term "Rent" shall refer to all monies due and owing by you under this Sublease,

1 including those monies due as set forth in Sections 6.1 through 6.11. Except as otherwise
2 specifically provided, all Rent shall be paid without notice or demand and without abatement,
3 deduction, counterclaim or set-off. Tenant's covenant to pay Rent shall be independent of every
4 other covenant set forth in this Sublease.

5
6 **6.1 Base Rent.** You agree to pay us the Base Rent specified in the Schedule in advance
7 on the first day of each month of the Term and, if applicable, at the current rate for fractions of a
8 month.

9
10 **6.2 Base Rent Adjustment.** If a Base Rent Adjustment Rider is attached to this
11 Sublease, we may adjust the specified Base Rent in the manner specified in that Rider.

12
13 **6.3 Percentage Rent.** If a Percentage Rent Rider is attached to this Sublease, you agree
14 to pay us the further sums in the manner specified in that Rider.

15
16 **6.4 Operating Costs.** If an Operating Costs Rider is attached to this Sublease, you
17 agree to pay us Operating Costs in the manner specified in that Rider.

18
19 **6.5 HVAC, Electricity and Water Charges.** You agree to pay HVAC, electricity and
20 water charges as set forth in the Schedule and Section 4.1(a),(c) and (d) of the Sublease.

21
22 **6.6 Additional Consideration.** If an Additional Consideration Rider is attached to this
23 Sublease, you agree to pay us the further sums in the manner specified in that Rider.

24
25 **6.7 Tax on Rent.** If any governmental authority assesses any tax or similar charge
26 against the rental or any amounts you are required to pay under this Sublease, and as a result, we are
27 required to collect from you or pay that tax directly to the governmental authority, you agree to pay
28 to us or reimburse us for that tax within seven (7) days of the date of our written demand to you.

29
30 **6.8 Increased Insurance Premiums.** If any increase in our insurance premiums is
31 caused by your use or occupancy of the Premises, you agree to reimburse us for the additional
32 amount(s) caused by your use or occupancy of the Premises within seven (7) days of the date of our
33 written demand to you.

34
35 **6.9 Expenditures on Your Behalf.** If we make any expenditure or incur any liability
36 which you are required to make or pay under this Sublease, you agree to pay that amount, plus an
37 additional amount equal to twenty-five percent (25%) thereof, to cover our overhead and
38 administrative costs with the next payment of Base Rent coming due.

39
40 **6.10 Enforcement Expenses.** You shall, within seven (7) days of the date of our written
41 demand to you, pay us all costs and expenses, including reasonable attorneys' fees, incurred by us in
42 enforcing any of your Sublease covenants, in remedying any of your breaches, in recovering
43 possession of the Premises, in collecting any Rent payable by you under this Sublease, in
44 terminating this Sublease because of your breach, or in connection with any litigation or arbitration
45 commenced by or against you to which we shall be made a party.

46
47 **6.11 Interest and Late Charges.** You acknowledge that late payment of any Rent will
48 cause us to incur costs not contemplated by this Sublease. Accordingly, in the event of a late
49 payment, you agree to pay us, at the same time you make the late payment, an additional charge
50 equal to ten percent (10%) of the amount due as a late charge to compensate us for those costs. In
51 addition, all overdue amounts will bear interest from the date due until the date paid at the annual
52 rate of eighteen percent (18%) or at the then maximum legal rate of interest, if any, whichever is
53 lower, which you agree to pay at the same time you make the late payment. If any check delivered
54 to Landlord by Tenant shall be returned for insufficient funds, then Tenant shall pay to Landlord in
55 addition to the late charge described above, as additional rent, the sum of \$50.00. If during the
56 Term a late charge is due under this Sublease, whether or not actually collected, for three
57 installments of Base Rent, then at our option, Base Rent will become due and payable quarterly in
58 advance instead of monthly in advance as otherwise provided by this Sublease.

59
60 **6.12 Additional Rent.** You shall pay any other sums due by you under this Sublease
61 when and as due.

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ARTICLE 7
INTENTIONALLY DELETED.

ARTICLE 8
INSURANCE; INDEMNIFICATION; WAIVER OF CLAIMS

8.1 **Tenant's Insurance.** You agree to carry insurance during the Term insuring you, and insuring us, the Additional Parties named in the Schedule, and our and their respective agents, partners, officers, directors and employees, as their interests may appear. Your insurance must contain terms and coverages and must be with insurers reasonably satisfactory to us. Initially, however and throughout the Term until otherwise specified by us in writing, you agree to maintain the following coverages in the following amounts:

(a) Commercial General Liability Insurance, including Fire Legal Liability, Products Liability Insurance and Contractual Liability Insurance insuring your contractual indemnification liability under this Sublease in an amount not less than \$5,000,000 per occurrence;

(b) "All risk" property damage insurance including fire, sprinkler leakage, vandalism and the extended coverage perils for the full replacement cost of Tenant's Work and any other additions, improvements and alterations to the Premises and of all office furniture and equipment, trade fixtures, merchandise and other items of your property on the Premises;

(c) Worker's compensation insurance in an amount not less than the statutory requirements required by the state or commonwealth in which the Property is located and Employers' Liability Insurance in an amount not less than \$1,000,000 each occurrence covering all of your employees at the Premises;

(d) Business interruption insurance and extra expense insurance with limits not less than those carried by a prudent tenant but in any event, insuring that monthly Base Rent will be paid to us for up to one year in the event the Premises are destroyed or rendered inaccessible or untenable by reason of casualty or interruption of services; and

(e) In the event your Permitted Uses include beautification, treatment, massage or other touching of the body of third persons, Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

At your option, your insurance may be provided by a company-wide blanket insurance policy or policies reasonably satisfactory to us. Initially, before the Term commences, and thereafter at least 30 days before any of your insurance is to expire, you must furnish us certificates evidencing the insurance you are required to maintain or, at our request, certified copies of the applicable insurance policies. That evidence must state that the applicable coverage may not be reduced, canceled or not renewed without at least 30 days' prior written notice to us. All of your insurance policies shall be considered primary of any existing similar insurance carried by us or by the Property.

8.2 **Indemnification.** Except for matters caused by our willful misconduct and otherwise to the extent permitted by applicable law, you agree to indemnify, defend, and hold us and the Additional Parties named in the Schedule harmless from all loss, claims and damages (including reasonable attorneys' fees) which are asserted, incurred or awarded (a) directly or indirectly in connection with your use and occupancy of the Premises, (b) directly or indirectly resulting from your failure to fully comply with any of the provisions of this Sublease, (c) directly or indirectly as a result of any act or omission committed by you or your agents, employees, contractors, licensees and invitees, and (d) for any commission or finder's fee other than to the Broker named in the Schedule.

8.3 **Waiver of Claims.** Except for matters caused by our willful misconduct and otherwise to the extent permitted by applicable law, we are not responsible for any inconvenience, loss or damage to property, by whomever owned, or injury to you or any other person occurring in the Premises or elsewhere in the Property. You waive the right to make any such claim against us.

1 The preceding sentence is applicable regardless of the cause of the inconvenience, loss or injury
2 including acts which we are permitted to undertake in and about the Property, as well as theft, crime
3 in general, failure by others to obey our rules and regulations, and other events like and unlike the
4 ones mentioned in this sentence. If any damage to the Premises or the Property, or the equipment in
5 either, results directly or indirectly from any act or omission committed by you or your agents,
6 employees, contractors, licensees or invitees, you must promptly repair that damage. This applies
7 whether that damaged property belongs to us or to other tenants or occupants of the Property.
8
9

10 **ARTICLE 9**
11 **SUBORDINATION; MORTGAGEE PROTECTION**
12

13 **9.1 Subordination.** If requested by a mortgagee or ground lessor, you agree, at the
14 election and specification of such mortgagee or ground lessor, to either (a) subordinate your interest
15 in this Sublease to its mortgage (and to all advances made under its mortgage) or its ground
16 Sublease, or (b) make certain of your rights and interest in this Sublease superior to its mortgage. In
17 either case, you agree to execute and deliver appropriate documentation as the mortgagee or ground
18 lessor may reasonably require.
19

20 **9.2 Liability of Mortgagee; Attornment.** You further agree that if any mortgage is
21 foreclosed or ground Sublease is terminated, (a) the liability of the mortgagee or purchaser at the
22 foreclosure sale who succeeds us as your Landlord will exist only as long as such entity is the
23 owner of the Property (and then, only with respect to matter which arising during such period of
24 ownership), and (b) upon request, you will attorn, as Tenant under this Sublease, to the mortgagee,
25 foreclosure purchaser or ground lessor, as applicable, and will, within seven (7) days of the date of
26 our written request to you, execute and deliver appropriate confirming documentation as the
27 requesting party may reasonably require.
28

29 **9.3 Modifications to Sublease.** If any prospective mortgagee or ground lessor requires
30 one or more Sublease modifications and in your reasonable judgment, the requested modifications
31 do not in any way materially and adversely change your rights and obligations under this Sublease,
32 you agree to execute whatever documentation is required to effect the modifications and to return
33 them to us within seven (7) days of the date we provide you the requested modifications.
34

35 **9.4 Estoppel Certificate.** Within seven (7) days of the date of our written request to
36 you, you agree to execute, acknowledge and deliver to us a written statement certifying (a) that this
37 Sublease, if and to the extent modified, is in full force and effect and the dates to which Rent is paid
38 in advance, (b) acknowledging that you are unaware of any uncured defaults on our part under this
39 Sublease, or specifying any claimed default, and (c) such other matters as we may reasonably
40 request. It is intended that a prospective purchaser or encumbrancer of the Property may rely on
41 your statement.
42

43 **9.5 Power of Attorney.** If you fail to execute and deliver any documentation referred
44 to above in this Article, you irrevocably appoint us as your attorney in fact to execute and deliver
45 that documentation for and in your name.
46

47 **9.6 Mortgagee Protection.** Provided we have first given you its name and address, you
48 agree to give our mortgagee written notice of any default by us under this Sublease, and to permit
49 the mortgagee a reasonable opportunity to cure that default.
50

51 **ARTICLE 10**
52 **ASSIGNMENT; SUBLETTING**
53

54 **10.1 Consent Required.** Any voluntary or involuntary assignment, transfer or
55 encumbrance (an "assignment") or Sublease of all or any part of your interest in this Sublease or in
56 the Premises without our prior consent, which may granted or withheld in our sole and absolute
57 discretion, will be void, will be considered a special default under this Sublease which cannot be
58 cured, and will permit but not require us to immediately terminate this Sublease. For these
59 purposes, any transaction which results in a change in (a) the identity of the persons entitled to
60 control your management policies and/or (b) the controlling ownership interest of you at any time
61

1 will be considered an assignment. If within 30 days after an unconsented to assignment or
2 subletting we do not choose to terminate this Sublease, or to exercise another remedy available to
3 us under, this Sublease then, without further notice to you, the monthly Base Rent will be increased
4 to the greater of (i) fair market rental value (as reasonably determined by us), or (ii) one hundred ten
5 percent (110%) of the monthly Base Rent then in effect.
6

7 Notwithstanding the foregoing, we shall not unreasonably withhold our consent to an
8 assignment of this Sublease or a Sublease of the Premises by Hazelwood Enterprises, Inc. to
9 your parent entity, any wholly-owned subsidiary entity of you or your parent entity, any
10 entity succeeding to substantially all of your assets as a result of a consolidation or merger, or
11 to your Affiliate (as defined below); provided that, in each of the foregoing instances, all of
12 the following conditions are met: (i) Richard L. Hazelwood remains an active member of the
13 management controlling policies of the entity (ii) such other entity shall assume in writing all
14 of your obligations hereunder; (iii) such entity (excluding intra-corporate transfers, which
15 shall not have a negative net worth)) shall have a sufficient net worth immediately prior to
16 such assignment or Sublease such that the resulting assignee or subtenant has a net value
17 equal to or greater than your value immediately prior to such assignment or Sublease; (iv)
18 such entity is engaged in the same business as you and has a minimum of ten years of
19 experience in your industry (excluding intra-corporate transfers), (v) such entity has a
20 reputation commensurate with your reputation in the national business community
21 (excluding intra-corporate transfers), and (vi) you and your assignee/sublessee furnish to us
22 all evidence that we may reasonably require to verify the foregoing. The term "Affiliate" as
23 used herein shall mean any entity, directly or indirectly, through one or more intermediaries,
24 controlling, controlled by or under common control with you. The term "control," as used in
25 the immediately preceding sentence, shall mean the right to the exercise, directly or
26 indirectly, of more than 50% of the voting rights attributable to the shares of the controlled
27 entity. Notwithstanding any such assignment or Sublease, you shall not be reSubleased from
28 any and shall perform all obligations imposed on you hereunder.
29

30 Subject to the foregoing, the conditions, covenants and agreements in the Sublease to
31 be kept and performed by the parties hereto shall bind and inure to the benefit of their
32 successors and assigns. In connection with any such transfer to which we may consent, you
33 agree to furnish us with copies of all documents, and subsequent amendments thereto,
34 executed in connection with such transfer. Any consent by us to a subletting, assignment or
35 transfer of control shall only be deemed to be a consent to the initial subletting, assignment or
36 transfer of control and shall not be deemed to be a consent to any further subletting,
37 assignment or transfer of control.
38

39 **10.2 Procedure.** If you propose an assignment or Sublease, you must give us ninety (90)
40 days' prior notice accompanied by (a) the name and address of the proposed assignee or subtenant, a
41 true and complete copy of the proposed assignment or Sublease and sufficient information as we
42 deem necessary to permit us to determine the financial responsibility, experience and character of
43 the proposed assignee or subtenant, and (b) a non-refundable processing fee in an amount equal to
44 the greater of \$1,500.00 or 10% of the current monthly Base Rent to cover our costs and fees
45 incurred in connection with processing your request.
46

47 **10.3 Our Options.** Within sixty (60) days after receipt of your notice and all
48 information we have requested that you provide us concerning the proposed assignee or sublessee,
49 we must elect to either (a) terminate this Sublease as to, and recapture, all or the applicable portion
50 of the Premises, (b) consent to the proposed transaction, or (c) withhold consent to the proposed
51 transaction.
52

53 **10.4 Termination and Recapture.** If your notice covers all of the Premises and we elect
54 to terminate and to recapture, then the Term of this Sublease will end on the date stated in your
55 notice for the commencement of the proposed assignment or Sublease (the "Start Date"). If your
56 notice covers less than all of the Premises and we elect to terminate and to recapture as to a lesser
57 portion, then as of the Start Date, the monthly Base Rent (and, if a Percentage Rent Rider is
58 attached to this Sublease, the "Gross Receipts" threshold) will be adjusted on the basis of the
59 number of rentable square feet you retain and this Sublease will continue until the Expiration Date.
60

61 **10.5 Consequences of Our Consent.** As a condition to our consent to the proposed

1 transaction, we may require that the amount of Base Rent and any other Rent payable under the
2 Sublease (and any adjustments to the Base Rent and any other Rent payable under the Sublease) be
3 modified to what is then the market value for property similar to the Premises as then constituted as
4 reasonably determined by us. In addition, if we consent:

5
6 (a) You must complete the proposed transaction within 30 days of our consent
7 on the terms and conditions set forth in your notice.

8
9 (b) The proposed transaction will not (i) become effective without the written
10 assumption by your assignee or subtenant of your obligations under this Sublease, (ii) reSublease
11 you of any obligations under this Sublease, or (iii) alter your primary liability for the payment of
12 Rent and for the performance of all other obligations to be performed by the Tenant under this
13 Sublease.

14
15 (c) Unless set forth in writing in our consent, the assignee or subtenant (as
16 applicable) will not enjoy or be entitled to any Sublease renewal or space expansion rights or
17 special privileges or extra services you may then enjoy.

18
19 (d) If we consent to any assignment or Sublease (or grant of a concession), you
20 shall pay to us, as Additional Rent, at the time of our consent, one-half (1/2) of all sums and other
21 consideration payable to you (or any other individual or entity) directly or indirectly as a result of
22 the assignment or Sublease (or grant of a concession). Moreover, if for any proposed assignment
23 you (or any other individual or entity) receive rent, either initially or over the term of the
24 assignment, in excess of the Rent called for hereunder or, in case of the Sublease (or grant of a
25 concession) of a portion of the Premises, in excess of such rent fairly allocable to such portion, you
26 shall pay to us, as Additional Rent, one-half (1/2) of the excess of each such payment of rent or
27 other consideration received by you within seven (7) days after you receive each payment.

28
29 **10.6 Withholding Our Consent.** We will not unreasonably withhold our consent to an
30 assignment or a Sublease to a **parent entity, any wholly-owned subsidiary entity of you or your**
31 **parent entity, any entity succeeding to substantially all of your assets as a result of a**
32 **consolidation or merger, or to your Affiliate as described above in Article 10.1.** Nonetheless,
33 while the following is not intended to be exclusive, you agree that we will be deemed to have acted
34 reasonably in withholding our consent to the proposed transaction if we conclude that:

35
36 (a) At the time of your request for consent, you are in Default under this
37 Sublease;

38
39 (b) The proposed assignee or subtenant is of a character or is engaged in a
40 business that is not in keeping with our standards for the Property, or is deleterious to its or our
41 reputation;

42
43 (c) The proposed assignee or subtenant lacks the financial responsibility or
44 experience to perform in accordance with the Sublease terms;

45
46 (d) If a Percentage Rent Rider is attached to this Sublease, the proposed
47 assignee or subtenant will be unable to produce or pay a monthly Percentage Rent at least equal to
48 your monthly Percentage Rent average during the 12 consecutive month period prior to the
49 proposed date of subletting or assignment, or the period beginning with the Commencement Date if
50 less than 12 months;

51
52 (e) The use to be made of the Premises by the proposed assignee or subtenant is
53 not within the scope of the Permitted Use specified in the Schedule, or would conflict with the
54 terms of any collective bargaining agreement affecting the Property;

55
56 (f) A requested subletting will result in more than two occupants in the
57 Premises;

58
59 (g) The proposed transaction would adversely affect any Property liquor or
60 gaming license;

- 1 (h) The proposed transaction would increase the possibility of default under this
2 Sublease; or
3
4 (i) The financial worth of the proposed assignee or subtenant is less than that of
5 you.
6

7 **10.7 Sublease Principal.** The purpose of this Sublease is to transfer possession of the
8 Premises to you, for your personal use in return for certain benefits, including rent and other
9 charges to be transferred to you. The essence of the Sublease Agreement, then, is the transfer of
10 the possession to your personal use and payment of money and your other consideration for this
11 transfer by us. Your right to assign or sublet is subsidiary and incidental to the underlying
12 purpose hereof. You acknowledge that you have entered into this Sublease in order to acquire
13 the Premises for your own personal use and you have not entered into this Sublease for the
14 purpose of obtaining the right to convey the Subleasehold to others.
15
16

17 **ARTICLE 11**
18 **DEFAULT; REMEDIES**
19

20 **11.1 Notices Concerning Failure to Timely Comply with Obligations Due Under**
21 **Sublease.** You acknowledge that if you fail to timely comply with any and all of your obligations
22 due under this Sublease, we will incur unanticipated legal and other costs in the preparation and
23 service of a notice advising you of that failure, that \$1,000 is a reasonable estimate of those costs,
24 and that you will pay that sum as Additional Rent (in addition to any other sums which you must
25 pay hereunder) within seven (7) days of the date of any such notice we send to you.
26

27 **11.2 Events of Default.** You will be in default under this Sublease (a "Default") if:
28

29 (a) You fail to pay Rent when due under the Sublease where such failure
30 continues for a period of three (3) days after written notice thereof from us to you.
31

32 (b) You effect an assignment or Sublease of all or any part of your interest in
33 this Sublease or in the Premises without our prior consent.
34

35 (c) You fail to comply with any of the other terms or covenants of this Sublease
36 and you do not cure that failure within ten (10) days after notice from us.
37

38 (d) You become insolvent or bankrupt, whether or not proceedings for relief
39 under bankruptcy or similar laws are instituted.
40

41 (e) A trustee or receiver is appointed for you or for substantially all of your
42 property, and is not discharged within 30 days after appointment.
43

44 (f) Any guarantor of your Sublease obligations dies, refuses to honor or
45 repudiates its guaranty.
46

47 **11.3 Recapture of Inducements.** If this Sublease provides for the abatement of any
48 form of Rent or other charges, or for our payment of any inducement or consideration (including
49 construction costs) for your entering into this Sublease, then upon a Default, even if remedied, the
50 applicable provision will automatically be considered deleted from this Sublease and of no further
51 effect. In this event, any Rent, other charge, inducement or consideration previously given, abated
52 or paid by us must be repaid by you as Additional Rent within seven (7) days of the date of our
53 written demand to you.
54

55 **11.4 Default under Other Sublease.** If the term of any other Sublease between you, or
56 an affiliate, as tenant, and us, or an affiliate, as landlord, shall be terminated or become terminable
57 because of a default by the tenant under that Sublease, we reserve the right, upon notice to you, (a)
58 to terminate this Sublease, or (b) to add any sums due the landlord under that Sublease to the
59 Additional Rent due under this Sublease.
60

61 **11.5 Repeated Defaults.** Three Defaults by you during the Term, even if remedied, will

1 constitute a "Repeated Default." In the event of a Repeated Default, we reserve the right, in
2 addition to any other remedy then available to us to use all or any portion of sums due you under
3 Paragraph A8(b) of Exhibit B to this Sublease to pay any amount due us, or to reimburse us for any
4 loss, cost or expense which we may incur as a consequence of your Repeated Default.

5
6 **11.6 Remedies.** If you fail to perform any of your affirmative duties or obligations under
7 this Sublease, on at least five (5) days' notice to you (or in case of an emergency, without notice),
8 we may elect to do so on your behalf. In the event of a Default, we may:

9
10 (a) Terminate this Sublease and repossess the Premises. If we do, you shall pay
11 us, within seven (7) days of the date we make a written demand to you, as agreed liquidated
12 damages, a sum equal to the Base Rent and Percentage Rent, if any, which you are required to pay
13 under the Sublease for the remainder of the stated Term, less the fair rental value of the Premises
14 (as reasonably determined by us) for that period.

15
16 (b) Terminate your right to possession of the Premises by any lawful means
17 without terminating this Sublease. If we do, then upon our notice, you must immediately vacate
18 and surrender possession of the Premises to us. If you do not, we have the right, with or without
19 legal process, to remove you or anyone else in possession using such force as may be reasonably
20 necessary to do so. Removal shall not relieve you of any of your obligations under this Sublease.
21 Thereafter, we will attempt in good faith to relet all or part of the Premises for your account upon
22 terms acceptable to us and we may incur costs in readying the Premises for occupancy by another.
23 Under no circumstances will we be obligated to relet the Premises for less than its fair rental value
24 or upon terms less favorable to us than those then prevailing in the market. If the consideration we
25 collect for your account after reletting is not sufficient to pay the sum of (i) the full amount of the
26 Base Rent and Percentage Rent, if any, reserved under this Sublease, plus (ii) an additional five
27 percent (5%) on that amount to cover our administrative costs, plus (iii) our reletting costs, you
28 must pay us the amount of each monthly deficiency within seven (7) days of the date you receive
29 written notice from us setting forth the amount due.

30
31 (c) Pursue any other remedy available to us under applicable law.

32
33 (d) All of our rights and remedies under this Sublease are cumulative and shall
34 not exclude any others.

35
36
37 **ARTICLE 12**
38 **DAMAGE TO PREMISES OR PROPERTY**
39

40 **12.1 Minor Damage.** If the Premises are damaged by fire, explosion, casualty or other
41 similar occurrence to the extent of twenty-five percent (25%) or less of their insurable value, we
42 shall promptly repair that damage at our expense. If for any reason, the damage is not substantially
43 repaired within one year after the event causing the damage, you may terminate this Sublease by
44 notice to us within ten days thereafter. If you do not, this Sublease will continue in effect.
45 Notwithstanding the foregoing, if the event producing the damage is caused by your negligent act or
46 omission, or the negligent act or omission of your servants, employees, agents, visitors or invitees,
47 the required repairs will be at your expense and you shall not have the right to terminate this
48 Sublease for failure to complete those repairs.

49
50 **12.2 Serious Damage.** If the damage exceeds twenty-five percent (25%) of the insurable
51 value of the Premises, or if the Property is damaged to the extent that you can no longer reasonably
52 conduct your business in the Premises as contemplated by this Sublease, then within 60 days after
53 the event causing the damage, we must notify you whether or not we elect to repair or rebuild. If
54 we elect to repair or rebuild, we shall proceed diligently toward that end. If the damage is not
55 substantially repaired within one year after the event causing the damage, you may terminate this
56 Sublease by notice to us within ten days thereafter. If you do not, this Sublease will continue in
57 effect. If we elect not to repair or rebuild, this Sublease will terminate on the day we give you
58 notice to that effect. Notwithstanding the foregoing, if the event producing the damage is caused by
59 your negligent act or omission, or the negligent act or omission of your servants, employees, agents,
60 visitors or invitees, the required repairs will be at your expense and you shall not have the right to
61 terminate this Sublease for failure to complete those repairs.

1
2 **12.3 Tenant's Work; No Rent Abatement.** If this Sublease is not terminated as
3 provided above, you are responsible, at your expense, for promptly repairing and restoring damaged
4 or destroyed Tenant's Work and trade fixtures. All Rent shall continue to be payable, without
5 abatement, as if the fire or other casualty had not occurred. In each case, you must look solely to
6 the proceeds of the insurance you are required to maintain under Section 8.1(d) of this Sublease for
7 compensation.
8
9

10 **ARTICLE 13**
11 **CONDEMNATION**
12

13 If any governmental authority acquires or condemns (a "Taking") any portion of the
14 Premises, or a portion of the Property which prevents its operation as a hotel, this Sublease will
15 automatically terminate as of the date possession or title, whichever first occurs, is obtained by that
16 authority unless we mutually agree otherwise. Any award as a consequence of a Taking shall
17 remain our sole property except that, if permitted by applicable law, you may seek any
18 compensation separately awarded for your relocation expenses and/or loss of your trade fixtures
19 provided it does not reduce our award.
20
21

22 **ARTICLE 14**
23 **TRADEMARKS**
24

25 You disclaim any interest in the name "Hilton," any variant thereof, or any other service
26 mark, trademark or trade name owned by us and/or Hilton Hotels Corporation (collectively,
27 "Trademarks"). Without our consent, you must not use the Trademarks for any purpose other than
28 your business address.
29
30

31 **ARTICLE 15**
32 **WAIVER OF JURY TRIAL AND WAIVER OF RIGHT TO REDEEM**
33 **OR REINSTATE FORFEITED SUBLEASE**
34

35 **15.1 Waiver of Jury Trial.** You and we shall and hereby do expressly waive trial by
36 jury in any action, proceeding or counterclaim brought by either of the parties hereto against the
37 other on any matters whatsoever arising out of or in any way connected with this Sublease, the
38 relationship of Lessor and Lessee, Lessee's use or occupancy of the Premises and/or any claim of
39 injury or damage.
40

41 **15.2 Waiver of Right to Redeem or Reinstate Forfeited Sublease.** You expressly
42 waive the right to redeem or reinstate this Sublease in the event this Sublease is forfeited for any
43 reason, including, but not limited to, your failure to respond timely to any notice to pay or quit or
44 any notice to perform covenant or quit.
45
46

47 **ARTICLE 16**
48 **MISCELLANEOUS**
49

50 **16.1 Brokers.** If no Broker is named in the Schedule, you warrant and represent to us
51 that you have not dealt with a broker or finder in connection with this Sublease. If a Broker is
52 named in the Schedule, you warrant and represent to us that this Sublease was brought about by the
53 named Broker, and that you have dealt with no other broker or finder in connection with this
54 Sublease. We agree to pay the commission due Broker in accordance with our agreement with
55 Broker.
56

57 **16.2 Our Consent.** Unless expressly provided to the contrary in this Sublease, whenever
58 our consent or approval is required, we are free to give or withhold it in our absolute discretion and
59 we need not provide any reason if it is withheld. Unless a specific sum is called for elsewhere in
60 this Sublease, you agree to pay us, within seven (7) days of receiving written notification from us,
61 as Additional Rent, all out-of-pocket expenses actually incurred by us, including reasonable

attorneys' fees, in reviewing and processing the request for consent or approval, regardless of whether the requested consent or approval is granted or withheld.

16.3 Relationship Between Landlord and Tenant. Nothing contained in this Sublease is intended to create any relationship between us other than the relationship of landlord and tenant.

16.4 Notices. Any notice which is required or permitted to be given under this Sublease must be in writing and must be given by personal delivery (including messenger and nationally organized air courier), with receipt acknowledged, or by prepaid registered or certified mail, return receipt requested, or by facsimile transfer with evidence of transmittal and receipt, to the party and at the address indicated in the Schedule. Either you or we may change our address for notices by giving notice in this manner. Emergency notices may be given by telephone. All notices will be considered delivered or served on the date of personal delivery or mailing.

16.5 Examination of Sublease. Submission of this instrument for your examination or signature does not constitute a reservation of or an option for the Premises, and it is not effective as a Sublease or otherwise until we and you both sign and exchange copies of this instrument.

16.6 Entire Agreement. This Sublease contains the entire agreement relating to the leasing of the Premises between you and us. All negotiations and oral agreements between you and us are merged into and are included in this Sublease. Except as otherwise provided in this Sublease, it cannot be changed in any way unless you and we both so agree in writing.

16.7 Time. Time is of the essence regarding this Sublease and each of its provisions.

16.8 Headings. Introductory headings used in this Sublease are for convenience only and are not intended to limit the plain meaning of the language following the relevant provision.

16.9 Recordation. Neither this Sublease nor any evidence or summary of this Sublease may be recorded.

16.10 Governing Law and Severability. This Sublease is to be governed by and interpreted in accordance with the laws of the state or commonwealth in which the Premises are located. If any provision of this Sublease is found to be illegal or unenforceable, it will be considered to have been deleted and the remaining portions of this Sublease will remain in full force and effect.

16.11 Subordinate Sublease. If a ground lessor is named as an Additional Party in the Schedule, (a) we (or the Owner if the Owner is not the Landlord) are a tenant under a ground or master Sublease with the ground lessor, (b) this document will be considered a Sublease between you and us, (c) you and we will be bound by the terms and provisions of that ground or master Sublease, (d) any inconsistency or conflict between this document and the ground or master Sublease will be resolved in favor of the latter, and (e) you and we each acknowledge that the ground lessor has rights superior to those afforded Landlord and Tenant under this Sublease.

16.12 Counterparts. This Sublease may be executed in copies, each of which will be considered an original but all of which together shall constitute one instrument. In the event of a conflict between your original and ours, the provisions of our copy will control.

16.13 Exculpation. If Landlord is a corporation, partnership, joint venture, or limited liability company then recourse with respect to its failure to comply with any of its obligations under this Sublease may only be had against its assets. Under no circumstances will any officer, director, shareholder, partner, member, other principal or debt or equity owner of Landlord be personally responsible for any liability or obligation of the Landlord under this Sublease.

16.14 Binding Effect. Each of the provisions of this Sublease shall extend to and shall, as the case may require, bind or inure to the benefit of you and us and your and our respective successors or assigns, provided this clause shall not permit any assignment by you contrary to the provisions of Article 10 of this Sublease.

1 **16.15 No Air Rights.** No rights to any view or to light or air over any property, whether
2 belonging to us or any other person, are granted to you by this Sublease. If at any time any
3 windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by
4 reason of any repairs, improvements, maintenance or cleaning in or about the Property, the same
5 shall be without liability to us and without any reduction or diminution of your obligations under
6 this Sublease.

7
8 **16.16 Transfer of Landlord's Interest.** You acknowledge that we have the right to
9 transfer all or any portion of our interest in the Property and in this Sublease, and you agree that in
10 the event of any such transfer we shall automatically be reSubleased from all further liability under
11 this Sublease arising after the date of such transfer and you agree to look solely to such transferee
12 for the performance of our obligations hereunder after the date of such transfer.

13
14 **16.17 Joint and Several.** If there is more than one Tenant named in the Schedule, the
15 obligations imposed upon the Tenant under this Sublease shall be joint and several.

16
17 **16.18 Authority.** If the Tenant named in the Schedule is a corporation or partnership or
18 other entity, each individual executing this Sublease on behalf of such party hereby represents and
19 warrants that such party is a duly formed and existing entity qualified to do business in the state or
20 commonwealth where the Property is located and that such party has full right and authority to
21 execute and deliver this Sublease and that each person signing on behalf of such party is authorized
22 to do so.

23
24 **16.19 Information requests.** You shall promptly provide Hilton Hotels Corporation with
25 all information reasonably requested by Hilton Hotels Corporation or its Compliance Committee
26 with respect to you and your affiliates including their respective officers, directors or shareholders.
27 The information requested may include but not necessarily be limited to financial condition,
28 personal and family background, litigation, indictment, criminal proceedings and the like in which
29 any of the aforementioned may have been involved (collectively, the "Requested Information"), in
30 order for Hilton Hotels Corporation to determine that the Requested Information does not disclose
31 any fact which might adversely affect, in any manner, any gaming licenses or permits held by
32 Hilton Hotels Corporation or its affiliates or the current stature of Hilton Hotels Corporation or its
33 affiliates with any gaming commission, board or similar regulatory agency.

34
35 **16.20 Business Projections.** In connection with Tenant's interest in entering into this
36 Sublease with Hilton Hotels Corporation as Managing Agent for Hilton San Diego Corporation,
37 Landlord may have provided Tenant certain materials and/or projections regarding (i) the
38 business and/or operations of Landlord; and/or (ii) the locality in which the Premises are located
39 (all of the foregoing, collectively, the "Projections"). Tenant acknowledges that the Projections
40 are provided by Landlord as an accommodation and for informational purposes only, with the
41 understanding that Landlord is by the provision of the Projections not engaged in the rendering of
42 legal or other professional advice or service. Landlord hereby specifically disclaims any
43 warranty, guaranty, or representation, oral or written, past, present, or future, of, as to, or
44 concerning any of the Projections. Tenant acknowledges that it has made its own independent
45 investigation in its determination to enter into this Sublease and that Tenant has not relied on the
46 Projections in any fashion, directly or indirectly, in making such determination.

47
48 **16.21 CITY OF SAN DIEGO SUBLEASE:** This Sublease is specifically subject and
49 subordinate to the terms of the Sublease by and between the City of San Diego as Lessor and Hilton
50 San Diego Corporation as Successor Lessee, on file in the office of the City Clerk as Document
51 No._____. The consent hereto by the City of San Diego is a condition precedent to the
52 effectiveness of this Sublease. Lessee is familiar with the terms and conditions of such City of San
53 Diego Sublease and Lessee covenants and agrees to comply therewith to the extent such
54 compliance is required. Lessee further agrees to abide by all rules and regulations promulgated by
55 the City of San Diego and all departments thereof having jurisdiction over the Demised Premises.

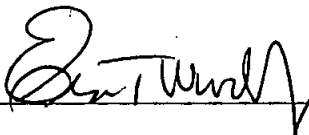
56
57
58 **[SIGNATURES FOLLOW ON NEXT PAGE]**
59
60
61

1
2 We and you have executed this Sublease on or as of the date indicated in the Schedule.
3
4

5 HILTON SAN DIEGO CORPORATION,
6 a California corporation
7

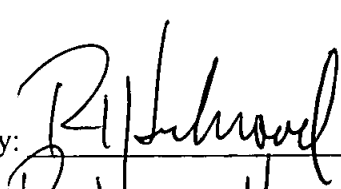
Hazelwood Enterprises, Inc.,
an Arizona corporation

8 By: Hilton Hotels Corporation,
9 Managing Agent

10
11 By: 

12
13 Print: Ernest Wooden Jr.

14
15 Its: Senior Vice President
16

By: 

Print: Richard L. Hazelwood

Its: CEO

17 //
18 //
19 //
20 //
21 //
22 //

1 **EXHIBIT A** to Sublease dated 7/21/04, by and between Hilton Hotels Corporation. as
2 Managing Agent for Hilton San Diego Corporation, as Landlord, and Hazelwood Enterprises, Inc.,
3 an Arizona corporation, as Tenant.

4
5 **THIS EXHIBIT IS ATTACHED TO AND IS AN IMPORTANT PART OF THE**
6 **CAPTIONED SUBLEASE.**
7

8
9 **EXHIBIT A**
10 **Floor Plan of Premises**
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1 **EXHIBIT B** to Sublease dated 7/21/04, by and between Hilton Hotels Corporation as
2 Managing Agent for Hilton San Diego Corporation, as Landlord, and Hazelwood Enterprises, Inc.,
3 an Arizona corporation, as Tenant.
4

5 **THIS EXHIBIT IS ATTACHED TO AND IS AN IMPORTANT PART OF THE**
6 **CAPTIONED SUBLEASE. YOUR FAILURE TO OBSERVE, PERFORM OR COMPLY**
7 **WITH THE TERMS OF THIS EXHIBIT MAY CONSTITUTE A DEFAULT UNDER**
8 **THE SUBLEASE.**
9

10
11 **EXHIBIT B**
12 **Rules, Regulations and Additional Operating Covenants**
13

14
15 **A. GENERAL**
16

17 **1. Compliance With Laws.** You agree to observe and perform all insurance
18 requirements and applicable laws pertaining to your business or your use of the Premises, including,
19 among others, (a) all requirements concerning health and safety standards and environmental
20 protection, (b) all requirements under the Americans With Disabilities Act to effect "readily
21 achievable" changes to remove architectural and communication barriers and/or to provide auxiliary
22 aids and services within the Premises, and (c) the obtaining of all permits required by applicable
23 law.
24

25 **2. No Discrimination.** You agree, in the conduct of your business, not to discriminate
26 against or segregate (or to permit anyone acting under the color of your authority to discriminate
27 against or segregate) any person on account of sex, sexual orientation, age, race, color, creed,
28 religion, marital status, ancestry or physical handicap. This covenant also governs your
29 employment practices and selection of suppliers and contractors. You acknowledge that we are an
30 equal opportunity employer and that we are committed to the principles and practices of
31 nondiscrimination in the operation of the Property.
32

33 **3. Rights of Access.** We and our experts/consultants may enter the Premises at any
34 time in case of an emergency, and otherwise at reasonable times, in order to inspect the condition of
35 the Premises, to verify your compliance with this Sublease and applicable law and to effect required
36 or necessary repairs. Any such entry will be at our expense unless it reveals a violation of
37 applicable law or a condition that if not promptly remedied would result in a Default under this
38 Sublease. In any such case, upon our request, you must promptly reimburse us for the costs of such
39 inspection. As long as we act in good faith and with reasonable care, no such entry shall constitute
40 an eviction or disturbance of your possession or render us liable to you.
41

42 **4. Additional Reserved Rights.** We reserve the following additional rights: (a) to
43 change the character, use and quality standards of the Property; (b) to change the name or street
44 address of the Property; (c) to control access to and from Property common areas; (d) to rearrange,
45 relocate, close or change corridors, elevators, stairs, lavatories, doors, lobbies, entrances or exits to
46 the Property; and (e) at reasonable times, to exhibit the Premises to prospective lessees, purchasers
47 or others.
48

49 **5. Conduct of Business.** You must continuously occupy and use the Premises during
50 normal business hours or, if longer, any Minimum Hours of Operation specified in the Schedule.
51 You acknowledge that we reserve the right from time to time, upon reasonable prior notice, to
52 change the Minimum Hours of Operation of the retail and commercial tenants of the Property. You
53 must conduct your business diligently and energetically, maintaining and employing at all times
54 such merchandise, equipment and personnel reasonably required for both the successful operation
55 of your business and the service and convenience of your customers including guests of the
56 Property. If any Tenant's Minimum Performance Standard Rider is attached to this Sublease and
57 you do not meet that standard, this Sublease may be terminated as provided in that Rider.
58

59 **6. Retail Inventory; Pricing.** If your business involves sales at retail, you agree to
60 offer for sale, at competitive prices, such merchandise as is customarily offered for sale at retail
61 establishments similar to yours in other hotels owned or operated by Hilton Hotels Corporation.

1 You further agree to immediately withdraw from sale or display any merchandise that we shall
2 designate to you as being inappropriate for sale at the Property. You acknowledge that any such
3 designation is motivated solely by our desire to preserve the first class reputation of the Property
4 and that we may make such designation in our sole discretion.

5
6 **7. Services; Nature and Pricing.** If your business involves the provision of services,
7 you agree to provide, at competitive prices, such services as are customarily offered at service
8 establishments similar to yours in other hotels owned or operated by Hilton Hotels Corporation. If,
9 prior to your execution of this Sublease, we have made you aware of company-wide pricing
10 guidelines established by Hilton Hotels Corporation with respect to the provision of one or more of
11 such services, your subsequent execution of this Sublease constitutes your agreement to abide by
12 those guidelines as they may be modified from time to time.

13
14 **8. Guest Accounts.**

15
16 (a) With our prior approval, you may charge purchases made by registered hotel
17 guests to their hotel account. It is your responsibility to first confirm that the charging party is in
18 fact a registered hotel guest entitled to charge privileges. On your behalf, we will then bill and
19 attempt to collect those charges. If, but only to the extent that, we collect them, we will remit to
20 you at times and in the manner then applicable to all retail and commercial tenants at the Property.

21
22 (b) If we collect your charges through a collection agency or through legal
23 action, we need only remit to you the net amount collected after deducting (i) our costs of collection
24 and (ii) a processing fee equal to 3.5% thereof. If we collect your charges through a credit card
25 agency, we need only remit to you the net amount thereof collected after deducting a processing fee
26 equal to 3.5% thereof. From time to time during the Term, we may adjust the amount of our
27 processing fee to reflect changes in our processing costs. If any amount remitted to you before its
28 actual collection is then found to be fully or partially uncollectible, or subject to collection expense,
29 we reserve the right to make an appropriate backcharge. In the event of a Repeated Default (as that
30 term is defined in Section 11.5 of this Sublease), sums due you under this paragraph may be
31 withheld and applied in accordance with that Section.

32
33 **9. Financial Statements.** At our request, you shall provide us with quarterly financial
34 statements (which may be prepared internally) and with annual statements prepared by an
35 accountant. All financial statements shall be prepared at your sole expense and, at a minimum,
36 shall include a balance sheet and an income and expense statement.

37
38 **10. Merchants' Association.** If we organize a merchants' association comprised of a
39 certain category of tenants at the Property and you fall within that category, you agree to join,
40 maintain membership in, and comply with any reasonable by-laws, rules and regulations adopted
41 by, the association.

42
43 **11. Appearance.** The appearance of the Premises materially affects the reputation of
44 the Property as well as the rentability of other Property space. For this reason, we reserve the right
45 to control and regulate the lighting, appearance and content of all signs, show windows, display
46 cases and/or fixtures, entranceways, walls, ceilings, floors and other areas of the Premises, and to
47 require reasonable periodic upgrades thereof. You acknowledge that if we exercise any of these
48 rights, we are motivated solely by our desire to preserve the first class reputation of the Property
49 and that we may do so in our sole discretion.

50
51 **12. No Solicitation.** You acknowledge our legitimate interest in preventing solicitation
52 from and around the Premises and in, from and around the Property. You agree not to solicit or
53 permit customer solicitation, canvassing or peddling by any persons stationed in or near the
54 entrance to the Premises, in any Property lobby or common area, or otherwise in the immediate
55 vicinity of the Property.

56
57 **13. Labor Disputes.** If labor disputes or activities involving you or the conduct of your
58 business result in a picket line being established upon or in the vicinity of the Premises or the
59 Property, or if there is related or similar activity which, in our judgment, interferes with or adversely
60 affects the operations of the Property, then, upon at least five days' notice to you, we may terminate
61 this Sublease unless within that five-day period you cause the objectionable activity to be enjoined

1 or otherwise disbanded for the duration of the labor dispute.

2
3 **14. Distress Sales.** You must not conduct or permit on the Premises any auction, fire,
4 bankruptcy, going out of business or relocation sale, or any similar distress sale, whether or not
5 otherwise permitted by applicable law.

6
7 **15. Machines, Devices, Etc.** You must not operate, display or permit vending
8 equipment, amusement machines or gaming devices of any kind on or next to the Premises.

9
10 **16. Alcoholic Beverages.** Unless specifically permitted by the Schedule or a Rider to
11 this Sublease, you must not use or permit the Premises to be used for the making, storing, using,
12 selling or giving away of any alcoholic beverage, as that term is defined under any applicable law.

13
14 **17. Cooking.** Unless specifically permitted by the Schedule or a Rider to this Sublease,
15 you must not cook or permit cooking on the Premises.

16
17 **18. Access.** You must not obstruct or encumber any areas of the Property outside your
18 Premises, nor use them for any purpose other than entering and leaving the Premises. If the
19 Premises are accessible from a public sidewalk, you are responsible for keeping the areas directly in
20 front of the Premises clean and free from ice, snow, dirt, rubbish and other accumulation.

21
22 **19. Miscellaneous.** You must not cover or obstruct the sashes, sash doors, skylights,
23 windows and doors that reflect or admit light into areas of the Property outside your Premises, nor
24 shall you place or permit parcels, bottles or other articles on the windowsills. You must not throw
25 anything out of the doors, windows or skylights of the Premises.

26
27 **20. Plumbing Fixtures.** Plumbing fixtures must be used only for their generally
28 accepted purposes. You are responsible for damages resulting from abuse or misuse of these
29 fixtures by you or your employees or invitees.

30
31 **21. Defacing Prohibited.** You must not in any way deface any part of the Premises or
32 the Property. Floor coverings of any kind may only be used in a manner, and with such adhesives,
33 as we first approve.

34
35 **22. Vehicles; Animals.** No bicycles, vehicles, animals, birds or fish shall be permitted
36 in the Premises, except aids for the disabled.

37
38 **23. Objectionable Odors.** You must not cause or permit any unusual or objectionable
39 odors to be produced or to emanate from the Premises.

40
41 **24. Disturbing Noises.** You must not make or permit any unseemly or disturbing
42 noises or otherwise disturb or interfere with other tenants, guests and patrons of the Property. You
43 must not place or permit antennae of any kind, loud speakers, sound amplifiers, flashing lights or
44 spotlights on the roof or inside or outside of the Premises or the Property.

45
46 **25. Locking Mechanisms.** You must not place additional gates, locks or bolts of any
47 kind upon any doors or windows outside your Premises, nor shall you change existing locks or their
48 mechanisms. Upon expiration of the Term, you must return all keys to such areas either furnished
49 to or otherwise procured by you. If you lose any key furnished to you by us, you must replace it or
50 promptly pay us its cost. Upon termination of this Sublease or your right to possession, you must
51 surrender to us all keys and combinations used by you in connection with the Premises and
52 otherwise advise us as to the operation of all locks, combination or otherwise, on safes, cabinets,
53 doors and vaults in the Premises.

54
55 **26. Freight.** All movement of bulky materials or items to and from the Premises must
56 take place during hours we determine. We reserve the right to inspect all freight to be brought into
57 the Property and to exclude from the Property all freight that violates this Sublease. Unless
58 equipped with rubber tires and side guards, hand trucks are not to be used in the Property. You
59 must not permit such use. You must not take or permit supplies, merchandise, fixtures, equipment,
60 appliances or trash to be taken in or out of the Property except through proper service doors

designated by us. You must also comply with our reasonable instructions concerning parking, loading and unloading in or around the Property.

27. **Prohibited Uses.** You must not use or permit the Premises to be used for possessing, storing, making, using, selling or giving away narcotics or controlled substances of any kind, as an employment bureau or for any illegal or immoral purpose. You must not engage or pay any employees on the Premises except those actually working for you on the Premises.

28. **Approved Vendors.** You may purchase spring water, ice, towels or other like service only from persons or companies approved by us. We will act reasonably in determining whether to approve such vendors.

29. **Objectionable Advertising.** We reserve the right to prohibit advertising that we reasonably believe tends to impair the reputation or desirability of the Property. You must immediately refrain from and discontinue any such advertising upon our written request.

30. **Use of Our Employees.** Requests for action by us, or our employees, must be made at our main office in the Property. You must not request our employees to perform any work for you or to do anything outside of their regular duties without first obtaining our written consent. If we make our employees available to assist you, you must promptly pay us for their services at reasonable hourly rates.

31. **Window and Door Coverings.** You may install awnings, shades, venetian blinds or window or door coverings of any kind only with our prior written approval. If so installed, you must maintain them in good and attractive condition, at your cost and risk.

32. **Floor Overloading.** You must not overload any floor.

B. CONCERNING YOUR EMPLOYEES

The Property has adopted certain rules and regulations applicable to its own employees at the Property. Those restated below are also appropriate and applicable to your employees at the Property. Unless inconsistent with the terms of a collective bargaining agreement between you and your employees, you agree to cause your employees to observe and comply with the following:

1. **Sexual Harassment.** No employee, male or female, shall harass another employee by (a) creating an intimidating, hostile or offensive working environment by such conduct as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, or (b) making submission to or rejection of such conduct the basis for employment decisions affecting the employee.

2. **Proof of Employability.** If then applicable immigration laws prohibit you from employing any person not authorized to work in the United States, your employees must submit to you documentation evidencing their legal right to work. Anyone failing to submit appropriate documentation or submitting false documentation must be immediately terminated.

3. **Dress and Hygiene.** Your employees must be dressed neatly and their clothing shall be neither dirty nor unpressed. We reserve the right to require your employees to wear uniforms reasonably acceptable to us. If your employees in fact wear uniforms, they shall be attractive, pressed and clean. Your employees must observe good standards of personal hygiene.

4. **Valuables.** Employees must not leave valuables or cash in any unsecured place. You must provide them with a secure place for personal effects. We are not responsible for your employees' missing personal property.

5. **Lost and Found.** If one of your employees finds a lost article in any part of the Property, he or she must turn it over to the Security office or to the manager on duty as soon as possible so that the Property may return it to its owner. These items, if unclaimed, will be returned to the finder or retained by the Property in accordance with then applicable Property procedures.

6. **Property Entrance and Exit.** We reserve the right to designate entrances and exits

1 to the Property for use by your employees. Your employees are required to leave the Property at
2 their earliest convenience following the end of their work day. For security reasons, if they are
3 leaving with a package, personal or otherwise, they must have a package pass from you identifying
4 the items being removed. From time to time, Property security may conduct random searches of
5 packages.
6

7 **7. Communicating with Guests.** Your employees must familiarize themselves with
8 Property facilities and nearby attractions. When asked for directions or otherwise talking to guests
9 (or anyone else for that matter), employees must be courteous and polite.
10

11 **8. Guest Privacy.** Employees must respect the privacy of hotel guests and must not
12 offer any information about them to anyone unless subpoenaed to do so.
13

14 **9. Smoking Policy.** For health and safety reasons and to comply with applicable laws,
15 smoking is prohibited in various areas of the Property. Your employees are not permitted to smoke
16 within those areas or within the Premises.
17

18 **10. Security.** Employees must cooperate with Property security personnel who are
19 making inquiries or conducting inspections. They must be aware of and must report to you or to
20 Property security any person or activity that looks suspicious such as smoke or fire, vandalism,
21 loitering or fighting.
22

23 **11. Emergencies.** In case of an emergency, employees must immediately call the
24 Property operator on any house phone.
25

26 **12. Prohibited Behavior.** We reserve the right to bar any of your employees from the
27 Property for any of the following behavior:
28

- 29 (a) Fighting or gambling on the Property grounds.
- 30 (b) Drunkenness or drinking while on duty.
- 31 (c) Consumption, possession or sale of illegal drugs while on duty.
- 32 (d) Carrying a gun or other concealed weapon on Property grounds, unless
33 licensed to do so under applicable law.
- 34 (e) Theft of hotel property, or the property of another employee, patron or guest.
- 35 (f) Asking for a gratuity or other payment from a hotel guest or patron.
- 36 (g) Falsifying your reports or failing to ring up any of your sales.
- 37 (h) Refusing to identify oneself or one's employer to Property security
38 personnel, the Property manager or assistant managers when asked to do so.
- 39 (i) Use of profanity, threats and/or intimidation while on duty.
- 40 (j) Concealing an infectious or communicable disease, a condition that poses a
41 significant risk of substantial harm to others, or the current use of illegal
42 drugs.
- 43 (k) Use of the Property for personal business.
- 44 (l) Failure to obey any published Property parking regulations.
- 45 (m) Racial, sexual or other forms of harassment while on Property grounds.
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//

1 **EXHIBIT C** to Sublease dated 7/21/04, by and between Hilton Hotels Corporation as
2 Managing Agent for Hilton San Diego Corporation, as Landlord, and Hazelwood Enterprises, Inc.,
3 an Arizona corporation, as Tenant.

4
5 **THIS EXHIBIT IS ATTACHED TO AND IS AN IMPORTANT PART OF THE**
6 **CAPTIONED SUBLEASE.**

7
8 **EXHIBIT C**

9
10 **Americans with Disabilities Act**

11
12 The Americans with Disability Act of 1990 (42 U.S.C. §12101 et seq.) (the "ADA"),
13 effective January 26, 1992, is a comprehensive Federal civil rights law which, among other things,
14 prohibits discrimination against disabled persons with respect to the use of certain "public
15 accommodations" as defined under that Act. That law provides in part that:

16
17 "No individual shall be discriminated against on the basis of disability in the full and equal
18 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place
19 of public accommodation by any person who owns, Subleases (or Subleases to), or operates a place
20 of public accommodation."

21
22 It is the policy of Hilton Hotels Corporation to comply with its obligations as a public
23 accommodation under the ADA and to require its tenants to do the same with respect to Premises.

24
25 The ADA permits the parties to a Sublease to allocate responsibility for compliance with the
26 ADA as between themselves. Accordingly, to the extent that the Hotel or the Premises are "public
27 accommodations" as defined in the ADA, the parties agree that the responsibility shall be allocated
28 as between themselves as follows:

29
30 1. Landlord agrees that it shall be responsible for complying with the ADA in all respects,
31 as it affects the common areas of the Building, including making required "readily achievable"
32 changes to remove any architectural or communications barriers and modifying policies applicable
33 to all tenants as may be necessary.

34
35 Landlord agrees that it will defend, indemnify and hold harmless Tenant from and against
36 any and all liability, claims, damages and expenses, (including reasonable attorneys' fees and costs)
37 which may arise out of any legitimate claim by any person for failure of Landlord to comply with its
38 obligation under this Subparagraph 1.

39
40 2. Tenant agrees that it shall familiarize itself with the requirements of the ADA and that it
41 shall be responsible for complying with the ADA in all respects, as it affects the Premises,
42 including but not limited to, making required "readily achievable" changes to remove any
43 architectural or communications barriers, and providing auxiliary aides and services within the
44 Premises.

45
46 3. Tenant further agrees that any and all alterations made to the Premises during the term of
47 this Sublease will comply with the requirements of the ADA. All plans for alterations which must
48 be submitted to the Landlord under the provision of Paragraph 3 of this Sublease must include a
49 statement from a licensed Architect or Engineer certifying that they have reviewed the plans, and
50 that the plans comply with all applicable provisions of the ADA. Any subsequent approval or
51 consent to the plans by the Landlord shall not be deemed to be a representation of the Landlord's
52 part that the plans comply with the ADA which obligation shall remain with the Tenant.

53
54 Tenant agrees that it will defend, indemnify and hold harmless Landlord and the Hotel from
55 and against any and all liability, claims, damages and expenses (including reasonable attorneys' fees
56 and costs) which may arise out of any legitimate claim by any person for failure of Tenant to
57 comply with its obligation under this Subparagraph 3.

58
59 Nothing contained herein is intended to create any rights in any third parties.

60 //

1 **RIDER 1** to Sublease dated 7/21/04, by and between Hilton Hotels Corporation as
2 Managing Agent for Hilton San Diego Corporation, as Landlord, and Hazelwood Enterprises, Inc.,
3 an Arizona corporation, as Tenant.

4
5 **THIS RIDER IS ATTACHED TO AND IS AN IMPORTANT PART OF THE**
6 **CAPTIONED SUBLEASE. YOUR FAILURE TO OBSERVE, PERFORM OR COMPLY**
7 **WITH THE TERMS OF THIS RIDER MAY CONSTITUTE A DEFAULT UNDER**
8 **THE SUBLEASE.**
9

10
11 **RIDER 1**

12
13 **Renewal Option Rider**

14
15
16
17 **[INTENTIONALLY DELETED]**

18 //
19 //
20 //
21 //

1 **RIDER 2** to Sublease dated 7/21/04, by and between Hilton Hotels Corporation as
2 Managing Agent for Hilton San Diego Corporation as Landlord, and Hazelwood Enterprises, Inc.,
3 an Arizona corporation, as Tenant.

4
5 **THIS RIDER IS ATTACHED TO AND IS AN IMPORTANT PART OF THE**
6 **CAPTIONED SUBLEASE. YOUR FAILURE TO OBSERVE, PERFORM OR COMPLY**
7 **WITH THE TERMS OF THIS RIDER MAY CONSTITUTE A DEFAULT UNDER**
8 **THE SUBLEASE.**
9

10
11 **RIDER 2**

12
13 **Tenant's Work Rider**

14
15
16 You agree, at your expense, to remodel the Premises for your Permitted Use, including:

- 17
18 1. Replace carpet in the Premises with hotel Lobby carpet.
19
20 2. You will also install new fixtures and equipment including self-lit wooden showcase
21 units, 3/8 inch beveled glass and other materials necessary to create a first-class gift
22 shop.
23 3. You will paint the interior walls of the Premises.
24

25 You, at your expense, will complete the foregoing and any other construction in the Premises for
26 your Permitted Use in accordance with plans and specifications approved by us and initialed by us.
27 Tenant's Work is a material consideration of this Sublease, must be approved by us and completed
28 no later than one hundred eighty days (180) after the Commencement Date. Tenant's Work is
29 subject to, and must meet, all of the requirements of Section 3.2 of this Sublease.
30

31 You agree to pay us for your use of Services, such as electricity, gas, HVAC and water,
32 during Tenant's Work within seven (7) days from date of invoice, unless such Service is separately
33 metered and paid directly by you to the Service provider.
34

35 You agree to use only union contractors to perform Tenant's Work if required by us due to
36 labor relations at the Hotel.

37 //

38 //

39 //

40 //

41 //

1 **RIDER 3** to Sublease dated 7/21/04, by and between Hilton Hotels Corporation as
2 Managing Agent for Hilton San Diego Corporation as Landlord, and Hazelwood Enterprises, Inc.,
3 an Arizona corporation, as Tenant.

4
5 **THIS RIDER IS ATTACHED TO AND IS AN IMPORTANT PART OF THE**
6 **CAPTIONED SUBLEASE. YOUR FAILURE TO OBSERVE, PERFORM OR COMPLY**
7 **WITH THE TERMS OF THIS RIDER MAY CONSTITUTE A DEFAULT UNDER**
8 **THE SUBLEASE.**

9
10 **RIDER 3**
11 **Percentage Rent Rider**

12
13 In addition to all rent and other amounts you must pay us, you agree to also pay Percentage
14 Rent in the manner described in this Rider.

15
16 1. **How Much.** You agree to pay us an amount equal to **sixteen percent (16%)** of
17 "Gross Receipts" for each month during the Term which exceeds **Thirty Seven Thousand Five**
18 **Hundred Dollars (\$37,500)** (the "Threshold"). If during the Term monthly Base Rent is increased,
19 whether pursuant to the operation of a Rent Adjustment Rider attached to this Sublease, or
20 otherwise, we will promptly make and notify you of a conforming increase in the monthly
21 Threshold. "Gross Receipts" include the total of all cash or credit sales (whether or not collected)
22 for which orders are taken at the Premises during the Term, regardless of whether the sales are
23 made in person, by telephone, by mail or by means of electronic communication of any kind, and
24 regardless of the location from or to which the merchandise or services sold are delivered. Gross
25 Receipts do not include (i) shipping and related packing charges which you separately state in
26 addition to the purchase price, (ii) bona fide refunds and credits for return of merchandise, or (iii)
27 any federal, state or local tax which you separately state in addition to the purchase price, collect
28 and remit to the taxing authority, (iv) newspaper, magazine and stamp sales, and (v) discounted
29 Hotel employee sales.

30
31 2. **Where Paid.** All payments and reporting required under this Rider must be sent to
32 the same place where Base Rent is payable.

33
34 3. **When and How Paid.** Within the first fifteen (15) days of the following month,
35 you agree to sign, certify and send to us a statement of Gross Receipts accompanied by any payment
36 which may be due for that month.

37
38 4. **Annual Adjustment.**

39
40 (a) **Reporting.** Within 30 days after the end of each calendar year during the
41 Term, you agree to furnish us an annual statement of Gross Receipts for that year, certified by an
42 accountant licensed to practice in the state or commonwealth in which the Property is located,
43 which correctly reflects all Gross Receipts calculated in accordance with generally accepted
44 accounting principles. If the Term starts other than on January 1, or ends other than on December
45 31, the applicable statement must cover only the partial year when the Term was in effect. If your
46 customary fiscal year is other than a calendar year, you may report annually to us on that basis,
47 provided that there are no gaps in reporting throughout the entire Term.

48
49 (b) **Adjustment.** If the accountant's certified statement shows more Gross
50 Receipts than you have reported for the corresponding year (or partial year), you agree to pay the
51 Percentage Rent deficiency, plus the late charge and interest thereon required by Section 6.11 of
52 this Sublease, at the same time you deliver this certified statement to us. In addition, we reserve the
53 right to terminate this Sublease in the event the accountant's certified statement indicates that the
54 Gross Receipts reported for the year or period in question were understated on more than two
55 occasions during the Term, or by more than five percent (5%) on any one occasion. If the
56 accountant's certified statement shows fewer Gross Receipts than you have reported for the
57 corresponding year (or partial year), you may deduct the overpayment in Percentage Rent from the
58 next installment(s) of Percentage Rent which are due from you. If that overpayment occurs at the
59 end of the Term, we will refund the overpayment within a reasonable time after you have re-
60 delivered the Premises to us in the condition required under this Sublease, and have otherwise
61 performed all of your Sublease obligations.

1
2 **5. Our Right to Review**
3

4 (a) When. At any time within three years after we receive your annual
5 statement of Gross Receipts, we may cause an audit of your business to be made by an accountant
6 selected by us. If we do, you agree to provide our accountant access to all information pertaining to
7 your Gross Receipts, whether or not that information is contained in tangible records or stored on
8 electronic media. We have the right to copy all such information. You and we will be bound by the
9 results of this audit.
10

11 (b) Audit Costs. If this audit discloses that any of your annual Gross Receipts
12 statements understates the actual Gross Receipts as shown by the audit by more than two percent
13 (2%), or on more than two occasions during the Term, you must promptly reimburse us for the
14 costs of that audit; in all other cases, we will pay the cost of our accountant. In addition, we reserve
15 the right to terminate this Sublease in the event actual Gross Receipts as shown by an audit exceed
16 those disclosed in your annual statements on more than two occasions during the Term, or by more
17 than two percent (2%) for any year.
18

19 (c) Payment of Deficiency. If you owe us more Percentage Rent as the result of
20 this audit, you agree to pay the Percentage Rent deficiency, plus the late charge and interest thereon
21 required by Section 6.11 of this Sublease, within ten days after we notify you of our auditor's
22 conclusions. If our auditor concludes that you overpaid Percentage Rent, you will be entitled to a
23 credit or refund in the same manner described above for annual adjustments.
24

25 **6. Your Further Agreements**
26

27 (a) Books and Records. You agree to keep and preserve full, complete and true
28 records of all Gross Receipts for at least three years following the close of each calendar year during
29 the Term. We have the right to review and copy these books and records from time to time, and
30 you agree, at our request, to explain your method of keeping these records so as to facilitate our
31 review.
32

33 (b) Conduct of Business. You agree to open the Premises for business on the
34 first day of the Term or, if you are performing Tenant's Work, then no later than the date by which
35 completion of this work is required pursuant to the attached Tenant's Work Rider. You also agree
36 to continuously conduct business in the Premises at all times in a manner consistent with first class
37 business standards and practices, in good faith, so that we will at all times receive the maximum
38 amount of Percentage Rent from the operation of your business. For this purpose, you agree at all
39 times to keep the Premises adequately stocked with new merchandise, staffed with adequate
40 numbers of properly trained personnel to properly service your customers, and to keep the Premises
41 open for business on the days and during the hours required by this Sublease. You agree not to
42 divert any business which ordinarily would be conducted from the Premises to another location.
43

44 (c) Other Competing Businesses. You agree not to participate, directly or
45 indirectly, financially or otherwise, in any business located within a radius of two city blocks (not
46 less than 600 feet) in all directions from the Property which in any manner competes with the
47 business conducted from the Premises.
48

49 **7. Defaults**. In the event of a Default under this Sublease, our damages may include a
50 Percentage Rent component. In such event, the Percentage Rent component will be calculated for
51 the same period for which our Base Rent damages are to be calculated. For these purposes, each
52 year's Percentage Rent component will be equal to:
53

54 (a) If less than three calendar years have elapsed before the Default, the annual
55 component will be the sum of all preceding monthly Percentage Rent amounts, divided by that
56 number of months, and then multiplied by 12;
57

58 (b) In all other cases, the annual component is equal to the sum of one-third of
59 each of the preceding three years' annual Percentage Rent amount.
60

61 Percentage rent components calculated for less than full years will be prorated.

CONSENT TO LICENSE AGREEMENT

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

HILTON SAN DIEGO CORPORATION

("LESSEE") and filed in the Office of the City Clerk as Document RR-293815 dated September 12, 2000, hereby consents to that certain Licence Agreement dated October 20, 2000 ("Agreement") between the above LESSEE ("LICENSOR") and

DOLLAR RENT A CAR SYSTEMS, INC.,
an Oklahoma 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:

PERCENTAGE RENT: The percentage rental rate for gross income resulting from this activity is ten (10%) percent.

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.

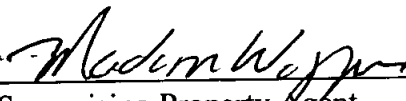
INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be Four Million Dollars (\$4,000,000) COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with 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.

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.

USE OF PREMISES: This licensed use of the premises is permitted only as incidental to the approved use of the premises as a hotel. This consent is subject to immediate termination by City if City Manager determines that the licensed use of the Premises is in excess of incidental use of the premises.

THE CITY OF SAN DIEGO

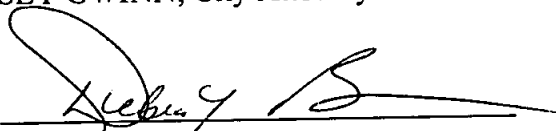
Dated _____

By 
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

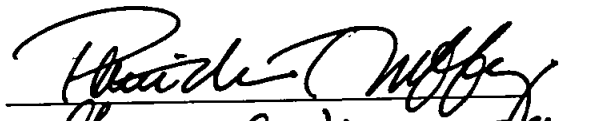
CASEY GWINN, City Attorney

Dated _____

By 
Deputy City Attorney

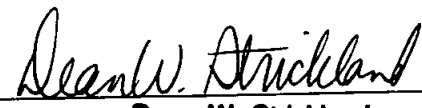
HILTON SAN DIEGO CORPORATION

Dated 8/25/01

By 
Its: General Manager

DOLLAR RENT A CAR SYSTEMS, INC.,
an Oklahoma corporation

Dated 8/10/01

By 
Dean W. Strickland
V.P., Properties & Concessions
Its: _____

**HILTON HOTELS CORPORATION
CAR RENTAL
LICENSE AGREEMENT
FOR
DOLLAR RENT A CAR SYSTEMS, INC.
AT THE HILTON SAN DIEGO RESORT**

Execution Copy

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1 2. TERM

2
3 January 15, 2001 The term of this License Agreement shall be three (3) years, commencing
4 ~~November 1, 2000~~, and ending ~~October 31, 2003~~, unless sooner terminated as provided herein. DWS January 14, 2004

5 3. CONSIDERATION

6
7 In consideration of the rights granted herein, Licensee will pay Hilton License Fees
8 on the fifteenth day of each month based on an amount equal to Ten Percent (10%) of Gross
9 Revenue as defined below and shall provide use of the vehicles as set forth in Number 4 below.

10
11 (a) The term Gross Revenue includes the total of all charges for services for
12 which charge is made and the gross receipts collected from all business transacted, in, upon and
13 from the Space during the Term excluding taxes and optional insurance.

14
15 (b) (i) On or before the fifteenth (15) day of each and every calendar
16 month for the preceding month during the Term, Licensee shall calculate the total Gross Revenues
17 and License Fees, furnish a written statement thereof and shall pay to Licensor the License Fees
18 then due. Licensee's written statements shall be certified as correct by Licensee, and shall be
19 satisfactory to Licensor in form and substance, showing the Gross Revenues and types of
20 transactions during the preceding month. Acceptance of License Fees by Licensor shall not
21 constitute a waiver of Licensor's right to additional fees justified by an inspection and/or audit by
22 Licensor.

23
24 (ii) Licensee shall keep and preserve full, complete and true records
25 of all Gross Revenues including all cash register tapes, if used, in manner and form satisfactory to
26 Licensor and in keeping with regular accounting practices, for at least two years following the close
27 of each year of the License Agreement. Licensee shall permit Licensor to examine or audit the
28 records at any and all reasonable times, and shall upon Licensor's request, explain the methods of
29 keeping the records.

30 4. USE OF VEHICLE

31
32 a. Licensee shall furnish for the Hotel's use, at no charge, one (1) premium
33 vehicle selected by Licensor from Licensee's rental fleet. Expenses for day-to-day operation of the
34 vehicles, including normal maintenance and fuel shall be borne by Licensor. Licensee at its own
35 expense shall handle all licensing, registration and warranty work concerning the equipment.
36 Licensee shall allow reasonable access to its "off Hotel" car wash facilities for Licensor to wash the
37 vehicles.

38
39 b. Any signs, decals, lettering or other identification placed on or attached to
40 the vehicles shall be at the expense of Licensor and subject to prior written approval of Licensee.
41 Upon termination of this Agreement, the vehicles will be returned to Licensee with any of such
42 signs, decals or any other advertising or identification materials removed by Licensor and the

1 vehicles shall be in good condition and repair, reasonable wear and tear excepted.

2
3 c. The drivers of said vehicles shall not be considered agents or employees
4 or under the direction or control of Licensee in any manner or under any circumstances. The
5 vehicles shall be driven in a safe and proper manner and in accordance with the requirements of all
6 governmental authorities applicable to roads and highways and the use of motor vehicles thereon.
7 In the event Licensee makes a determination that any driver is in violation of the standards set forth
8 in the preceding sentence, Licensee may give notice to Licensor that the driver is not to be allowed
9 to drive the vehicles, and Licensor shall comply.

10
11 d. Licensor shall furnish a certificate of insurance on the vehicles provided
12 by Licensee for claims with limits of not less than **\$1,000,000 bodily injury and \$50,000 property**
13 **damage**. Licensor shall be responsible for any collision damage to the vehicles. Said insurance
14 policy shall name Licensee as an additional insured and shall contain a provision that it shall not be
15 canceled or changed without first giving Licensee thirty (30) days written notice.

16 5. COVENANTS OF LICENSEE

17
18 Licensee hereby covenants and agrees as follows:

19
20 a. That it will, at all times during the continuance of this License
21 Agreement, provide sufficient number of staff at all hours of operation. Hilton reserves the right to
22 require additional staff during days of heavy volume.

23
24 b. That it will, at all times during the continuance of this Agreement, furnish
25 such number of late model automobiles, not older than **eighteen (18) months**, for the use under the
26 provisions hereof, as the demand therefor by patrons of the Hotel shall reasonably require (giving
27 consideration to similar services offered by other concessionaires at the Hotel), and will keep,
28 operate and maintain the same in good order, condition and repair; provided, however, that
29 Licensee shall have no liability under this subparagraph b. to the extent that it is unable to comply
30 therewith because of war, strikes, lockouts or other cause beyond Licensee's reasonable control.

31
32 c. That it will furnish, operate and maintain the space and fixtures, furniture
33 and equipment in good order, condition and repair.

34
35 d. That it will use reasonable efforts to ensure that all employees of
36 Licensee coming in the Hotel, shall at all times while present, be appropriately dressed and conduct
37 themselves in a proper and businesslike manner, it being understood and agreed that upon Hilton's
38 written request, Licensee shall cease to send to the Hotel any employee designated by Hilton as
39 unacceptable to it, but no such employee shall be so designated by Hilton without reasonable cause.

40
41 e. That it will comply with all federal, state and municipal laws and
42 regulations applicable to its operation in the Hotel.
43

1 f. That it will permit Licensor to enter at all reasonable times, any space
2 occupied by Licensee hereunder to inspect the same and make such repairs thereto as Licensor may
3 deem necessary.
4

5 g. Licensee hereby waives all claims against Hilton, its employees and
6 agents, the **Hilton San Diego Resort, Hilton Hotels Corporation, City of San Diego and their**
7 **respective employees and agents** for injury to it or damage to its property resulting from any
8 accident or event occurring in or about the Hotel premises, or resulting from or arising out of the
9 operations of Licensee hereunder, unless caused by the negligence of Hilton, its employees or
10 agents. Licensee further covenants and agrees to indemnify and hold harmless Hilton, the **Hilton**
11 **San Diego Resort, Hilton Hotels Corporation, City of San Diego and their respective**
12 **employees and agents** from any and all causes, damages, liabilities, suits and/or actions, and any
13 expenses incurred in connection therewith resulting from the death or injury to persons or damage
14 to property, caused by or arising from or out of Licensee's operations hereunder, whether caused by
15 the act or omission of Licensee, its servants, agents or employees; but in no event will Licensee
16 indemnify or hold harmless the **Hilton San Diego Resorts, Hilton Hotels Corporation, City of**
17 **San Diego and their respective employees and agents** for anything arising out of their own
18 negligence, act or omission of their employees or agents.
19

20 h. That Licensee shall maintain in force during the term of this License
21 Agreement, at its own expense with responsible insurance companies that have an A.M. Best
22 Company rating of "A VIII" or better, policies of public liability insurance, including commercial
23 general and automobile liability insurance, insuring the contractual liability of Licensee under
24 Paragraph 5g hereof, in an amount not less than **FOUR MILLION AND NO/100THS**
25 **DOLLARS (\$4,000,000.00)** per occurrence also Licensee shall provide worker's compensation in
26 an amount not less than the statutory requirements required by the State and employers liability
27 coverage in the amount of **ONE MILLION DOLLARS (\$1,000,000)** per accident, per disease
28 policy limit and per disease per employee covering all employees of Licensee.
29

30 All policies will name **Hilton Hotels Corporation, City of San Diego** and the **Hotel** as
31 "Additional Insureds." All policies of insurance shall be considered primary of any existing similar
32 insurance carried by Hotel or Licensee. Licensee shall provide the Hotel with Certificates of
33 Insurance carried by Licensee. If requested by the Hotel, Licensee shall furnish certified copies of
34 insurance carried. Copies of said Certificates of Insurance or certified policies of Insurance shall be
35 delivered to the offices of the Hotel by Licensee and shall be kept on file during the term of this
36 License Agreement. No Policy of Insurance shall be canceled or materially changed without thirty
37 (30) days prior written notice to the Hotel.
38

39 **6. NATURE OF LICENSE**

40
41 The License granted hereby is a non exclusive license for Licensee to use the Space
42 solely as required to perform its obligations hereunder, revocable according to the terms hereof. In
43 no event shall this License be deemed or construed to run with the land or create or vest any
44 easements or other rights in Licensor's property. Licensee agrees that no permanent or possessory

1 interest shall accrue to Licensee or its licensees in Licensor's property at any time or by exercise of
2 the permission given hereunder, and that Licensee shall not claim any such interest in Licensor's
3 property. **This License does not create any recordable interest and shall not be recorded in**
4 **any official records.**

5 **7. NOTICES**

6
7 Whenever, by the terms of this License Agreement, or otherwise, notice is required
8 or desired to be given, such notice shall be effective only if in writing and served personally or sent
9 by certified mail or registered mail, postage prepaid;

10
11 a. If intended for Hilton, addressed to:

12
13 1775 East Mission Bay Drive
14 San Diego, CA 92109
15 (619) 276-4010
16 (Attention: General Manager)

17
18 b. If intended for Licensee, addressed to:

19
20 Dollar Rent A Car Systems, Inc.
21 5330 E. 31st St.
22 Tulsa, OK 74153
23 (918) 669-3000
24 (Attention: Director Properties & Concessions)

25
26 or to such other address as may from time-to-time hereafter be designated by Licensee any like
27 notice. All notices shall be deemed given four (4) days after the postmark thereof unless served
28 personally.

29 **8. TERMINATION**

30
31 This License Agreement shall terminate upon the occurrence of any of the
32 following events:

33
34 a. If Licensee shall fail to pay the sums to Hilton called for in
35 Paragraph 2 of the License or fails to pay sums discovered to be owing to Hilton as a result of an
36 audit by Hilton's Comptroller and such failure continuing for three (3) days after written notice that
37 the same is due;

38
39 b. If Licensee shall violate or breach any of the terms, conditions or
40 covenants hereof and shall not remedy such violation or breach within ten (10) days after written
41 notice by Hilton to Licensee of such violation or breach;

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

9
10 d. If Licensee shall make an assignment for the benefit of creditors
11 or file a voluntary petition in bankruptcy or be adjudged insolvent or shall admit in writing its
12 inability to meet its obligations as they mature, or if a permanent receiver of all or any portion of
13 Licensee's property shall be appointed in any judicial proceeding, or there shall be entered against it
14 an order adjudicating it a bankrupt or insolvent or an order appointing a liquidator, receiver or
15 trustee for it or all or substantially all of its assets or approving as properly filed against it a petition
16 seeking reorganization, arrangement or other proceeding under any bankruptcy or other law for the
17 relief of debtors, which order shall continue unstayed and in effect for, or which proceeding shall
18 not be terminated and Licensee released from such proceeding within thirty (30) days, or if
19 Licensee shall attempt to assign or encumber this License Agreement or permit any other person,
20 firm or corporation to conduct the business or Services provided for hereunder;

21
22 e. If any statute, ordinance, rule or regulation hereafter promulgated
23 by any legislative body or agency having jurisdiction over the Licensee shall prohibit the furnishing
24 of services or the transaction of business of the nature to be provided or transacted hereunder; or,
25

26 f. In the event that: (i) The premises upon which the Space is located
27 should be sold; (ii) Licensor should assign its rights to the site to a third party, or (iii) Licensor
28 proposes, or is required for any reason to renovate or demolish the Hotel or a substantial portion
29 thereof which includes all or a portion of the Space, then Licensor shall have the right, upon not less
30 than one hundred eighty (180) days prior written notice to Licensee, to terminate this Agreement.
31

32 **9. SURRENDER OF SPACE**

33
34 On termination of the term, Licensee shall surrender to Hilton the Space in good
35 condition (except for ordinary wear and tear), and will have the right to remove only unattached
36 equipment, furniture, merchandise, and trade fixtures that Licensee installed in the Space (except,
37 trade fixtures shall not include lighting fixtures and floor covering). Except, Hilton shall have the
38 election to require Licensee to restore all or any part of the Space to the same condition as originally
39 received by Licensee (ordinary wear and tear excepted), in which event Licensee shall do so on or
40 before termination of the term. Licensee shall perform all restoration made necessary by the
41 removal of any item as allowed or required by this paragraph if Licensee fails to surrender the
42 Space to Hotel on the date as required herein, Licensee shall hold Hotel harmless from all damages
43 resulting from Licensee's failure to surrender the Space, including, without limitation, claims made

1 by a succeeding tenant or Licensee resulting from Licensee's failure to surrender the Space.

2 **10. SUBORDINATION**

3
4 Licensee's rights are and shall always be subordinate to the lien of any mortgage,
5 deed of trust, deed in the nature of a mortgage or trust indenture ("mortgage") or any ground lease
6 or master lease now or hereafter placed upon the Hotel or on the underlying or surrounding real
7 estate and to all advances made or hereafter to be made upon security thereof. Licensee shall
8 execute such further instruments subordinating its rights under this Agreement to the lien or liens of
9 any such mortgage or to any such ground lease or master lease as shall be requested by Licensor.

10
11 **11. GOVERNING LAW**

12
13 This Agreement shall be governed by and construed under the laws of the State of
14 California.

15 **12. AUTHORITY**

16
17 Licensee represents and warrants that the person executing this Agreement on its
18 behalf is duly authorized to execute and deliver this Agreement on its behalf in accordance with a
19 duly adopted, unrevoked resolution or other consent of its Board of Directors or in accordance
20 with its bylaws, and that this Agreement is binding upon Licensee in accordance with its terms.

21
22 **13. ENTIRE AGREEMENT**

23
24 This Agreement contains the full and complete understanding of the parties
25 concerning the subjects contained herein and supersedes any and all prior written or oral
26 agreements between the parties and cannot be amended except in writing signed by both
27 parties.

28 **14. ATTORNEY'S FEES**

29
30 In the event Licensor or Licensee breaches any of the terms of this License, whereby
31 the party not in default employs attorneys to protect or enforce its rights hereunder and prevails,
32 then the defaulting party agrees to pay the other party reasonable attorneys' fees so incurred by such
33 other party.

34 **15. CITY OF SAN DIEGO**

35
36 This License is specifically subject and subordinate to the terms of the Lease by and
37 between the City of San Diego as Lessor and Hilton San Diego Corporation as successor Lessee, in
38 file in the office of the City Clerk as document No. 606775. The consent of the City of San Diego
39 is a condition precedent to the effectiveness of this License. Licensee is familiar with the terms and
40 conditions of such City of San Diego Lease and Licensee covenants and agrees to comply therewith
41 to the extent such compliance is required. Licensee further agrees to abide by the rules and

1 regulations promulgated by the City of San Diego and all departments thereof having jurisdiction
2 over Licensee's space. Except for consent, nothing contained in the City of San Diego Lease
3 prevents Licensee from operating a car rental business as described in this License Agreement.
4

5 IN WITNESS WHEREOF, the parties hereto have caused this instrument to be
6 executed as of date first above written.
7

8 **Owner**
9 **Hilton Hotels Corporation,**
10 **a Delaware corporation**

11 By: Ernest Wooden, Jr.
12
13 Ernest Wooden, Jr.
14
15 Its: Senior Vice President
16

17 ~~City of San Diego~~

18
19 By: N/A
20
21
22 please print
23

Its: _____
//

Licensee
DOLLAR RENT A CAR SYSTEMS, INC.
an Oklahoma corporation

By: Dean W. Strickland
Dean W. Strickland
V.P., Properties & Concessions
please print

Its: _____

1 **EXHIBIT "A"**

2
3 **Exhibit "A" to License Agreement dated for reference purposes only, October 20, 2000, by**
4 **and between Hilton Hotels Corporation, a Delaware corporation, Licensors, and DOLLAR**
5 **RENT A CAR SYSTEMS, INC., an Oklahoma corporation, Licensee;**
6

7 **AMERICANS WITH DISABILITIES ACT**

8
9 The Americans with Disability Act of 1990 (42 U.S.C. §12101 et seq.) (the "ADA"),
10 effective January 26, 1992, is a comprehensive Federal civil rights law which, among other things,
11 prohibits discrimination against disabled persons with respect to the use of certain "public
12 accommodations" as defined under that Act. That law provides in part that:
13

14 "No individual shall be discriminated against on the basis of disability in the full and equal
15 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place
16 of public accommodation by any person who owns, leases (or leases to), or operates a place of
17 public accommodation."
18

19 It is the policy of Hilton Hotels Corporation to comply with its obligations as a public
20 accommodation under the ADA and to require its tenants to do the same with respect to the Space.
21

22 The ADA permits the parties to a license or lease agreement to allocate responsibility for
23 compliance with the ADA as between themselves. Accordingly, to the extent that the Hotel or the
24 Space are "public accommodations" as defined in the ADA, the parties agree that the responsibility
25 shall be allocated as between themselves as follows:
26

27 1. Licensors agree that it shall be responsible for complying with the ADA in all respects,
28 as it affects the common areas of the Building, including making required "readily achievable"
29 changes to remove any architectural or communications barriers and modifying policies applicable
30 to all tenants as may be necessary.
31

32 Licensors agree that it will defend, indemnify and hold harmless Licensee from and against
33 any and all liability, claims, damages and expenses, (including reasonable attorneys' fees and costs)
34 which may arise out of any legitimate claim by any person for failure of Licensors to comply with its
35 obligation under this subparagraph 1.
36

37 2. Licensee agrees that it shall familiarize itself with the requirements of the ADA and that
38 it shall be responsible for complying with the ADA in all respects, as it affects the Space, including
39 but not limited to, making required "readily achievable" changes to remove any architectural or
40 communications barriers, and providing auxiliary aides and services within the Space.
41

42
43 3. Licensee further agrees that any and all alterations made to the Space during the term of
44 this license will comply with the requirements of the ADA. All plans for alterations which must be
45 submitted to the Licensors under the provision of this License must include a statement from a

1 licensed Architect or Engineer certifying that they have reviewed the plans, and that the plans
2 comply with all applicable provisions of the ADA. Any subsequent approval or consent to the
3 plans by the Licensor shall not be deemed to be a representation of the Licensor's part that the plans
4 comply with the ADA which obligation shall remain with the Licensee.
5

6 Licensee agrees that it will defend, indemnify and hold harmless **City of San Diego, Hilton**
7 **Hotels Corporation and the Hilton San Diego Resort** from and against any and all liability,
8 claims, damages and expenses (including reasonable attorneys' fees and costs) which may arise out
9 of any legitimate claim by any person for failure of Licensee to comply with its obligation under
10 this Subparagraph 3.
11

12 Nothing contained herein is intended to create any rights in any third parties.
13

14 LICENSOR'S INITIAL

Q

15 LICENSEE'S INITIAL

DWS

**HILTON HOTELS CORPORATION
LICENSE AGREEMENT
FOR
CP WATERSPORTS, INC.
AT THE
HILTON SAND DIEGO RESORT**

January 31, 2000

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT dated for reference purposes only, January 31, 2000, by and between **Hilton Hotels Corporation as Managing Agent for Hilton San Diego Corporation**, Licensor (hereinafter sometimes variously referred to as "Licensor" and/or "Hilton"), and **CP Watersports, Inc.**, a California corporation (hereinafter referred to as "Licensee");

WITNESSETH:

WHEREAS, Hilton operates the hotel located at **1775 East Mission Bay Drive, San Diego, California 92109**, commonly known as the **Hilton San Diego Resort** (hereinafter sometimes referred to as the "Hotel"); and,

WHEREAS, Licensee is in the business of renting water sports equipment services; 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:

1. SPACE

Hilton hereby grants to Licensee the right to operate its business (as more particularly defined below in a. Permitted Use of Space) in the Hotel for the convenience of the Hotel guests and others desiring to use such services. Licensee's business will be conducted from such space (hereinafter the "Space" or "Spaces") designated by Hilton for Licensee's use. However, Hilton shall, at any time, have the right upon reasonable notice to Licensee to relocate Licensee, to another location within the Hotel during the term hereof. Licensee will provide sufficient staff coverage at said Space daily from at least 9:00 a.m. to 6:00 p.m., from Memorial Day to Labor day (in-season) and 11:00 a.m. to 4:00 p.m. the balance of the year (off-season). Licensor reserves the right to modify business hours based upon customer demand for Licensee's services which is made known to or expected by Licensor and upon reasonable notice to Licensee. Licensee shall have the right to furnish, install and maintain appropriate fixtures, furniture equipment and signs for Licensee's usage of the Space subject to Hilton's approval prior to installation.

a. Permitted Use of Space: Licensee shall use the Space only for the rental of boats and other water sports equipment, and for the sale at retail of items closely related to such rentals. Licensor reserves the right of approval over all items sold at retail. The Space may be used for no other purpose without the prior written consent of Hilton.

2. TERM

The term of this License Agreement shall be **Five (5) years**, commencing **March 1,**

1 2000, and ending February 28, 2005, unless sooner terminated as provided herein.

2 3. FEES

3
4 In consideration of the rights granted herein, on the first day of each month Licensee will
5 pay Hilton as **Percentage Consideration** a percent of gross revenues, as defined below, in
6 accordance with the following schedule:

7
8 (a) Licensee shall pay Licensor Twenty Percent (20%) of Gross Revenues
9 up to and including the sum of Three Hundred Fifty Thousand and 00/100th Dollars
10 (\$350,000.00), inclusively; during each year of the Term; and,

11
12 (b) In the event Gross Revenues exceed \$350,000.00 during each year of the
13 Term, Licensee shall pay Licensor Twenty Five Percent (25%) of such revenues (exceeding
14 \$350,000.00), plus the Fees defined above in (a).

15
16 (c) License Fees are due on a monthly basis with Licensee paying 20% of
17 all Gross Revenue each month of a "License Agreement Year" until the aggregate of
18 \$350,000.00 is achieved. Thereafter, Licensee's percentage shall increase to 25% for the
19 balance of the License Agreement Year. Such payment is due and payable by the tenth (10) day
20 of the following month reported upon.

21
22 i) GROSS REVENUES: The term "Gross Revenues"
23 includes the total of all sales of merchandise, all charges for services for which charge is made,
24 and the gross receipts from all business transacted, in, upon and from the Space during the term
25 by Licensee and all others occupying the Spaces or any part thereof.

26
27 ii) The term "Gross Revenues" excludes bona-fide refunds
28 and credits for services not performed. Also excluded are any federal, state, or local tax which is
29 collected by the Contractor from its customers for any governing authority provided that said
30 taxes are charged and stated separately and not included in the purchase price.

31
32 iii) The consideration shall be payable in lawful money of
33 the United States at the Executive Office of the Hotel or at such other place as Hilton shall
34 designate in writing.

35
36 iv) On or before the 10th of each month Licensee shall
37 submit to Hilton a report showing, in reasonable detail, the gross revenues for the prior month,
38 which statement will be certified by Licensee. Licensee agrees that it will keep such accounts
39 of the business conducted and transacted from the Hotel as may be necessary in order to
40 compute the consideration payments due hereunder and will, upon request, make such accounts
41 available for inspection by Hilton or its representatives at all times during regular business
42 hours.

1 4. COVENANTS OF LICENSEE

2
3 Licensee hereby covenants and agrees as follows:

4
5 a. That it will, at all times during the continuance of this License
6 Agreement, provide sufficient number of staff at all hours of operation. Hilton reserves the right
7 to require additional staff during days of heavy volume.

8
9 b. That it will furnish, operate and maintain the fixtures, furniture and
10 equipment in good order, condition and repair. Equipment shall be replaced with new equipment
11 in accordance with the following schedule:

12 1. Personal watercraft, including but not limited to wave runners
13 and jet skis, shall be replaced every eighteen (18) months.

14 2. Powerboats shall be replaced every thirty six (36) months.

15 3. Bicycles, rollerblades shall be replaced every twenty four (24)
16 months.

17 4. Sailboat sails and sailboard sails shall be replaced every twenty
18 four (24) months.

19
20 c. That it will use reasonable efforts to ensure that all employees of
21 Licensee coming in the Hotel, shall at all times while present, be appropriately dressed and
22 conduct themselves in a proper and businesslike manner, it being understood and agreed that
23 upon Hilton's written request, Licensee shall cease to send to the Hotel any employee designated
24 by Hilton as unacceptable to it, but no such employee shall be so designated by Hilton without
25 reasonable cause.

26
27 d. That it will comply with all federal, state and municipal laws and
28 regulations applicable to its operation in the Hotel.

29
30 e. Licensee hereby waives all claims against Hilton, its employees and
31 agents, the **Hilton San Diego Resort, Hilton Hotels Corporation, The City of San Diego and**
32 **Hilton San Diego Corporation and their respective employees and agents** for injury to it or
33 damage to its property resulting from any accident or event occurring in or about the Hotel
34 premises, or resulting from or arising out of the operations of Licensee hereunder, unless caused
35 by the negligence of Hilton, its employees or agents. Licensee further covenants and agrees to
36 indemnify and hold harmless Hilton, the **Hilton San Diego Resort, Hilton Hotels Corporation,**
37 **The City of San Diego and Hilton San Diego Corporation and their respective employees**
38 **and agents** from any and all causes, damages, liabilities, suits and/or actions, and any expenses
39 incurred in connection therewith resulting from the death or injury to persons or damage to
40 property, caused by or arising from or out of Licensee's operations hereunder, whether caused
41 by the act or omission of Licensee, its servants, agents or employees; but in no event will
42 Licensee indemnify or hold harmless the **Hilton San Diego Resort, Hilton Hotels Corporation,**
43 **The City of San Diego and Hilton San Diego Corporation and their respective employees and**
44 **agents** for anything arising out of their own negligence, act or omission of their employees or
45 agents.

1
2 f. That Licensee shall maintain in force during the term of this License
3 Agreement, at its own expense with responsible insurance companies that have an A.M. Best
4 Company rating of "A VIII" or better, policies of public liability insurance, including commercial
5 general and automobile liability insurance, insuring the contractual liability of Licensee under
6 Paragraph 4e hereof, in an amount not less than **TWO MILLION AND NO/100THS**
7 **DOLLARS (\$2,000,000.00)** per occurrence also licensee shall provide worker's compensation in
8 an amount not less than the statutory requirements required by the State and employers liability
9 coverage in the amount of **ONE MILLION DOLLARS (\$1,000,000)** per accident, per disease
10 policy limit and per disease per employee covering all employees of Licensee.
11

12 All policies will name **Hilton San Diego Resort, Hilton Hotels Corporation, The City**
13 **of San Diego and Hilton San Diego Corporation** as "Additional Insureds." All policies of
14 insurance shall be considered primary of any existing similar insurance carried by Hotel or
15 Licensee. Licensee shall provide the Hotel with Certificates of Insurance carried by Licensee. If
16 requested by the Hotel, Licensee shall furnish certified copies of insurance carried. Copies of
17 said Certificates of Insurance or certified policies of Insurance shall be delivered to the offices of
18 the Hotel by Licensee and shall be kept on file during the term of this License Agreement. No
19 Policy of Insurance shall be canceled or materially changed without thirty (30) days prior written
20 notice to the Hotel.

21 5. NATURE OF LICENSE
22

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

31 6. EMPLOYEES
32

33 Neither party will hire or attempt to hire personnel of the other party working at
34 the Hotel, during the term of this Agreement and for a period of ninety (90) days after
35 termination of this Agreement, without the written consent of the other party.

36 7. NOTICES
37

38 Whenever, by the terms of this License Agreement, or otherwise, notice is required or
39 desired to be given, such notice shall be effective only if in writing and served personally or sent
40 by certified mail or registered mail, postage prepaid;
41
42

1 a. If intended for Hilton, addressed to it (Attention: General Manager) at
2 **Hilton San Diego Resort**
3 **1775 East Mission Bay Drive,**
4 **San Diego, CA 92109**
5

6 or such other address as may from time-to-time hereafter be designated by Hilton by like notice.
7

8 b. If intended for Licensee, addressed to it at
9 **CP Watersports, Inc.**
10 **1775 East Mission Bay Drive,**
11 **San Diego, CA 92109**
12

13 or to such other address as may from time-to-time hereafter be designated by Licensee any like
14 notice. All notices shall be deemed given four (4) days after the postmark thereof unless served
15 personally.

16 8. TERMINATION
17

18 This License Agreement shall terminate upon the occurrence of any of the following
19 events:
20

21 a. If Licensee shall fail to pay the sums to Hilton called for in Paragraph 3
22 of the License or fails to pay sums discovered to be owing to Hilton as a result of an audit by
23 Hilton's Comptroller and such failure continuing for three (3) days after written notice that the
24 same is due;
25

26 b. If Licensee shall violate or breach any of the terms, conditions or
27 covenants hereof and shall not remedy such violation or breach within ten (10) days after written
28 notice by Hilton to Licensee of such violation or breach;
29

30 c. If Licensee shall at any time conduct the business or Services provided
31 for hereunder in a manner not conforming to any reasonable rules, standards or practices
32 established herein or as may be modified or supplemented by Hilton from time-to-time in writing
33 to Licensee of such noncompliance within ten (10) days after written notice by Hilton to Licensee
34 of such noncompliance (provided that if the nature of such noncompliance is curable but that the
35 same cannot with due diligence be cured within ten (10) days Licensee shall not be deemed to be
36 subject to termination, if it shall within such ten day period commence curing and thereafter
37 diligently prosecutes the same to completion).
38

39 d. If Licensee shall make an assignment for the benefit of creditors or file
40 a voluntary petition in bankruptcy or be adjudged insolvent or shall admit in writing its inability
41 to meet its obligations as they mature, or if a permanent receiver of all or any portion of
42 Licensee's property shall be appointed in any judicial proceeding, or there shall be entered
43 against it an order adjudicating it a bankrupt or insolvent or an order appointing a liquidator,
44 receiver or trustee for it or all or substantially all of its assets or approving as properly filed

1 against it a petition seeking reorganization, arrangement or other proceeding under any
2 bankruptcy or other law for the relief of debtors, which order shall continue unstayed and in
3 effect for, or which proceeding shall not be terminated and Licensee released from such
4 proceeding within thirty (30) days, or if Licensee shall attempt to assign or encumber this
5 License Agreement or permit any other person, firm or corporation to conduct the business or
6 Services provided for hereunder;

7
8 e. If any statute, ordinance, rule or regulation hereafter promulgated by
9 any legislative body or agency having jurisdiction over the Licensee shall prohibit the furnishing
10 of services or the transaction of business of the nature to be provided or transacted hereunder; or,
11

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

18 9. SURRENDER OF SPACE

19
20 On termination of the term, Licensee shall surrender to Hilton the Space in good
21 condition (except for ordinary wear and tear), and will have the right to remove only unattached
22 equipment, furniture, merchandise, and trade fixtures that Licensee installed in the Space (except,
23 trade fixtures shall not include lighting fixtures and floor covering). Except, Hilton shall have
24 the election to require Licensee to restore all or any part of the Space to the same condition as
25 originally received by Licensee (ordinary wear and tear excepted), in which event Licensee shall
26 do so on or before termination of the term. Licensee shall perform all restoration made necessary
27 by the removal of any item as allowed or required by this paragraph if Licensee fails to surrender
28 the Space to Hotel on the date as required herein, Licensee shall hold Hotel harmless from all
29 damages resulting from Licensee's failure to surrender the Space, including, without limitation,
30 claims made by a succeeding tenant or Licensee resulting from Licensee's failure to surrender the
31 Space.

32 10. ENTIRE AGREEMENT

33
34 This Agreement contains the full and complete understanding of the parties concerning
35 the subjects contained herein and supersedes any and all prior written or oral agreements between
36 the parties and cannot be amended except in writing signed by both parties.

37 11. AUTHORITY

38
39 Each of the parties hereto hereby represents and warrants to the other party hereto that it
40 has the capacity set forth on the signature pages hereof with full power and authority to bind the
41 party on whose behalf it is executing this Agreement to the terms hereto, and its authority is not
42 inhibited by any private agreement or legal proceeding.

1 12. GOVERNING LAW

2 This Agreement is to be governed by and interpreted in accordance with the laws of the
3 state or commonwealth in which the Services are being performed.

4 13. LIENS

5
6 Licensee covenants and agrees to keep the equipment and property of Licensor and the
7 Hotel and the Space of Licensor and the Hotel free and clear from any and all liens for work
8 performed or materials furnished hereunder and Licensee agrees to indemnify the Indemnitees
9 from and against any and all costs, expenses, losses and all damage resulting from the filing of
10 any such liens against Licensor and the Hotel or the Space of Licensor and the Hotel. As a
11 condition to payment hereunder, License shall from time-to-time, upon request by Licensor or
12 the Hotel, furnish waivers or releases of such liens or receipts in full for all claims for such work
13 or materials and an affidavit that all such claims have been fully satisfied.

14 14. ATTORNEY'S FEES

15
16 In the event Licensor or Licensee breaches any of the terms of this License, whereby the
17 party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then
18 the defaulting party agrees to pay the other party reasonable attorneys' fees so incurred by such
19 other party.

20 15. REPRESENTATIONS AND WARRANTIES OF LICENSEE

21
22 Licensee represents and warrants that there are no agreements or arrangements, whether
23 written or oral, that would be breached by Licensee upon execution of this Agreement or that
24 would impair or prevent Licensee from rendering the Services during the term hereof, and
25 Licensee further represents, warrants, covenants and agrees that it has and will maintain
26 throughout the term hereof all qualifications required to perform its Services hereunder, and that
27 it has not made and will not make any commitment or do any act in conflict with this Agreement.
28 Licensee shall promptly provide Hilton with all information reasonably requested by Hilton or its
29 Compliance Committee with respect to Licensee and its affiliates including their respective
30 officers, directors or shareholders. The information requested may include but not necessarily be
31 limited to financial condition, personal and family background, litigation, indictment, criminal
32 proceedings and the like in which any of the aforementioned may have been involved
33 (collectively, the "Requested Information"), in order for Hilton to determine that the Requested
34 Information does not disclose any fact which might adversely affect, in any manner, any gaming
35 licenses or permits held by Hilton or its affiliates or the current stature of Hilton or its affiliates
36 with any gaming commission, board or similar regulatory agency.

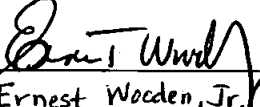
37
38 16. CITY OF SAN DIEGO

39
40 This License is specifically subject and subordinate to the terms of the Lease by and
41 between the City of San Diego as Lessor and Hilton San Diego Corporation as successor Lessee,

1 in file in the office of the City Clerk as document No. 606775. The consent of the City of San
2 Diego is a condition precedent to the effectiveness of this License. Licensee is familiar with the
3 terms and conditions of such City of San Diego Lease and Licensee covenants and agrees to
4 comply therewith to the extent such compliance is required. Licensee further agrees to abide by
5 the rules and regulations Opromulgated by the City of San Diego and all departments thereof
6 having jurisdiction over Licensee's space.

7
8 IN WITNESS WHEREOF, the parties hereto have caused this instrument to be
9 executed as of date first above written.

10
11 Hilton Hotels Corporation as Managing Agent
12 for Hilton San Diego Corporation

13
14 By: 
15 Ernest Wooden, Jr.
16 Print: ~~Hilmar A. Rosenast~~

17
18 Its: Senior Vice President

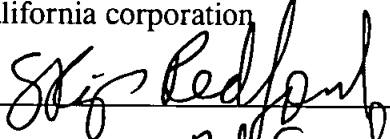
19
20 City of San Diego

21
22 By: _____

23
24 Print: _____

25
26 Its: _____

CP Watersports, Inc.
a California corporation

By: 
Print: Skip Redford

Its: C. E. O.

1 EXHIBIT A, to License dated January 31, 2000, by and between Hilton Hotels Corporation as
2 Managing Agent for Hilton San Diego Corporation, Licenser.

3
4 THIS EXHIBIT IS ATTACHED TO AND IS AN IMPORTANT PART OF THE
5 CAPTIONED LEASE.
6

7
8 EXHIBIT A
9

10 AMERICANS WITH DISABILITIES ACT
11

12 The Americans with Disability Act of 1990 (42 U.S.C. §12101 et seq.) (the "ADA"),
13 effective January 26, 1992, is a comprehensive Federal civil rights law which, among other
14 things, prohibits discrimination against disabled persons with respect to the use of certain "public
15 accommodations" as defined under that Act. That law provides in part that:
16

17 "No individual shall be discriminated against on the basis of disability in the full and
18 equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of
19 any place of public accommodation by any person who owns, leases (or leases to), or operates a
20 place of public accommodation."
21

22 It is the policy of Hilton Hotels Corporation to comply with its obligations as a public
23 accommodation under the ADA and to require its tenants to do the same with respect to the
24 Space.
25

26 The ADA permits the parties to a license or lease agreement to allocate responsibility for
27 compliance with the ADA as between themselves. Accordingly, to the extent that the Hotel or
28 the Space are "public accommodations" as defined in the ADA, the parties agree that the
29 responsibility shall be allocated as between themselves as follows:
30

31 1. Licenser agrees that it shall be responsible for complying with the ADA in all
32 respects, as it affects the common areas of the Building, including making required "readily
33 achievable" changes to remove any architectural or communications barriers and modifying
34 policies applicable to all tenants as may be necessary.
35

36 Licenser agrees that it will defend, indemnify and hold harmless Licensee from and
37 against any and all liability, claims, damages and expenses, (including reasonable attorneys' fees
38 and costs) which may arise out of any legitimate claim by any person for failure of Licenser to
39 comply with its obligation under this subparagraph 1.
40

41 2. Licensee agrees that it shall familiarize itself with the requirements of the ADA and
42 that it shall be responsible for complying with the ADA in all respects, as it affects the Space,
43 including but not limited to, making required "readily achievable" changes to remove any
44 architectural or communications barriers, and providing auxiliary aides and services within the
45 Space.
46

1 3. Licensee further agrees that any and all alterations made to the Space during the term
2 of this license will comply with the requirements of the ADA. All plans for alterations that must
3 be submitted to the Licensor under the provision of this License must include a statement from a
4 licensed Architect or Engineer certifying that they have reviewed the plans, and that the plans
5 comply with all applicable provisions of the ADA. Any subsequent approval or consent to the
6 plans by the Licensor shall not be deemed to be a representation of the Licensor's part that the
7 plans comply with the ADA which obligation shall remain with the Licensee.
8

9 Licensee agrees that it will defend, indemnify and hold harmless **Hilton Hotels**
10 **Corporation** and the Hilton San Diego Resort from and against any and all liability, claims,
11 damages and expenses (including reasonable attorneys' fees and costs) which may arise out of
12 any legitimate claim by any person for failure of Licensee to comply with its obligation under this
13 Subparagraph 3.
14

15 Nothing contained herein is intended to create any rights in any third parties.
16

17 LICENSOR'S INITIAL 

18
19 LICENSEE'S INITIAL SK
20 \\\

UNDERWATER INSTRUCTORS PROFESSIONAL LIABILITY

MASTER CERTIFICATE NO. :NAUI-9899IS
EVIDENCE OF INSURANCE NO. :6775
NAMED INSURED :RODNEY M WATKINS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

VICARIOUS LIABILITY

This endorsement modifies insurance provided under the following:

UNDERWATER INSTRUCTORS PROFESSIONAL LIABILITY COVERAGE

This insurance is extended to provide vicarious liability coverage to the following Entities: any retail dive facility, dive vessel, educational institution, marina, government entity, municipality, swimming pool facility, property owner, dive resort, hotel, or motel from which the **Named Insured** renders his/her **Professional Services**.

This additional insured protection is strictly limited in scope and applies only to the liability of these Entities arising vicariously out of or attributable to the **Named Insured's** rendering of or failure to render **Professional Services** in his/her capacity as a diving leader, divemaster, instructor, divecon, assistant instructor or sustaining instructor providing instruction or supervision of recreational underwater swimming as specifically approved and sanctioned by **NAUI**.

This Endorsement does not extend coverage to any Entity for liability attributable to or allegations made against said Entity for his/her/its own conduct.

This Endorsement and the coverage provided herein is subject to all of the terms, provisions, agreements, definitions, exclusions, limitations, conditions, and warranties contained in the Master certificate and Evidence of Insurance to which it is attached.

San Diego



Beach and Tennis Resort

May 28, 1997

RECEIVED
JUL 09 1997
REAL ESTATE ASSETS

Mr. Vladimir Balotsky
City of San Diego
Real Estate Assets Department
Mail Station 51-A, Civic Center Plaza
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4199

Dear Vladimir:

Enclosed is a copy of the Sublease Agreement with C. P. Water Sports. Due to the length of time in processing this contract, we are now requesting C. P. Water Sports to now change their commission structure to 17% as noted in the contract, effective June 1, 1997.

If you have any questions, comments or concerns, feel free to give me a call.

Sincerely,

John Wells
Executive Assistant Manager/
Director of Food and Beverage

JW/llr

Enclosure

cc: John Kuhn, Comptroller



CONSENT TO LICENSE AGREEMENT

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

HILTON SAN DIEGO CORPORATION

("Lessee") and filed in the Office of the City Clerk as Document RR-293815 dated September 12, 2000, hereby consents to that certain License Agreement ("Agreement") dated January 31, 2000 between the above Lessee ("Licensor") and

CP WATERSPORTS, 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 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 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.

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 Two Million Dollars (\$2,000,000) 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.

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.

BOAT RENTALS: For purposes of the Agreement, the "boats" include ships of all kinds, motorboats, sailboats, inflatable boats, personal watercraft, and every structure adapted to be navigated from place to place upon the water for recreation or for the transportation of merchandise or persons. Licensor and Licensee shall be permitted to rent boats to the general public subject to prior written approval from the City Manager as to the number and types of boats available to rent. The City Manager may, upon written notice to Licensor and Licensee and with reasonable cause, modify any approval previously given. Licensor and Licensee shall carry commercial general liability insurance, the amount and coverages shall be based upon the City Manager's assessment of the risk associated with the rental operation.

All boats 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 boats for rent shall be identified by Licensee through the use of distinctive markings and logos.

Each rental boat shall be equipped with a waterproof map detailing all current regulations and activity zones for Mission Bay, along with all the safety equipment required by law. At any time that the Licensor or Licensee is renting a boat or boats, Licensor or Licensee shall have at least one operational chase boat and staff available to operate on the waters of Mission Bay. No rental boats may be stored on public property outside the leasehold. Licensor and Licensee agree that the City Manager or his designees shall have the authority to immediately terminate any Agreement which is not in conformance with the stipulations of this Consent to License Agreement or current boating regulations.

SUPERSEDURE: Licensor and Licensee acknowledge that the Agreement supercedes that certain Agreement dated October 29, 1996 between Licensor and Licensee in all respects and that the consent of the City to the prior license is terminated effective upon execution of this Consent to License Agreement.

THE CITY OF SAN DIEGO

Dated 12/15/00

By [Signature]
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 12/20/00

By [Signature]
Deputy City Attorney

HILTON SAN DIEGO CORPORATION

Dated 12-3-00

By [Signature]
Its: Senior Vice President

CP WATERSPORTS, INC.,
a California Corporation

Dated 11/21/00

By [Signature]
Its: President

CONSENT TO 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 License Agreement between the above LESSEE (Licensor) and

C.P. WATERSPORTS, Inc., a California Corporation

(Licensee) dated October 29, 1996. Said agreement shall be subordinate to the Master Lease in all respects. The CITY is hereby merely approving the Licence Agreement 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 Licence 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:

Assignment and Subletting : Licensee shall not assign this agreement or sublet the premises or any part thereto without the prior written consent of licensor and City of San Diego, hereafter "City". An assignment by operation of law shall automatically terminate this agreement.

Hold Harmless: Licensee shall assume the defense of, indemnify and save harmless licensor and City from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operation conducted on the permitted use space or any space designated by licensor for licensee use or from any act or omission of licensee, its agent and invites.

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 of or operation conducted on the permitted use space or any space designated by licensor for licence use. Minimum coverage shall be \$2 million 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 30 days prior written notice to City by the insurance company.

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 the license agreement, licensee agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.

Subordination: This agreement is in effect a License Agreement of a portion of the premises covered by that certain Lease Agreement dated May 11, 1962, as amended between the licensor herein and the City of San Diego. This agreement is subject to and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

Boat rentals: For purpose of this agreement, the "boats" include ships of all kinds, motorboats, sailboats, inflatable boats, personal watercraft, and every structure adapted to be navigated from place to place upon the water for recreation or for the transportation of merchandise or persons. Licensor and licensee shall be permitted to rent boats to the general public subject to prior written approval from the City Manager as to the number and type of boats available to rent. The City Manager may, upon written notice to licensor and licensee and with reasonable cause, modify and approval previously given. Licensor and licensee shall carry commercial general liability insurance, the amount and coverages shall be based upon the City Manager's assessment of the risk associated with the rental operation.

All boats for rent which are required by law to be registered with California Department of Motor Vehicles shall be currently registered as rental vessels and carry proper registration numbers and stickers. All boats for rent shall be identified by licensee through the use of distinctive markings and logos.

Each rental boats shall be equipped with waterproof map detailing all current regulations and activity zones for Mission Bay, along with all safety equipment required by law. At any time that the licensor or licensee is renting a boat or boats, licensor or licensee shall have at least one operational chase boat and staff available to operate on the water of Mission Bay. No rental boats may be stored on public property outside the leasehold. Licensor and licensee agree that the City Manager or his designees shall have the authority to immediately terminate any agreement which is not in conformance with the stipulation of this Consent to License Agreement or current boating regulations.

THE CITY OF SAN DIEGO

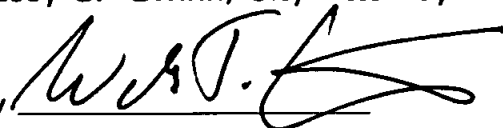
Dated 3-26-97

By 
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

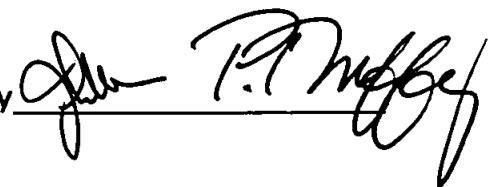
Casey G. Gwinn, City Attorney

Dated 4/3/97

By 
Deputy

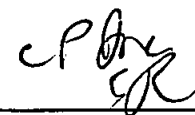
Licenser

Dated 4.23.97

By 

Licensee

Dated 4/23

By 

**HILTON HOTELS CORPORATION
LICENSE AGREEMENT
FOR
C.P. WATERSPORTS
AT THE SAN DIEGO HILTON BEACH AND TENNIS RESORT**

Execution Copy

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT dated for reference purposes only, **October 29, 1996**, by and between **Hilton San Diego Corporation, Hilton Hotels Corporation**, Agent, Licensor (hereinafter sometimes variously referred to as "Licensor" and/or "Hilton"), and **C.P. Watersports, Inc.** a California corporation (hereinafter referred to as "Licensee");

W I T N E S S E T H:

WHEREAS, Licensor operates the San Diego Hilton Beach and Tennis Resort located at 1775 East Mission Bay Drive, San Diego, California 92109 (hereinafter sometimes referred to as the "Hotel"); and,

WHEREAS, Licensee is in the business of providing water sports equipment rental services; and,

WHEREAS, Licensor 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:

1. SPACE: Hilton hereby grants to Licensee the right to operate its business (as more particularly defined below in a. Permitted Use of Space) in the Hotel for the convenience of the Hotel guests and others desiring to use such services. Licensee's business will be conducted from the Beach/Pier space (hereinafter the "Space" or "Spaces") designated by Hilton for Licensee's use. However, Hilton shall, at any time, have the right upon reasonable notice to Licensee to relocate Licensee, to another location within the Hotel during the term hereof. **Licensee will provide sufficient staff coverage at said Space from at least 9:00 a.m. to 5:00 p.m., daily. Such times are subject to seasonal adjustment as approved by Hilton.** Licensee shall have the right to furnish, install and maintain appropriate fixtures, furniture equipment and signs for Licensee's usage of said Space subject to Hilton's approval prior to installation.

a. Permitted Use of Space: Licensee shall use the Space only for the rental of boats and other water sports equipment, and for the sale, at retail, of items related closely to such rentals, and Licensor reserves the right of approval of all retail items. The Space shall be used for no other purpose without the prior written consent of Licensor.

2. TERM: The term ("Term") of this License Agreement shall commence as of **November 1, 1996** and shall end **October 31, 2001**.

3. CONSIDERATION: In consideration of the rights granted herein, Licensee will pay Hilton each month a sum equal to the greater of:

a. Base Rent: On the first of each month during the Term, **Two Hundred and Fifty-Five and 00/100th Dollars (\$255.00)** per month, or;

1 b. Percentage Rent: According to the percent rate of the gross revenues
2 as hereinafter defined:

3
4 (1) 17% of gross revenues from \$0 through \$250,000, inclusively,
5 annually.

6 (2) 18% of gross revenues from \$250,000 through \$300,000,
7 inclusively, annually.

8 (3) 20% of gross revenues from \$ 300,000 through \$350,000,
9 inclusively, annually.

10 (4) 25% of gross revenues from \$350,000 through \$400,000,
11 inclusively, annually.

12
13 Such percentage rent payment is due monthly and payable by the tenth (10th) day of the
14 following month reported upon. The above annual totals shall be divided by twelve to calculate
15 monthly Percentage Rent payments and the Percentage Rent shall increase in accordance with
16 the aggregate total achieved at any given month throughout the year.

17
18 i) GROSS REVENUES: The term "Gross Revenues"
19 includes the total of all sales of merchandise, all charges for services for which charge is made,
20 and the gross receipts from all business transacted, in, upon and from the Space during the term
21 by Licensee and all others occupying the Spaces or any part thereof.

22
23 ii) The consideration shall be payable in lawful
24 money of the United States at the Executive Office of the Hotel or at such other place as Hilton
25 shall designate in writing.

26
27 iii) On or before the 10th of each month Licensee
28 shall submit to Hilton a report showing, in reasonable detail, the gross revenues for the prior
29 month, which statement shall be certified correct by Licensee. Licensee agrees that it will keep
30 such accounts of the business conducted and transacted from the Hotel as may be necessary in
31 order to compute the consideration payments due hereunder and will, upon request, make such
32 accounts available for inspection by Hilton or its representatives at all times during regular
33 business hours.

34 iv) On or before the 20th of January of each year
35 Licensee shall submit to Hilton a report showing, in reasonable detail, the gross revenues for
36 the prior year, which statement shall be certified correct by Licensee. In the event Licensee has
37 underpaid Percentage Rent for the year, such difference shall be paid at the time the report is
38 submitted to Licensor. In the event Licensee has overpaid Percentage Rent for the year,
39 Licensor shall apply such overpayment as a credit to the next rents due.

40
41 v) In the event a governmental authority closes
42 Mission Bay for public use for five (5) days or more during any month of the Term hereof,
43 Licensor agrees to waive Minimum Rent during such month.

44
45 4. COVENANTS OF LICENSEE: Licensee hereby covenants and agrees as
46 follows:

1 a. That it will, at all times during the continuance of this License
2 Agreement, provide sufficient number of staff at all hours of operation and additional staff
3 during days of heavy volume as designated by the Hotel.
4

5 b. That it will furnish, operate and maintain the fixtures, furniture and
6 equipment in good order, condition and repair.
7

8 c. That it will use reasonable efforts to ensure that all employees of
9 Licensee coming in the Hotel, shall at all times while present, be appropriately dressed and
10 conduct themselves in a proper and businesslike manner, it being understood and agreed that
11 upon Hilton's written request, Licensee shall cease to send to the Hotel any employee designated
12 by Hilton as unacceptable to it, but no such employee shall be so designated by Hilton without
13 reasonable cause.
14

15 d. That it will comply with all federal, state and municipal laws and
16 regulations applicable to its operation in the Hotel. Hilton agrees that in the event Licensee is
17 not permitted to conduct its business on the Hotel premises because of any federal, state or
18 municipal law or regulation, that this License Agreement shall immediately terminate.
19

20 e. Licensee hereby waives all claims against the **San Diego Hilton Beach**
21 **& Tennis Resort, Hilton San Diego Corporation, Hilton Hotels Corporation and the City**
22 **of San Diego, their respective employees, servants and agents**, for injury to it or damage to
23 its property resulting from any accident or event occurring in or about the Hotel premises, or
24 resulting from or arising out of the operations of Licensee hereunder, unless caused by the
25 negligence of Hilton, its employees or agents. Licensee further covenants and agrees to
26 indemnify and hold harmless the **San Diego Hilton Beach & Tennis Resort, Hilton San Diego**
27 **Corporation and Hilton Hotels Corporation** from any and all causes, damages, liabilities, suits
28 and/or actions, and any expenses incurred in connection therewith resulting from the death or
29 injury to persons or damage to property, caused by or arising from or out of Licensee's
30 operations hereunder, whether caused by the act or omission of Licensee, its servants, agents
31 or employees; but in no event will Licensee indemnify or hold harmless the **San Diego Hilton**
32 **Beach & Tennis Resort, Hilton San Diego Corporation, Hilton Hotels Corporation and the**
33 **City of San Diego** for anything arising out of their own negligence, act or omission of their
34 employees or agents.
35

36 f. That Licensee shall maintain in force during the term of this License
37 Agreement, at its own expense with responsible insurance companies that have an A.M. Best
38 Company rating of "A VIII" or better, policies of comprehensive general liability insurance,
39 including watercraft liability providing coverage for all vessels of the size involved in Licensee's
40 business, and contractual liability insurance, insuring the contractual liability of Licensee under
41 Paragraph 4e hereof, in an amount not less than **TWO MILLION AND NO/100THS**
42 **DOLLARS (\$2,000,000.00)** combined single limit Personal Injury and Property Damage,
43 including Comprehensive Auto Liability Insurance and Worker's Compensation in an amount
44 not less than the Statutory requirements required by the State covering all employees of
45 Licensee.
46

1 All policies will name **Hilton Hotels Corporation, Hilton San Diego Corporation, the**
2 **San Diego Hilton Beach & Tennis Resort and the City of San Diego** as "Additional Insureds."
3 All policies of insurance shall be considered primary of any existing similar insurance carried
4 by Hotel or Licensee. Licensee shall provide the Hotel with Certificates of Insurance carried
5 by Licensee. If requested by the Hotel, Licensee shall furnish certified copies of insurance
6 carried. Copies of said Certificates of Insurance or certified policies of Insurance shall be
7 delivered to the offices of the Hotel by Licensee and shall be kept on file during the term of this
8 License Agreement. No Policy of Insurance shall be cancelled or materially changed without
9 thirty (30) days prior written notice to the Hotel.

10
11 5. TRADEMARKS: Licensee disclaims any interest in the name "Hilton," any
12 variant thereof, or any other service mark, trademark or tradename owned by Hilton San Diego
13 Corporation or Hilton Hotels Corporation (collectively, "**Trademarks**"). Without Licensor
14 consent, Licensee must not use the Trademarks for any purpose other than the business address.

15
16 6. LICENSE ONLY: This License Agreement creates a license only and
17 Licensee acknowledges that Licensee does not and shall not claim at any time, any real property
18 interest or estate of any kind or extent whatsoever in the Space by virtue of this license or
19 Licensee's use of the Space pursuant hereto. Nothing herein contained shall be construed as
20 constituting a partnership, joint venture or agency between Hilton and Licensee.

21
22 7. NOTICES: Whenever, by the terms of this License Agreement, or otherwise,
23 notice is required or desired to be given, such notice shall be effective only if in writing and
24 served personally or sent by certified mail or registered mail, postage prepaid;

25
26 a. If intended for Hilton, addressed to it (Attention: General Manager) at

27
28 **San Diego Hilton Beach and Tennis Resort**
29 **1775 East Mission Bay Drive**
30 **San Diego, CA 92109**

31
32 or such other address as may from time-to-time hereafter be designated by Hilton by like notice.

33
34 b. If intended for Licensee, addressed to it at

35
36 **C.P. Watersports, Inc.**
37 **1775 East Mission Bay Drive**
38 **San Diego, CA 92109**

39
40 or to such other address as may from time-to-time hereafter be designated by Licensee any like
41 notice. All notices shall be deemed given four (4) days after the postmark thereof unless served
42 personally.

43
44 8. TERMINATION: This License Agreement shall terminate upon the
45 occurrence of any of the following events:
46

1 a. If Licensee shall fail to pay the sums to Hilton called for in Paragraph
2 3 of the License or fails to pay sums discovered to be owing to Hilton as a result of an audit by
3 Hilton's Comptroller as defined in Paragraph 3ciii of the License and such failure continuing for
4 three (3) days after written notice that the same is due;

5
6 b. If Licensee shall violate or breach any of the terms, conditions or
7 covenants hereof and shall not remedy such violation or breach within ten (10) days after written
8 notice by Hilton to Licensee of such violation or breach;

9
10 c. If Licensee shall at any time conduct the business or Services provided
11 for hereunder in a manner not conforming to any reasonable rules, standards or practices
12 established herein or as may be modified or supplemented by Hilton from time-to-time in writing
13 to Licensee of such noncompliance within ten (10) days after written notice by Hilton to
14 Licensee of such noncompliance (provided that if the nature of such noncompliance is curable
15 but that the same cannot with due diligence be cured within ten (10) days Licensee shall not be
16 deemed to be subject to termination, if it shall within such ten day period commence curing and
17 thereafter diligently prosecutes the same to completion).

18
19 Notwithstanding the foregoing in this Paragraph c., Hilton must act in good faith in
20 exercising this right of termination.

21
22 d. If Licensee shall make an assignment for the benefit of creditors or file
23 a voluntary petition in bankruptcy or be adjudged insolvent or shall admit in writing its inability
24 to meet its obligations as they mature, or if a permanent receiver of all or any portion of
25 Licensee's property shall be appointed in any judicial proceeding, or there shall be entered
26 against it an order adjudicating it a bankrupt or insolvent or an order appointing a liquidator,
27 receiver or trustee for it or all or substantially all of its assets or approving as properly filed
28 against it a petition seeking reorganization, arrangement or other proceeding under any
29 bankruptcy or other law for the relief of debtors, which order shall continue unstayed and in
30 effect for, or which proceeding shall not be terminated and Licensee released from such
31 proceeding within thirty (30) days, or if Licensee shall attempt to assign or encumber this
32 License Agreement or permit any other person, firm or corporation to conduct the business or
33 Services provided for hereunder;

34
35 e. If any statute, ordinance, rule or regulation hereafter promulgated by
36 any legislative body or agency having jurisdiction over the Licensee shall prohibit the furnishing
37 of services or the transaction of business of the nature to be provided or transacted hereunder;
38 or,

39
40 f. Upon the expiration of sixty (60) days following written notice of the
41 sale of the Hotel by its owner, given by Hilton to Licensee at any time prior to the date that is
42 30 days after the transfer of ownership; provided that if that notice is given more than 60 days
43 prior to the closing of the sale, the termination shall be effective only upon the closing of the
44 sale.

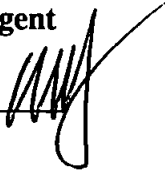
1 9. SURRENDER OF SPACE: On termination of the term, Licensee shall
2 surrender to Hilton the Space in good condition (except for ordinary wear and tear), and will
3 have the right to remove only unattached equipment, furniture, merchandise, and trade fixtures
4 that Licensee installed in the Space (except, trade fixtures shall not include lighting fixtures and
5 floor covering). Except, Hilton shall have the election to require Licensee to restore all or any
6 part of the Space to the same condition as originally received by Licensee (ordinary wear and
7 tear excepted), in which event Licensee shall do so on or before termination of the term.
8 Licensee shall perform all restoration made necessary by the removal of any item as allowed or
9 required by this paragraph if Licensee fails to surrender the Space to Hotel on the date as
10 required herein, Licensee shall hold Hotel harmless from all damages resulting from Licensee's
11 failure to surrender the Space, including, without limitation, claims made by a succeeding tenant
12 or Licensee resulting from Licensee's failure to surrender the Space.
13

14 10. ATTORNEY'S FEES: In the event that legal proceedings are brought or
15 commenced to enforce the terms of this License Agreement, the prevailing party shall be entitled
16 to recover from the other party all costs and expenses of such proceedings, including reasonable
17 attorney's fees, whether or not any proceedings are prosecuted to judgment.
18

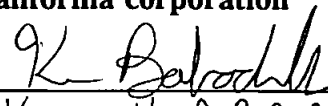
19 11. CITY OF SAN DIEGO: This License is specifically subject and subordinate
20 to the terms of the Lease by an between the City of San Diego as Lessor and Hilton San Diego
21 Corporation as successor Lessee, in file in the office of the City Clerk as Document No.
22 606775. The consent hereto by the City of San Diego is a condition precedent to the
23 effectiveness of this License. Licensee is familiar with the terms and conditions of such City
24 of San Diego Lease and Licensee covenants and agrees to comply therewith to the extent such
25 compliance is required., Licensee further agrees to abide by the rules and regulations
26 promulgated by the City of San Diego and all departments thereof having jurisdiction over
27 Licensee's space.
28

29 IN WITNESS WHEREOF, the parties hereto have caused this instrument to be
30 executed as of date first above written.
31

32 **Hilton San Diego Corporation,**
33 **Hilton Hotels Corporation, Agent**

34
35 By: 
36 Hilmar Rosenast,
37 Its: Senior Vice President
38

C.P. Watersports, Inc.,
a California corporation

39
40 By: 
41 Kenneth D BobADILLA
42 print name
43 Its: Pres
44

45 ATTEST:
46

By: _____
William Rees,
Its: Assistant Secretary

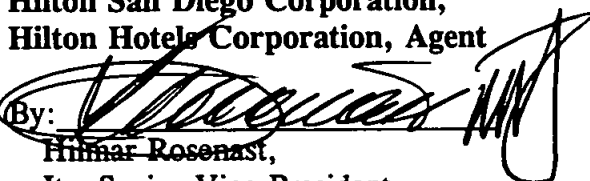
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4 that Licensee installed in the Space (except, trade fixtures shall not include lighting fixtures and
5 floor covering). Except, Hilton shall have the election to require Licensee to restore all or any
6 part of the Space to the same condition as originally received by Licensee (ordinary wear and
7 tear excepted), in which event Licensee shall do so on or before termination of the term.
8 Licensee shall perform all restoration made necessary by the removal of any item as allowed or
9 required by this paragraph if Licensee fails to surrender the Space to Hotel on the date as
10 required herein, Licensee shall hold Hotel harmless from all damages resulting from Licensee's
11 failure to surrender the Space, including, without limitation, claims made by a succeeding tenant
12 or Licensee resulting from Licensee's failure to surrender the Space.
13

14 10. ATTORNEY'S FEES: In the event that legal proceedings are brought or
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16 to recover from the other party all costs and expenses of such proceedings, including reasonable
17 attorney's fees, whether or not any proceedings are prosecuted to judgment.
18

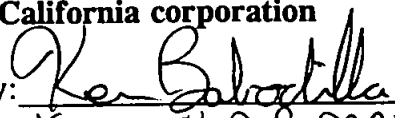
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21 Corporation as successor Lessee, in file in the office of the City Clerk as Document No.
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23 effectiveness of this License. Licensee is familiar with the terms and conditions of such City
24 of San Diego Lease and Licensee covenants and agrees to comply therewith to the extent such
25 compliance is required., Licensee further agrees to abide by the rules and regulations
26 promulgated by the City of San Diego and all departments thereof having jurisdiction over
27 Licensee's space.
28

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30 executed as of date first above written.
31

32 Hilton San Diego Corporation,
33 Hilton Hotels Corporation, Agent

34 By: 
35 Hilmar Rosenast,
36 Its: Senior Vice President
37
38
39

C.P. Watersports, Inc.,
a California corporation

By: 
KENNETH D BOGADILLA
print name
Its: Pres

40 ATTEST:

41 By: 
42 William Rees,
43 Its: Assistant Secretary
44
45
46

1
2 **CONSENT TO SUBLICENSE AGREEMENT**
3

4 **THE CITY OF SAN DIEGO** ("City") as Lessor under that certain Lease Agreement
5 between City and Mears Hotel Company ("Lessee") on file in the office of the City Clerk as
6 Document Number 606775 as amended, herein called "Master Lease," hereby consents to Hilton
7 San Diego Corporation, as successor Lessee under said Master Lease, entering into that certain
8 sublicense agreement with C.P. Watersports, Inc., a California corporation, as Licensee
9 covering the sales and rental of boats and other watersports equipment located at the San Diego
10 Hilton Beach & Tennis Resort, which consent is subject to the following conditions:
11

- 12 1. This consent shall not be construed as a consent to any subsequent agreement, nor
13 as a waiver of any rights or recourse of City under or pursuant to said Master
14 Lease.
15
16 2. Said agreement shall not have the effect of reducing in any manner rents due City
17 under said Master Lease.
18
19 3. Said agreement shall be subordinate to said Master Lease in all respects.
20
21

22 IN WITNESS WHEREOF, the parties hereto have caused this instrument to be
23 executed as of date first above written.
24
25
26

27 The City of San Diego
28
29

30 By _____
31

32 _____
33 Print name

34 Its: _____
35

36 //
37 //
38 //
39 //
40 //
41 //
42 //
43 //
44 //
45 //
46 //

1 EXHIBIT "A" to License Agreement dated for reference purposes only, October 29, 1996, by
2 and between Hilton San Diego Corporation, Hilton Hotels Corporation, Agent, Licensor
3 (hereinafter sometimes variously referred to as "Licensor" and/or "Hilton"), and C.P.
4 Watersports, Inc., a California corporation, Licensee.

5
6 AMERICANS WITH DISABILITIES ACT
7

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

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

17
18 It is the policy of Hilton Hotels Corporation to comply with its obligations as a public
19 accommodation under the ADA and to require its tenants to do the same with respect to the
20 Space.

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

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

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

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

42
43 3. Licensee further agrees that any and all alterations made to the Space during the term
44 of this license will comply with the requirements of the ADA. All plans for alterations which
45 must be submitted to the Licensor under the provision of this License must include a statement
46 from a licensed Architect or Engineer certifying that they have reviewed the plans, and that the

1 plans comply with all applicable provisions of the ADA. Any subsequent approval or consent
2 to the plans by the Licensor shall not be deemed to be a representation of the Licensor's part
3 that the plans comply with the ADA which obligation shall remain with the Licensee.
4

5 Licensee agrees that it will defend, indemnify and hold harmless **San Diego Hilton**
6 **Corporation, Hilton Hotels Corporation** and the **San Diego Hilton Beach & Tennis Resort**
7 from and against any and all liability, claims, damages and expenses (including reasonable
8 attorneys' fees and costs) which may arise out of any legitimate claim by any person for failure
9 of Licensee to comply with its obligation under this Subparagraph 3.
10

11 Nothing contained herein is intended to create any rights in any third parties.
12

13 LICENSOR'S INITIAL _____
14

15 LICENSEE'S INITIAL _____
16

17 //

18 //

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CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with Mears Hotel Company and Hilton San Diego Corporation as successor (LESSEE) and filed in the Office of the City Clerk as Document 606775 and as amended, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

Hazelwood Enterprises, Inc.

(SUBLESSEE) dated March 15, 1995. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and 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.

This consent is subject to the following conditions:

ASSIGNMENT AND SUBLEASING: Sublessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessee and the City of San Diego, hereinafter, "City". An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: Sublessee shall assume the defense of, indemnify and save harmless Lessee and 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 leased premises or from any act or omission of Sublessee, his agents and invitees.

INSURANCE: Sublessee shall be insured by an insurance carrier acceptable to the Lessee and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$1 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of the policy of insurance shall be filed with 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 30 days prior written notice to City by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for Lessee or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this lease, Sublessee agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement filed in the office of the City Clerk as Document 606775, as amended between the sublessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

THE CITY OF SAN DIEGO

Dated 2-26-96

By Mary Ann Frank
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated 2/28/96

By [Signature]
Deputy

HAZELWOOD ENTERPRISES, INC.
(Sublessee)

By: [Signature]
President

Date: 3/12/96

HILTON SAN DIEGO CORPORATION
(Sublessor)

By: [Signature]

Date: _____

SUBLEASE

HILTON HOTELS CORPORATION

THIS SUBLEASE (hereinafter "Sublease" or "Lease") dated for reference purposes only, March 15, 1995,

W I T N E S S E T H:

Hilton San Diego Corporation, Sublessor, Hilton Hotels Corporation, Agent, (hereinafter "Sublessor" or "Lessor"), hereby leases unto

Hazelwood Enterprises, Inc.,
an Arizona corporation

Sublessee, (hereinafter "Sublessee" or "Lessee"), and Lessee accepts the Premises numbered Room 114 and a retail kiosk space adjacent to the pool known as the

Lobby Gift Shop and Pool Kiosk

as shown hatched in black on the plan marked EXHIBIT "A" attached hereto and made a part hereof, hereinafter referred to as Premises in the

San Diego Hilton Beach and Tennis Resort
1775 East Mission Bay Drive,
San Diego, CA 92109

hereinafter referred to as the Building, for a Term of

Sixty (60) Months

commencing April 15, 1995, and ending April 14, 2000, (subject to Paragraph 43 Option to Extend) unless sooner terminated as provided herein, hereinafter referred to as the Lease Term, to be occupied and shall be used by Lessee only for the exclusive sale at retail of general sundry items; pool towels; T-shirts; books; postcards; cups; hats; sunglasses; mens and womens apparel and accessories related closely thereto; inflatable pool items; small travel cases and accessories related closely thereto; and San Diego Hilton Logo and Banana Cabana¹ merchandise (Lessor reserves the right of approval of all such merchandise, which shall be absolutely binding and not subject to a standard of reasonableness: Lessee agrees to display and sell or remove from the Premises any type of Logo product requested by Lessor). Banana Cabana merchandise is limited to the pool kiosk only and not to be sold at the Gift Shop. "Scuba Experience" T-shirts and accessories, if available, must be sold only at the Pool Kiosk. Notwithstanding the foregoing, Lessor reserves the right of approval of all merchandise sold from the Pool Kiosk. Lessee may also sell on a non-exclusive basis snacks and sodas only in the Lobby Gift Shop, and in no case shall they be displayed or sold at the Pool Kiosk.

Lessee's exclusive right to sell the foregoing merchandise is subject to the following limitations: 1) Tennis apparel and equipment including San Diego Hilton Logo items may also be sold at the Tennis Shop; 2) Banana Cabana shirts and accessories may be sold at the Banana Cabana space; 3) Hilton logo items may be sold from any future Spa operation; and, 4) Lessor reserves the right to use, give away or display any Hilton logo merchandise used for promotional purposes, such items may be different than those approved by Lessor for sale by Lessee. The Premises shall be used for no other purpose without the prior written consent of Lessor.

a:Western Region\
San Diego\hazel.ls

¹ Banana Cabana is a registered Trademark of Hilton.

1 IN CONSIDERATION THEREOF, THE PARTIES COVENANT AND AGREE:

2
3 1. RENT: Lessee shall pay to Lessor, or Lessor's agent, in
4 United States currency which at the time or times of payment is
5 legal tender for public and private debts in the United States of
6 America, at Lessor's office in the building or elsewhere designated
7 from time to time by Lessor's notice, without further demand or
8 set-off, the following payments reserved and required under this
9 Lease:

10
11 (a) Base Rental: in installments of Four Thousand Four
12 Hundred Eighty and No/100th Dollars, (\$4,480.00), per month.
13 Notwithstanding the foregoing, Base Rental shall be waived for a
14 Ninety (90) day period commencing upon the earlier of the date
15 Lessee opens the Premises for business; or, May 1, 1995, and ending
16 90 days thereafter.

17
18 Such rental is payable in advance on the first day of each calendar
19 month of the term and at the current rate for fractions of a month
20 if a term shall commence or terminate on any day other than the
21 last day of the month, which Base Rent shall be adjusted in
22 accordance with Paragraph 2 hereof.

23
24 (b) Percentage Rental: The further sums promised in the
25 Rider attached hereto titled "PERCENTAGE RENTAL," unless no such
26 Rider is part of this Lease in which case the word "none" shall be
27 inserted in the following blank: see attached Percentage Rent
28 Rider.

29
30 (c) All other sums payable hereunder within ten (10)
31 days after Lessor renders statements of account thereof unless
32 otherwise provided therein; and

33
34 (d) Late charges at 18 percent per annum or the maximum
35 legally permissible rates per annum, whichever is less, from due
36 date until paid, on each defaulted obligation under sub-paragraphs
37 (a) and (b) above. All of said sums and the late charge thereon
38 constitute RENTAL accruing hereunder.

39
40 Except as otherwise specifically provided, all Rental shall be paid
41 without notice or demand and without abatement, deduction,
42 counterclaim, or set off, except as otherwise provided herein.
43 Lessee's covenant to pay such Rental shall be independent of every
44 covenant set forth in this Lease.

45
46 2. RENT ADJUSTMENT:

47
48 A. Base Rental increased for the period commencing April
49 15, 1998, and ending April 14, 2000, shall be established in the
50 following manner:

51
52 A determination shall be made as soon as practicable of the total
53 amount of Base Rental, paragraph 1(a), plus Percentage Rental,
54 paragraph 1(b), paid from the commencement of Base Rent (1a above)
55 through April 14, 1998. Rent shall be established by multiplying
56 the sum of the total Base Rent and Percentage Rent by 80%, and
57 dividing the product by the number of months since Base Rent
58 commenced.

59
60 EXAMPLE:

61 1) Assume Total Base Rent: \$145,600.00
62 (provided rent commences on August 1, 1995,
63 which is 32½ months to April 14, 1998).

64
65 Assume Total Percentage Rent: +\$ 71,066.00

66
67 Total Rent: \$216,666.00

68
69 2) Multiply sum by 80%: \$216,666.00 x .80 = \$173,333.00
70

1 3) Divide product by 32½: \$61,440.00÷ 12 = \$ 5,333.00
2 New monthly Base Rental would therefor be established at \$5,333.00
3 per month.
4

5 In no case shall the Base Rental be less than \$ 4,480.00 per month.
6

7 B. In the event Lessee's annual Gross Sales are less than
8 \$307,200.00 during any Lease Year of the initial term, Lessee shall
9 be entitled to an adjustment of Base Rental paid during such Lease
10 Year to an amount equal to Seventeen and one-half percent (17.5%)
11 of Gross Sales during such Lease Year. Lessor may apply credit on
12 future rent or reimburse Lessee as the case requires.
13

14 3. SECURITY DEPOSIT: Intentionally Deleted.
15

16 4. SERVICE: Lessor shall furnish: (a) Heat and air
17 conditioning (unless by special provision herein Lessee shall
18 furnish) whenever, in Lessor's sole judgement, necessary for the
19 use of the Premises, to the extent that as of the date of this
20 Lease the Building is equipped for heating and air conditioning.
21 Lessor shall not at any time be required to increase this heating
22 and air conditioning capability. This service shall be provided
23 daily (except Sundays and holidays) during the customary business
24 hours for Lessee's stated use of the Premises in the vicinity, but
25 not earlier than 8:00 a.m. or later than 6:00 p.m. on any day
26 unless specifically stated herein.
27

28 (b) Water from city mains through existing pipes in the
29 quantity used by businesses comparable to that of Lessee for
30 drinking, lavatory and toilet purposes only.
31

32 (c) Electricity through presently installed electrical
33 facilities for Lessee's reasonable use for lighting purposes and
34 the operation of electrical appliances and equipment as the Lessee
35 has advised Lessor it proposes to install in the leased premises.
36 ~~It is estimated that Lessee's average monthly consumption of~~
37 ~~electricity will be _____ kilowatt hours. The Lessee agrees to pay~~
38 ~~as additional rent the amount of (\$____.00) per month for and in~~
39 ~~consideration of Lessor's agreement to so furnish electricity.~~
40 ~~Lessee covenants not to operate or permit to be operated on the~~
41 ~~demised property any additions or alterations in electrical~~
42 ~~equipment and appliances from that proposed to be installed by~~
43 ~~Lessee as aforesaid, without first obtaining consent from the~~
44 ~~Lessor in each instance, in which event an additional charge will~~
45 ~~be made.~~
46

47 ~~(i) Lessee shall pay to Lessor, as Additional Rent,~~
48 ~~any increase in the cost of said service equal to such increased~~
49 ~~costs charged by Lessor's suppliers of said service and for such~~
50 ~~increased cost for the use of such service by reason of an increase~~
51 ~~in the number of hours Lessee shall be open for business which~~
52 ~~shall exceed 98 hours per week. Such increased cost shall be paid~~
53 ~~by Lessee within ten (10) days after Lessor renders statements of~~
54 ~~account therefor.~~
55

56 ~~(ii) Lessee shall have the right in the event of~~
57 ~~any increase in the electric charge as hereinbefore provided to use~~
58 ~~its own electrical metering consultant, at its own cost and~~
59 ~~expense. In the event any variance between the increased charge~~
60 ~~made by Lessor's consultant and that determined by Lessee's~~
61 ~~consultant shall not be resolved by mutual agreement, same shall be~~
62 ~~submitted to a third party consultant whose determination shall be~~
63 ~~final, the cost of same to be borne equally by Lessor and Lessee.~~
64 ~~The third party consultant shall be chosen by the two consultants.~~
65

66 (d) ~~Lessee shall pay to Lessor's charges for water, if~~
67 ~~any, and electricity within ten (10) days after the billing~~
68 ~~therefor unless otherwise stated in the statements account.~~
69 ~~Lessee's failure to pay promptly any such charges shall entitle~~
70 ~~Lessor, upon not less than five (5) days notice, to discontinue~~

1 ~~furnishing the service not paid for, and no such discontinuance~~
2 ~~shall be deemed an eviction or disturbance of Lessee's use of~~
3 ~~premises or render Lessor liable for damages or relieve Lessee from~~
4 ~~performance of Lessee's obligations hereunder. Lessee shall pay for~~
5 ~~all electricity and water used during alterations, repairs, and~~
6 ~~decorating made in the premises during the term, or made at any~~
7 ~~time in consequence of any default by Lessee. Lessor does not~~
8 warrant that any of the services above mentioned will be free from
9 interruptions caused by war, insurrection, civil commotion, riots,
10 acts of God or the enemy or Government action, repairs, renewals,
11 improvements, alterations, picketing, whether legal or illegal,
12 accidents, inability of Lessor to obtain fuel or supplies or any
13 other cause or causes beyond the reasonable control of Lessor. Any
14 such interruption shall not be deemed an eviction or disturbance of
15 Lessee's use and possession of the premises or any part thereof, or
16 render Lessor liable to Lessee for damages, or relieve Lessee from
17 full performance of Lessee's obligations under this Lease.

18
19 (e) Lessor provides NO janitor service in the demised
20 Premises, except for exterior window washing, trash removal and
21 shampoo of carpet on an as needed basis.
22

23 (f) If Lessee desires telegraphic, telephonic, burglar
24 alarm, computer installations or signal service (which service
25 shall be at Lessee's sole expense), Lessor shall, upon request
26 direct where and how all connections and wiring for such service
27 shall be introduced and run. Absent such directions, Lessee shall
28 make no borings, cutting, or installation of wire or cables in or
29 about the Premises or the Property. Lessor will supply a telephone
30 extension through the Hotel's PBX to the Lobby Gift Shop from the
31 Guest Rooms and a listing in the Hotel Directory.
32

33 (g) Lessor hereby disclaims (and Lessee hereby
34 acknowledges such disclaimer) any express or implied obligation to
35 provide security with respect to Lessee's use and occupancy of the
36 Premises.
37

38 5. INSURANCE: Lessee will obtain and keep in force, at its
39 own expense with responsible insurance companies satisfactory to
40 the Lessor, policies of Comprehensive General Liability Insurance,
41 including Products Liability Insurance and Contractual Liability
42 Insurance insuring the contractual liability of Lessee under
43 Paragraphs 6, 7, 14, and 16 and as provided for in the Exhibit "C"
44 (Americans with Disabilities Act) in an amount not less than
45 \$1,000,000.00 combined single limit bodily injury, personal injury
46 and property damage; workers' compensation in an amount not less
47 than the Statutory requirements required by the State and
48 Employer's Liability Insurance in an amount not less than
49 \$100,000.00 covering all employees of Lessee. Workers'
50 Compensation and Employer's Liability will contain a waiver of
51 subrogation against the Lessor, Hilton Hotels Corporation and the
52 Hotel. In the event the business activities of the Lessee as
53 defined in the Usage Clause, pertain to any beautification,
54 treatment, massage or other touching of the body of third persons,
55 Professional Liability not less than \$1,000,000.00 combined single
56 limit shall be obtained and maintained in force throughout the term
57 of this Lease. All policies will name Lessor, the City of San
58 Diego, Hilton San Diego Corporation, Hilton Hotels Corporation and
59 San Diego Hilton Beach and Tennis Resort as additional insureds,
60 hereinafter referred to as "Additional Insureds." All policies of
61 insurance shall be considered primary of any existing, similar
62 insurance carried by Lessor or Hotel. Lessee shall furnish Lessor
63 with Certificates of Insurance carried by Lessee. If requested by
64 Lessor, Lessee shall furnish certified copies of insurance carried.
65 Copies of said Certificates of Insurance or Certified Policies of
66 Insurance shall be delivered to the offices of Lessor by Lessee and
67 shall be kept on file during the term of this Lease. All policies
68 of insurance shall not be canceled or materially changed without
69 thirty (30) days prior written notice to Lessor.
70

1 6. INDEMNIFICATION: In addition to the specific
2 indemnification of Lessee of Lessor set forth in Exhibit "C"
3 hereto, and specifically set forth elsewhere in this Lease, Lessee
4 covenants and agrees that Lessee at all times will indemnify and
5 save, protect, defend and keep harmless the said Lessor, Additional
6 Insureds, and the said leased Premises, of, from and against, any
7 and all liability, cost, damage, expense, reasonable attorneys'
8 fees, and fines whatsoever which may arise or be claimed against
9 the Lessor, Additional Insureds, or the demised Premises by any
10 person or persons for any loss, injury, damage or death to any
11 person or property whatsoever, consequent upon or arising from or
12 out of the business operations, use or occupancy of the said
13 demised Premises by the said Lessee, Lessee's agents, employees or
14 servants or, arising from or in connection with any other act or
15 omission of Lessee. Lessee further covenants and agrees that in
16 the event any suit or proceeding shall be brought against Lessor,
17 Additional Insureds, or the demised Premises as the result of any
18 loss, damage, injury or death as aforesaid, said Lessee will defend
19 such suit or proceeding and will pay any judgments against the
20 Lessor, Additional Insureds, or against the demised Premises,
21 including reasonable attorneys' fees, costs, fines and expenses of
22 the Lessor or Additional Insureds.
23

24 7. LESSEE'S PROPERTY: All property belonging to Lessee,
25 employees, agents, invitees of Lessee, or any occupant of the
26 Premises that is in the Building, or the Premises, shall be there
27 at the risk of Lessee or other person only, and Lessor shall not be
28 liable for damage thereto or theft or misappropriation thereof
29 except if such damage results from the gross negligence or willful
30 misconduct of Lessor, its employees, agents, or invitees; further,
31 Lessee shall indemnify and hold harmless Lessor and the Hotel from
32 any claims, causes of action arising from theft or
33 misappropriation.
34

35 8. LESSOR'S TITLE: Lessor's title is and always shall be
36 paramount to the title of Lessee and nothing herein contained shall
37 empower Lessee to do any act which can, may, or shall cloud or
38 encumber Lessor's title. Lessee's rights are and shall always be
39 subordinate to the lien of any mortgage, deed of trust, or trust
40 deed in the nature of a mortgage (or trust indentures) now and
41 hereafter placed upon the Property and to all advances made or
42 hereafter to be made upon the security thereof, and Lessee shall
43 execute such further instrument or instruments subordinating this
44 Lease to the lien or liens of any mortgage deed of trust, or trust
45 deed in the nature of a mortgage (or trust indentures) or to any
46 such underlying lease or leases as shall be requested by Lessor.
47 Lessee hereby appoints the Lessor as attorney-in-fact for the Lease
48 with full power and authority to execute and deliver in the name of
49 Lessee any such instrument or instruments. Lessor's demise, if
50 any, of sidewalk space, or of any space outside the lines of the
51 lot or lots whereon the Building stands, conveys only Lessor's
52 rights thereto. If, at any time during the term, any municipality
53 or public authority shall either (a) take possession of all or any
54 part of such space, then this Lease shall continue without
55 abatement or diminution of Rental (b) require compensation for such
56 space, then Lessee will pay to Lessor amount or amounts equal
57 thereto.
58

59 9. DEFAULT: If (i) Lessee abandons or vacates the Premises
60 hereunder, or (ii) Lessee shall fail to pay any installment of Base
61 Rental or any Rental hereunder within three (3) days after written
62 notice from Lessor that the same is due and payable, or (iii)
63 Lessee shall fail to comply with any of the other terms, covenants,
64 conditions or obligations of this Lease and such failure shall
65 continue for a period of twenty (20) days after written notice from
66 Lessor, or (iv) any portion of Lessee's property, tangible or
67 intangible, located at the Premises, is attached, executed or
68 levied upon, or seized pursuant to judicial action where such
69 attachment, execution, levy or seizure is not discharged within
70 twenty (20) days; then, in any such event Lessee shall be in

1 default hereunder.

2
3 Notwithstanding anything to the contrary set forth in this
4 Paragraph 9 of the Lease, if Lessee shall be in default of any of
5 the provisions pertaining to Lessee's payment of Rental Obligations
6 or violations of Lessee's permitted uses on more than three (3)
7 occasions during the Lease Term; then, notwithstanding that such
8 defaults shall have been cured within the appropriate time period
9 set forth therein, any further default relating in any way to such
10 provision of the Lease shall be deemed to be a Repeated Default.

11
12 By way of example, in the event Lessee defaults any of the
13 provisions pertaining to paying Rental Obligations, and the
14 defaults occur on more than Three (3) occasions (even though cured
15 within the time period applicable to the respective provision) such
16 default more than the third occasion is a Repeated Default.

17
18 In the event of any such default by Lessee, Lessor may at any time
19 thereafter, without further notice or demand and without limiting
20 Lessor in the exercise of any other right or remedy which Lessor
21 may have by reason of such default:

22
23 (A) Terminate this Lease and Lessee's right of
24 possession in which event Lessee shall immediately surrender
25 possession of the Premises and Lessor shall have the right to re-
26 enter and take possession of said Premises with or without process
27 of law and to expel or remove Lessee therefrom and to remove all
28 property therefrom, using such force as may be necessary, without
29 being deemed guilty of trespass, or forcible entry or detainer, and
30 Lessor shall have the right to store said property in a public
31 warehouse or elsewhere at Lessee's expense without liability on the
32 part of the Lessor. In the event this Lease is terminated,
33 pursuant to the provision in this paragraph, Lessor may recover
34 from Lessee the following damages:

35
36 (i) The worth at the time of the award of the
37 unpaid rent earned to the time of termination hereunder;

38
39 (ii) The worth at the time of award of the amount
40 by which the unpaid rent which would have been earned after
41 termination until the time of award exceeds the amount of such
42 rental loss that the Lessee proves could be reasonably avoided;

43
44 (iii) The worth at the time of award of the amount
45 by which the unpaid rent for the balance of the term after the time
46 of award exceeds the amount of such rental loss for the same period
47 that the Lessee proves could be reasonably avoided; and

48
49 (iv) The cost of recovering possession of the
50 premises, necessary repairs, alterations and renovations thereto,
51 and the cost of reletting, if any, and such other amounts as are
52 allowed under California Civil Code, Section 1951.2 (a) (4), or its
53 successor.

54
55 The "worth at the time of award" of the amounts referred to in
56 subparagraphs (i) and (ii) of this paragraph 9(A) shall be computed
57 by allowing interest at the rate of ten percent (10%) per annum.
58 The "worth at the time of award" of the amount referred to in
59 subparagraph (iii) of this paragraph 9(A) shall be computed by
60 discounting such amount at the discount rate at the time of award
61 of the Federal Reserve Bank of San Francisco plus one percent (1%).
62 "Time of the award," as used herein, shall mean the time of entry
63 of the judgement or similar point of determination if the matter is
64 determined by other than a court. As used herein, it is agreed
65 that rent shall include charges under the Lease which are
66 equivalent to rent and charges under the Lease which are additional
67 rent.

68
69 (B) Permit the Lease to remain in effect, where Lessee
70 is in default and has abandoned the premises, as long as Lessee's

1 right of possession hereunder is not terminated by Lessor, and
2 Lessor in such event shall have the right to enforce all rights and
3 remedies hereunder, including, without limitation, the right to
4 recover rent as it becomes due. Neither acts by Lessor to maintain
5 and/or preserve the premises nor efforts by Lessor to relet the
6 premises, nor appointment of a receiver upon initiative of the
7 Lessor to protect Lessor's interest under the Lease shall
8 constitute a termination of Lessee's right to possession hereunder.
9

10 In addition, the prevailing party in any claim for breach of
11 contract or unlawful detainer arising out of a breach of any of the
12 provisions of this lease (or any amendment related thereto) shall
13 be entitled to recover all costs and attorneys' fees reasonably
14 incurred in connection with enforcing any judgment entered by the
15 court in connection with said claims.
16

17 10. UNTENANTABILITY: If the demised Premises shall be
18 partially damaged by fire or other casualty, the damages (except
19 damage, if any, to the betterments and improvements installed by
20 Lessee and the trade fixtures in the demised Premises) shall be
21 repaired by and at the expense of Lessor and the Rental until such
22 repairs shall be made shall be apportioned according to the part of
23 the demised Premises which is usable by Lessee. It is understood
24 and agreed that in the event the demised Premises or any portion
25 thereof shall be damaged by fire or other casualty caused by the
26 negligent act or omission of Lessee, Lessee's servants, employees,
27 agents, visitors or licensees, rental shall not abate and repair,
28 rehabilitation of the demised Premises for that portion thereof
29 damaged shall be at the expense of the Lessee.
30

31 If the demised Premises are totally damaged or are rendered
32 untenable, or if the Building shall be substantially damaged by
33 fire or other casualty, then Lessor may, no later than ninety (90)
34 days following the damage, give Lessee a notice in writing electing
35 either (i) to terminate this Lease; or (ii) to repair and restore
36 the demised Premises (except damage, if any, to the betterment and
37 improvements installed by Lessee and the trade fixtures in the
38 demised Premises) including at Lessor's option, demolishing and
39 rebuilding the same, and to continue this Lease in full force and
40 effect. If Lessor elects to terminate this Lease, the term of this
41 Lease shall terminate on the tenth (10th) day after such notice is
42 given, and Lessee shall vacate the demised Premises and surrender
43 the same to Lessor. If Lessee shall not be in default under this
44 Lease, then upon the termination of this Lease under the conditions
45 provided for in the preceding sentence, Lessee's liability for
46 Rental shall cease as of the day following such damage. If Lessor
47 elects to repair and restore the demised Premises or the Building
48 and to continue this Lease in effect, this Lease shall not
49 terminate and the demised Premises or the Building shall be
50 repaired and restored by and at the expense of Lessor and the
51 Rental until such repairs or restoration shall be made shall be
52 apportioned according to the part of the Premises which is usable
53 by Lessee.
54

55 No penalty shall accrue for reasonable delay which may arise by
56 reason of adjustment of fire insurance on the part of Lessor and/or
57 Lessee and for reasonable delay on account of "labor troubles" or
58 any other cause beyond Lessor's control.
59

60 The parties agree that this paragraph 10 constitutes an express
61 agreement governing any case of damage or destruction of the
62 demised Premises or the Building by fire or other casualty and any
63 statute which provides for such contingency in the absence of an
64 express agreement now or hereafter in force shall have no
65 application in any such case.
66

67 11. GUEST ACCOUNTS: The Lessee, with the approval of the
68 Lessor, may charge purchases not to exceed \$100.00 per guest per
69 visit made by any guest of the Hotel to their "room charges". Such
70 charges will be billed to guests and collected by Hotel for the

1 account of Lessee. Charges will be billed to guests on a
2 miscellaneous charge voucher upon receipt of an itemized statement
3 from the Lessee. The total monthly charges minus any credit card
4 fees as described below will be paid to the Lessee by the tenth day
5 of each month for the preceding month. The Hotel does not
6 guarantee collection of any uncollected charges above \$100.00 per
7 guest per visit and any such charges may be billed back to the
8 Lessee or collection cost deducted above the \$100.00 limit.
9

10 Should the Lessor collect charges in excess of the \$100.00 limit by
11 means of a collection agency or legal action; or, in any case where
12 a fee is imposed by a credit card agency such as, but not limited
13 to, Carte Blanche, American Express, or Diners Club, the Lessor
14 shall be required to pay or credit to the Lessee only the net
15 amount thus collected after deduction of any costs of collection.
16 Should the Lessor pay over to or credit to the Lessee any amounts
17 billed to Hotel guests prior to actual collection and which shall
18 be found to be uncollectible, in whole or in part, or subject to
19 collection fee or expense, then the Hotel shall have the right to
20 backcharge such items against the Lessee to the extent that they
21 prove to be uncollectible or subject to collection fee or expense.
22

23 12. RIGHT TO TERMINATE: (A) The Lessor shall have the right
24 to terminate this Lease at any time upon ninety (90) days notice,
25 given as provided in Paragraph 30 hereof, (i) in the event that
26 Lessor proposes, or is required for any reason (other than
27 condemnation or casualty), to renovate or demolish the Building or
28 a substantial portion thereof which includes all or a portion of
29 the demised Premises, or (ii) in the event of the sale of the
30 Building or (iii) the sale, assignment or other transfer of
31 Lessor's interest in any ground lease covering the Building or (iv)
32 Lessor's granting a ground lease covering the Building or (v)
33 Lessor's abandonment of the Building or (vi) a change in the use of
34 the Building either from Hotel purposes entirely or partially to
35 another use following which fifty percent (50%) or less of the
36 Hotel rooms are to be continued as Hotel rooms or (vii) in the
37 event of a transfer of control of Lessor. For the purpose of sub-
38 paragraph (vii), "control" shall mean the possession, directly or
39 indirectly, of the power to direct or cause the direction of the
40 management and policies of Lessor, whether through ownership of
41 voting securities or by contract otherwise.
42

43 If Lessor terminates under this provision within the first Thirty
44 Six months, Lessor shall reimburse Lessee the amount of the full
45 cost of remodeling and fixturation for which Lessee received
46 prior written approval from Lessor, bills to be provided to Lessor
47 minus \$13,400.00 (rent waiver amount) and any amounts paid to the
48 City of San Diego owed by Lessor during Lessee's rent waiver.
49 There shall be no amortization on this amount. If Lessor
50 terminates under this provision after the Thirty Sixth month,
51 Lessor shall reimburse Lessee the full costs as established above
52 (minus \$13,400 and any other amounts paid to the City of San Diego)
53 minus amortization on a straight line basis dating from the
54 commencement of the Lease on April 15, 1995, with full amortization
55 being achieved April 14, 2000. During the Option period (if
56 exercised by Lessee) no unamortization amount for remodelling or
57 fixturation is owed by Lessor to Lessee.
58

59 (B) Lessee shall have the right to terminate this Lease
60 only if the circumstances defined above in subparagraph (ii) occur.
61 In such event Lessee shall have forty five (45) days to serve its
62 written Ninety (90) day notice of termination. Lessee's failure to
63 serve notice within 45 days shall nullify this right. Lessee shall
64 not be entitled to recover the cost of remodeling or fixturation
65 or any other amounts from Lessor.
66

67 13. SUBLETTING OR ASSIGNMENT OR TRANSFER OF CONTROL: It is
68 expressly understood and agreed that the Lessee shall not allow or
69 permit any transfer of this Lease or any interest under it or
70 assign or convey this Lease or any interest under it, or sublet the

1 premises or any part thereof, or permit the use or occupancy of the
2 premises or any part thereof by any one other than Lessee (agents
3 and servants of Lessee excepted) without prior written consent of
4 the Lessor. Lessor's decision to grant or deny any approval shall,
5 in its sole discretion, be absolutely binding and Lessor shall not
6 be held to any standard of reasonableness or other such standard
7 in making such decision. If Lessee is a corporation and if, during
8 the term of this Lease, the ownership of the shares of stock which
9 constitute control of Lessee changes by reason of sale, gift or
10 death, Lessor may at any time thereafter terminate this Lease by
11 giving Lessee written notice of such termination at least sixty
12 (60) days prior to the date of termination stated in the Notice.
13 The receipt of rent after such change of control shall not affect
14 Lessor's rights under the preceding sentence.

15
16 In connection with any such transfer to which Lessor may consent,
17 Lessee agrees to furnish Lessor with copies of all documents, and
18 subsequent amendments thereto, executed in connection with such
19 transfer. Any consent of Lessor to a subletting, assignment or
20 transfer of control shall be deemed to be a consent to the initial
21 subletting, assignment or transfer of control and shall not be
22 deemed to be a consent to any further subletting, assignment or
23 transfer of control.

24
25 Consent by Lessor to any assignment or subletting shall not include
26 consent to the assignment or transferring of any lease renewal or
27 option rights or space expansion rights of the leased premises,
28 special privileges or extra services granted to Lessee by this
29 Lease or addendum thereto or letter to agreement (and such options,
30 rights, privileges or services shall terminate upon such
31 assignment), unless Lessor specifically grants in writing such
32 options, rights, privileges or services to assignee or subtenant.

33
34 Further, notwithstanding any permitted subletting or assignment,
35 the Lessee hereunder shall at all times remain fully responsible
36 and liable for the payment of the Rental hereunder and for
37 compliance with all of Lessee's obligations under the terms,
38 provisions and covenants of this Lease.

39
40 14. COVENANT AGAINST LIENS: Lessee covenants and agrees not
41 to suffer or permit any lien of mechanics or materialmen to be
42 placed against the Building or any part thereof, and in case of any
43 such lien attaching, to immediately pay off and remove same.
44 Lessee has no authority or power to cause or permit any lien or
45 encumbrance of any kind whatsoever, whether created by act of
46 Lessee, operation of law or otherwise, to attach to or be placed
47 upon the Building or any part thereof, and any and all liens and
48 encumbrances created by Lessee shall attach only to Lessee's
49 interest in the Premises.

50
51 15. CONDITION OF THE PREMISES: Lessee has examined the
52 Premises before signing this Lease and is satisfied with the
53 condition thereof, and accepts "as is" the condition of the
54 Premises, excepting only such alterations, improvements, repairs,
55 decorating and cleaning, if any, which are specifically provided
56 for in the Rider attached hereto and made a part hereof, unless no
57 such rider is a part of this Lease in which case the word "none"
58 shall be inserted in the following blank: See attached Rider.

59
60 Lessee's taking possession shall be conclusive evidence as against
61 Lessee that the Premises were in good order and satisfactory
62 condition when Lessee took possession hereunder. No promise of
63 Lessor to alter, remodel, improve, repair, decorate or clean the
64 premises or any part thereof, and no representation respecting the
65 condition of the Premises or the Building, has been made by Lessor
66 to Lessee, unless the same is contained in the Rider. At the
67 termination of this Lease by lapse of time or otherwise, Lessee
68 shall return the Premises and all equipment and fixtures therein in
69 as good condition as when Lessee took possession, ordinary wear and
70 tear and damage by fire or other casualty not caused by the acts or

RIDER to Sublease dated March 15, 1995, by and between Hilton San Diego Corporation, Hilton Hotels Corporation, Agent, and Hazelwood Enterprises, Inc., an Arizona corporation.

45. LESSEE OBLIGATIONS: Lessee shall complete construction work in accordance with design, plans and specifications which must be previously approved by Lessor for the Lobby Gift Shop and Pool Kiosk. The amount of work shall not be less than Thirty Five Thousand and No/100th Dollars (\$35,000.00). Any changes, additions or alterations thereto shall be subject to Lessor's prior written approval. It is further understood and agreed that the construction work will include but not be limited to refurbishing, remodeling, refixturing, recarpeting of the store, and air conditioning and sprinkler distribution if necessary.

It is further agreed that the work described herein under "Lessee Obligations" is a material consideration of this Lease and will be commenced on or before April 1, 1995. It is anticipated that the completed new store will open for business on or before May 1, 1995. Failure to complete said work will render this Lease null and void, and Lessee will quit and vacate the demised Premises May 1, 1995, unless said failure is due to circumstances beyond Lessee's control.

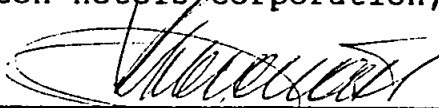
46. LESSOR OBLIGATIONS: In consideration of this Lease and the demised Premises, as soon as practicable after the execution and delivery hereof, Lessor at its sole cost and expense, shall "stub" heating and air conditioning ducting to the Premises. Repair and maintenance of the above and any further additions and/or alterations shall be at Lessee's sole cost and expense with Lessor approval as per Article 16 of this Lease.

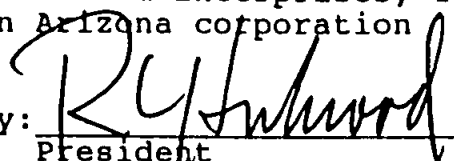
47. RIGHT OF FIRST REFUSAL: Provided Lessee has not breached the Lease, in the event Lessor receives an offer to lease any additional retail outlet (the "Outlet") in the Hotel during the term of this Lease, Lessor shall give written notice ("Offer Notice") to Lessee of any such offer, and shall include all the terms and conditions of such offer. Lessee shall have 15 days from the date the Offer Notice is delivered to accept the terms and conditions stated therein. Upon acceptance of such terms and conditions, Lessee shall have 15 days, from the date the agreement is delivered, to execute such agreement containing all terms and conditions set forth in the Offer Notice. Should Lessee fail to: 1) respond to the Offer Notice within the stated time period; or, 2) execute and deliver such agreement to Lessor within the stated time period, Lessor may then accept the offer to lease the Outlet to any other entity, provided that the terms and conditions shall be no more favorable than those offered to Lessee. If the Outlet is not leased to any other entity upon the same terms and conditions as contained in the Offer Notice, thereafter, such Outlet shall not be leased to any other entity without first offering it to Lessee in accordance with the terms and conditions of this paragraph.

48. OPPORTUNITY TO BID: Whenever possible, Lessee will be given the opportunity to bid for wholesale sales to the Hotel of T-shirts and related logo items to be used at the Hotel as promotional items. The Hotel is under no obligation to accept any of Lessee's bid(s).

Hilton San Diego Corporation,
Hilton Hotels Corporation, Agent

Hazelwood Enterprises, Inc.,
an Arizona corporation

By: 
Sr Vice President (Lessor)

By: 
President

ATTEST:

By: 
Assistant Secretary

By: _____
Secretary

1 EXHIBIT "B", to Sublease dated March 15, 1995, by and between
2 Hilton San Diego Corporation, Hilton Hotels Corporation, Agent, and
3 Hazelwood Enterprises, Inc., an Arizona corporation.
4
5

6 RULES AND REGULATIONS
7
8
9

10 1. The sidewalks, entrances, passages, courts,
11 elevators, vestibules, stairways, corridors or halls shall not be
12 obstructed or encumbered by any Tenant or used for any purpose
13 other than ingress and egress to and from the premises. If the
14 premises are situated on the ground floor of the Building the
15 Tenant thereof shall, at said Tenant's own expense, keep the
16 sidewalks and curb directly in front of the premises clean and free
17 from ice, snow, etc.
18

19 2. The sashes, sash doors, skylights, windows and doors
20 that reflect or admit light into the halls, passageways or other
21 public places in the Building shall not be covered or obstructed by
22 any Tenant nor shall any bottles, parcels, or other articles be
23 placed on the window sills.
24

25 3. No showcases or other articles shall be put in front
26 of or affixed to any part of the exterior of the Building, or
27 placed in the halls, corridors or vestibules without the prior
28 written consent of the Lessor.
29

30 4. The water and wash closets and other plumbing
31 fixtures shall not be used for any purposes other than those for
32 which they were constructed, and no sweepings, rubbish, rags, or
33 other substances shall be thrown therein. All damages resulting
34 from any misuse of the fixtures shall be borne by the Lessee who,
35 or whose servants, employees, agents, visitors or licensees, shall
36 have caused the same.
37

38 5. No Lessee shall mark, drill, or in any way deface
39 any part of the premises or the building of which they form a part.
40 No boring, cutting or stringing of wires shall be permitted, except
41 with the prior written consent of Lessor, and as Lessor may direct.
42 No Lessee shall lay linoleum, asphalt or rubber tile or other
43 similar floor covering, except in such manner and using such
44 adhesives as Lessor may first approve in writing.
45

46 6. No bicycles, vehicles or animals of any kind shall
47 be brought into or kept in or about the premises.
48

49 7. No cooking shall be done or permitted by any Lessee
50 on said premises. No Lessee shall cause or permit any unusual or
51 objectionable odors to be produced or permeate from the demised
52 premises. MICROWAVE OVEN USAGE IS ACCEPTABLE.
53

54 8. No space in the Building shall be used for
55 manufacturing or for the sale of merchandise, goods or property of
56 any kind at auction.
57

58 9. No Lessee shall make, or permit to be made, any
59 unseemly or disturbing noises or otherwise disturb or interfere
60 with occupants of this or neighboring buildings or premises or
61 those having business with them, whether by the use of any musical
62 instrument, radio, talking machine, unmusical noise, whistling,
63 singing, or in any other way. No Lessee shall throw anything out
64 of the doors, windows, or skylights, or down the passageways.
65
66
67
68
69
70

1 10. No additional locks or bolts of any kind shall be
2 placed upon any of the doors or windows by any Lessee, nor shall
3 any changes be made in existing locks or the mechanism thereof.
4 Each Lessee must, upon the termination of his tenancy, return to
5 the Lessor all keys of stores, offices and toilet rooms, either
6 furnished to, or otherwise procured by such Lessee and in the event
7 of the loss of any keys, so furnished, such Lessee shall pay to the
8 Lessor the cost thereof.
9

10 11. All removals, or the carrying in or out of any
11 safes, freight, furniture or bulky matter of any description must
12 take place during the hours which Lessor or its agents may
13 determine from time to time. Lessor reserves the right to inspect
14 all freight to be brought into the Building and to exclude from the
15 Building all freight which violates any of these Rules and
16 Regulations or the Lease of which they are a part.
17

18 12. No Lessee shall occupy or permit any portion of the
19 Premises demised to him to be occupied as an office for the
20 possession, storage, manufacture, or sale of narcotics or dope, or
21 as an employment bureau. No Lessee shall engage or pay any
22 employees on the demised Premises, except those actually working
23 for such Lessee on said Premises, or advertise for laborers, giving
24 an address at said Premises.
25

26 13. No Lessee shall purchase spring water, ice, towels
27 or other like service, from any company or persons not approved by
28 the Lessor, but such approval shall not be withheld unreasonably.
29

30 14. Lessor shall have the right to prohibit any
31 advertising by Lessee which, in Lessor's opinion, tends to impair
32 the reputation of the Building or its desirability as a hotel
33 building, and upon written notice from Lessor, Lessee shall
34 immediately refrain from and discontinue such advertising.
35

36 15. The Premises shall not be used for any immoral or
37 illegal purpose.
38

39 16. The requirements of Lessees will be attended to only
40 upon application at the Office of the Building. Employees shall
41 not perform any work or do anything outside of their regular
42 duties, unless under special instructions from the office of the
43 Lessor. If Lessor shall make its employees available for any
44 Lessee's assistance, Lessor shall be paid for their services at
45 reasonable hourly rates.
46

47 17. Canvassing, soliciting and peddling in the Building
48 is prohibited and each Lessee shall cooperate to prevent the same.
49

50 18. There shall not be used in any space, or in the
51 public halls of the Building, either by any Lessee or by jobbers or
52 others in the delivery or receipt of merchandise or the removal of
53 waste, any hand trucks, except those equipped with rubber tires and
54 side guards.
55

56 19. Lessee shall not take or permit to be taken any
57 supplies, merchandise, fixtures, equipment or appliances in or out
58 of the Premises or the Building except through proper service doors
59 designated by Lessor. Lessee shall comply with any and all
60 instructions of Lessor with respect to parking, loading or
61 unloading in or about the Building.
62

63 20. Lessee shall not place or permit any radio or
64 television antennae, loud speakers, sound amplifiers, flashing
65 lights, spotlights, or other similar devices on the roof or outside
66 of the Building.
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1 21. Upon termination of this Lease or of Lessee's
2 possession, Lessee shall surrender all Keys and combinations used
3 by Lessee in connection with the Premises to Landlord at the place
4 then fixed for the payment of rent and shall make known to Landlord
5 the explanation of all locks, combination or otherwise, on safes,
6 cabinets, doors, and vaults in the Premises.
7

8 22. Awnings, shades, venetian blinds or window or door
9 coverings of any kind, whether inside or outside shall be installed
10 only upon written approval of Landlord and in such event Lessee may
11 furnish and maintain the same in good and attractive condition at
12 Lessee's expense and risk, and the same shall be of such shape,
13 color, design and material, quality and make as shall first be
14 approved by Landlord in writing.
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16 23. Lessee shall not overload any floor.
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1 EXHIBIT "C" to Sublease dated March 15, 1995, by and between Hilton
2 San Diego Corporation, Hilton Hotels Corporation, Agent, and
3 Hazelwood Enterprises, Inc., an Arizona corporation.
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5

6 AMERICANS WITH DISABILITIES ACT
7

8 The Americans with Disability Act of 1990 (42 U.S.C. SS 12101
9 et seq.) (the "ADA"), effective January 26, 1992, is a
10 comprehensive Federal civil rights law which, among other things,
11 prohibits discrimination against disabled persons with respect to
12 the use of certain "public accommodations" as defined under that
13 Act. That law provides in part that:
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15 "no individual shall be discriminated against on the basis of
16 disability in the full and equal enjoyment of the goods, services,
17 facilities, privileges, advantages, or accommodations of any place
18 of public accommodation by any person who owns, leases (or leases
19 to), or operates a place of public accommodation."
20

21 It is the policy of Hilton Hotels Corporation to comply with its
22 obligations as a public accommodation under the ADA and to require
23 its tenants to do the same with respect to Leased Premises.
24

25 The ADA permits the parties to a lease to allocate
26 responsibility for compliance with the ADA as between themselves.
27 Accordingly, to the extent that the Hotel or the Leased Premises
28 are "public accommodations" as defined in the ADA, the parties
29 agree that the responsibility shall be allocated as between
30 themselves as follows:
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32 1. Lessor agrees that it shall be responsible for complying
33 with the ADA in all respects, as it affects the common areas of the
34 Building, including making required "readily achievable" changes to
35 remove any architectural or communications barriers and modifying
36 policies applicable to all tenants as may be necessary.
37

38 Lessor agrees that it will defend, indemnify and hold harmless
39 Tenant from and against any and all liability, claims, damages and
40 expenses, (including reasonable attorneys' fees and costs) which
41 may arise out of any legitimate claim by any person for failure of
42 Lessor to comply with its obligation under this subparagraph 1.
43

44 2. Lessee agrees that it shall familiarize itself with the
45 requirements of the ADA and that it shall be responsible for
46 complying with the ADA in all respects, as it affects the Leased
47 Premises, including but not limited to, making required "readily
48 achievable" changes to remove any architectural or communications
49 barriers, and providing auxiliary aides and services within the
50 Leased Premises.
51

52 3. Lessee further agrees that any and all alterations made to
53 the Leased Premises during the term of this Lease will comply with
54 the requirements of the ADA. All plans for alterations which must
55 be submitted to the Lessor under the provision of paragraph 16 of
56 this Lease must include a statement from a licensed Architect or
57 Engineer certifying that they have reviewed the plans, and that the
58 plans comply with all applicable provisions of the ADA. Any
59 subsequent approval or consent to the plans by the Lessor shall not
60 be deemed to be a representation of the Lessor's part that the
61 plans comply with the ADA which obligation shall remain with the
62 Lessee.
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64 Lessee agrees that it will defend, indemnify and hold harmless the
65 City of San Diego, Hilton San Diego Corporation, Hilton Hotels
66 Corporation and San Diego Hilton Beach and Tennis Resort from and
67 against any and all liability, claims, damages and expenses
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1 (including reasonable attorneys' fees and costs) which may arise
2 out of any legitimate claim by any person for failure of Lessee to
3 comply with its obligation under this subparagraph 3.

4
5 Nothing contained herein is intended to create any rights in any
6 third parties.

7
8
9 LESSOR'S INITIAL

10
11 LESSEE'S INITIAL

1 PERCENTAGE RENTAL RIDER to Sublease dated March 15, 1995, by and
2 between Hilton San Diego Corporation, Hilton Hotels Corporation,
3 Agent, and Hazelwood Enterprises, Inc., an Arizona corporation.
4

5 (a) Percentage Rent: In addition to the fixed minimum rent
6 payable pursuant to the terms of the Lease to which this rider is
7 attached, Lessee agrees to pay to Lessor, in the manner and upon
8 the conditions and at the times hereinafter set forth during each
9 calendar month, and as percentage rent hereunder, a sum equivalent
10 to the amount, if any, by which Sixteen percent (16%) of the Gross
11 Sales, as hereinafter defined, exceeds the amount of base monthly
12 rent Lessee actually paid to Lessor during such calendar month.
13 Acceptance of percentage rent by Lessor shall not constitute a
14 waiver of Lessor's right to additional percentage rent justified by
15 an inspection and/or audit undertaken by Lessor. Said percentage
16 rent shall be payable as hereinafter provided at the office of
17 Lessor or at such other place as Lessor may designate without any
18 prior demand therefore and without any set-off or deduction
19 whatsoever.
20

21 (b) Gross Sales: The term "Gross Sales" includes the total
22 of all sales of merchandise, all charges for services for which
23 charge is made, and the gross receipts from all business
24 transacted, in, upon and from the premises and consignment sales of
25 Lessee's merchandise from any other outlet at the Hotel including
26 but not limited to Banana Cabana and the Diving Shop during the
27 term by Lessee and all others occupying the premises or any part
28 thereof.
29

30 The term "Gross Sales" excludes bona-fide refunds and credits
31 for SERVICES NOT PERFORMED, Hotel employee sales where any discount
32 of 15% or greater is given, newspaper sales, if any, and any
33 Federal, state, or local tax which is collected by the Lessee from
34 its customers for any governing authority provided that said taxes
35 are charged and stated separately and not included in the purchase
36 price.
37

38 The Percentage Rental Provisions apply to all Gross Sales made
39 for cash or upon credit, or partly for cash and partly upon credit,
40 regardless of collections of charges for which credit is given, and
41 to all sales, charges for services and business transacted for
42 which orders are taken in or upon the Premises during the term
43 regardless of whether the services are rendered and the business is
44 transacted in, from or upon the Premises. Each sale, charge or
45 business transaction upon installments, or a contract therefore,
46 shall be treated as a gross sale for the full price of charge in
47 the month during which such sale, charge or contract shall be made.
48

49 (c) Records: Lessee shall keep and preserve full, complete
50 and true records of all Gross Sales, including all cash register
51 tapes, in manner and form satisfactory to Lessor for at least two
52 years following the close of each year. Lessee shall permit Lessor
53 or Lessor's representative to examine or audit the records at any
54 and all reasonable times, and shall, upon Lessor's request, explain
55 the methods of keeping the records.
56

57 (d) Monthly Statements: Lessee shall submit to Lessor on or
58 before the tenth (10th) day of each and every calendar month, at
59 the place then fixed for the payment of Rental a sworn statement of
60 Gross Sales during the preceding calendar month. With each such
61 Monthly Statement, Lessee shall pay to Lessor the Percentage Rental
62 due according to such Monthly Statement. The statement shall be
63 sworn to by Lessee, if an individual; by a partner of Lessee, if a
64 partnership, and by an officer of Lessee, if a corporation.
65

66 (e) Annual Statements: For the purposes hereof, Lease Year
67 shall mean the twelve calendar month period beginning with the
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1 first day of the first full calendar month for which fixed rent is
2 payable pursuant to Paragraph one of the Lease. On or before the
3 twentieth (20th) day following the end of each Lease Year,
4 including the lease year ending upon the expiration of termination
5 of the term of this Lease, Lessee shall deliver to Lessor at the
6 place last fixed for the payment of Rent an Annual Statement
7 certified by an accountant licensed under the laws of this State,
8 showing Gross Sales during the year of the term ended on the last
9 day of the last previous month. The accountant's certificate to
10 the statement shall certify that he made a complete examination of
11 the books, Federal income tax return or returns and cash register
12 tapes of Lessee; that he compared the Gross Sales shown in the
13 statement with the Gross Sales shown in such tax returns and both
14 statements of Gross Sales are consistent and that the statement is
15 prepared in accordance with accepted accounting principles. If any
16 provision of this Lease, or the enforcement thereof by Lessor,
17 requires an accounting for Gross Sales and payment of Percentage
18 Rental for a period less than one Lease Year hereafter referred to
19 as a "short period") or if Lessor and Lessee desire to adjust the
20 accounting period to Lessee's fiscal year which is different from
21 the Lease Year and a short period thereby results at the beginning
22 or end of the term of the Lease, such short period shall be dealt
23 with as follows: If such short period is less than six months in
24 length, it shall be added to the previous year, or if no previous
25 year, to the next succeeding year, and the total period shall be
26 considered as a single period in calculating percentage rental. If
27 such short period is six months or more in length, it shall be
28 considered a separate year. The Annual Statement required by this
29 section shall be filed on the fifteenth (15th) day of the next
30 month following the expiration of such total or short period as the
31 case may be. With each such Annual Statement or statement for a
32 short period Lessee shall pay to Lessor any and all sums due
33 hereunder and then remaining unpaid for the entire period covered
34 by such statement.

35
36 (f) Contesting Lessee's Statements: If Lessor is not
37 satisfied with any Monthly, Annual or other Statement, Lessor shall
38 serve notice upon Lessee of Lessor's dissatisfaction within one
39 hundred eighty (180) days after Lessor's receipt of the Statement
40 complained of, and it shall not be necessary for Lessor to specify
41 therein the grounds for Lessor's dissatisfaction. Unless within
42 ten (10) days after service of Lessor's notice of dissatisfaction
43 Lessee satisfies Lessor with respect to such statement, Lessor
44 shall have the right to make an audit of all books and records of
45 Lessee, including Lessee's bank accounts, which in any way pertain
46 to or show Gross Sales. Such audit shall be made by an accountant
47 to be selected by Lessor, and all expenses of the audit shall be
48 paid by Lessee if the report of the account shows the statement
49 complained of to have contained error prejudicial to Lessor's
50 receipt of Rent in an amount equal to or greater than two percent
51 (2%) of the amount of Rent reported by the Lessee's statement for
52 the period of the audit; otherwise to be paid by Lessor. The final
53 audit of the accountant made pursuant to this Section (f) shall be
54 conclusive upon the parties, and Lessee shall pay to Lessor within
55 five (5) days after a copy of the public accountant's final report
56 has been delivered to Lessee the amount, if any, shown thereby to
57 be due to Lessor. If Lessor makes any such audit, all Statements
58 made by Lessee after the Statement complained of and until ten (10)
59 days after Lessor receives the final report of the public
60 accountant shall be subject to Lessor's notice of dissatisfaction.
61 "Accountant" as used in this section means an accountant licensed
62 under the laws of any state.

63
64 (g) Failure to Deliver Statements: If Lessee omits to
65 prepare and deliver promptly and Monthly, Annual or other Statement
66 required by the Percentage Rental Provisions, Lessor may elect to
67 treat Lessee's omission as a substantive breach of this Lease
68 entitling Lessor to terminate this Lease and Lessee's right to
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1 possession of the Premises, or to make an audit of all books and
2 records of Lessee, including Lessee's bank accounts, which in any
3 way pertain to or show Gross Sales, and to prepare the Statement or
4 Statements which Lessee failed to prepare and deliver. Such audit
5 shall be made and such Statement or Statements shall be prepared by
6 a public accountant to be selected by Lessor. The Statement or
7 Statements, so prepared, shall be conclusive on Lessee, and Lessee
8 shall pay all expenses of the audit and other services.
9

10 (h) Limitation: By this Lease, Lessor does not acquire any
11 right, title or interest in or to any property of Lessee except
12 such rights as are specifically stated in the Lease. Lessor is not
13 and never shall be liable to any creditor of Lessee or to any
14 claimant against the estate or property of Lessee for any debt,
15 loss, contract or other obligation of Lessee. The relationship
16 between Lessor and Lessee is solely that of Landlord and tenant,
17 and is not and never shall be deemed a partnership or joint
18 venture.
19

20 (i) Restriction: During the term of this Lease, Lessee shall
21 not, without Lessor's advance written consent, engage or
22 participate, directly or indirectly, as owner, principal, employee
23 or agent, or furnish financial or other aid or support to, any
24 business enterprise or undertaking which is in any manner or degree
25 competitive with the stated use of the demised Premises for which
26 this Lease is made and which business enterprise or undertaking is
27 situated within a radius of two city blocks (not less than 600
28 feet) in all directions from the Building in which the demised
29 Premises are located.
30

31 (j) Damages for Lessee Default: The provisions of Article 9
32 herein notwithstanding, it is understood and agreed that in
33 computing damages for rental due under this Lease, the value of
34 percentage rental for any period subsequent to the termination of
35 this Lease, or the termination of Lessee's right to possession,
36 shall be an amount per a year equal to one-third (1/3) of the total
37 percentage rent paid by Lessee for the last three (3) full lease
38 years immediately preceding such termination, and if less than
39 three (3) full years shall have elapsed, such value shall be an
40 amount per year equal to the average yearly percentage theretofore
41 paid.
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1 EXHIBIT "B", to Sublease dated March 15, 1995, by and between
2 Hilton San Diego Corporation, Hilton Hotels Corporation, Agent, and
3 Hazelwood Enterprises, Inc., an Arizona corporation.
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6 RULES AND REGULATIONS
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10 1. The sidewalks, entrances, passages, courts,
11 elevators, vestibules, stairways, corridors or halls shall not be
12 obstructed or encumbered by any Tenant or used for any purpose
13 other than ingress and egress to and from the premises. If the
14 premises are situated on the ground floor of the Building the
15 Tenant thereof shall, at said Tenant's own expense, keep the
16 sidewalks and curb directly in front of the premises clean and free
17 from ice, snow, etc.
18

19 2. The sashes, sash doors, skylights, windows and doors
20 that reflect or admit light into the halls, passageways or other
21 public places in the Building shall not be covered or obstructed by
22 any Tenant nor shall any bottles, parcels, or other articles be
23 placed on the window sills.
24

25 3. No showcases or other articles shall be put in front
26 of or affixed to any part of the exterior of the Building, or
27 placed in the halls, corridors or vestibules without the prior
28 written consent of the Lessor.
29

30 4. The water and wash closets and other plumbing
31 fixtures shall not be used for any purposes other than those for
32 which they were constructed, and no sweepings, rubbish, rags, or
33 other substances shall be thrown therein. All damages resulting
34 from any misuse of the fixtures shall be borne by the Lessee who,
35 or whose servants, employees, agents, visitors or licensees, shall
36 have caused the same.
37

38 5. No Lessee shall mark, drill, or in any way deface
39 any part of the premises or the building of which they form a part.
40 No boring, cutting or stringing of wires shall be permitted, except
41 with the prior written consent of Lessor, and as Lessor may direct.
42 No Lessee shall lay linoleum, asphalt or rubber tile or other
43 similar floor covering, except in such manner and using such
44 adhesives as Lessor may first approve in writing.
45

46 6. No bicycles, vehicles or animals of any kind shall
47 be brought into or kept in or about the premises.
48

49 7. No cooking shall be done or permitted by any Lessee
50 on said premises. No Lessee shall cause or permit any unusual or
51 objectionable odors to be produced or permeate from the demised
52 premises. MICROWAVE OVEN USAGE IS ACCEPTABLE.
53

54 8. No space in the Building shall be used for
55 manufacturing or for the sale of merchandise, goods or property of
56 any kind at auction.
57

58 9. No Lessee shall make, or permit to be made, any
59 unseemly or disturbing noises or otherwise disturb or interfere
60 with occupants of this or neighboring buildings or premises or
61 those having business with them, whether by the use of any musical
62 instrument, radio, talking machine, unmusical noise, whistling,
63 singing, or in any other way. No Lessee shall throw anything out
64 of the doors, windows, or skylights, or down the passageways.
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1 10. No additional locks or bolts of any kind shall be
2 placed upon any of the doors or windows by any Lessee, nor shall
3 any changes be made in existing locks or the mechanism thereof.
4 Each Lessee must, upon the termination of his tenancy, return to
5 the Lessor all keys of stores, offices and toilet rooms, either
6 furnished to, or otherwise procured by such Lessee and in the event
7 of the loss of any keys, so furnished, such Lessee shall pay to the
8 Lessor the cost thereof.
9

10 11. All removals, or the carrying in or out of any
11 safes, freight, furniture or bulky matter of any description must
12 take place during the hours which Lessor or its agents may
13 determine from time to time. Lessor reserves the right to inspect
14 all freight to be brought into the Building and to exclude from the
15 Building all freight which violates any of these Rules and
16 Regulations or the Lease of which they are a part.
17

18 12. No Lessee shall occupy or permit any portion of the
19 Premises demised to him to be occupied as an office for the
20 possession, storage, manufacture, or sale of narcotics or dope, or
21 as an employment bureau. No Lessee shall engage or pay any
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15 "no individual shall be discriminated against on the basis of
16 disability in the full and equal enjoyment of the goods, services,
17 facilities, privileges, advantages, or accommodations of any place
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19 to), or operates a place of public accommodation."
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21 It is the policy of Hilton Hotels Corporation to comply with its
22 obligations as a public accommodation under the ADA and to require
23 its tenants to do the same with respect to Leased Premises.
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26 responsibility for compliance with the ADA as between themselves.
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33 with the ADA in all respects, as it affects the common areas of the
34 Building, including making required "readily achievable" changes to
35 remove any architectural or communications barriers and modifying
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39 Tenant from and against any and all liability, claims, damages and
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66 Corporation and San Diego Hilton Beach and Tennis Resort from and
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(including reasonable attorneys' fees and costs) which may arise out of any legitimate claim by any person for failure of Lessee to comply with its obligation under this subparagraph 3.

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LESSOR'S INITIAL

LESSEE'S INITIAL




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9 calendar month, and as percentage rent hereunder, a sum equivalent
10 to the amount, if any, by which Sixteen percent (16%) of the Gross
11 Sales, as hereinafter defined, exceeds the amount of base monthly
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13 Acceptance of percentage rent by Lessor shall not constitute a
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15 an inspection and/or audit undertaken by Lessor. Said percentage
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18 prior demand therefore and without any set-off or deduction
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22 of all sales of merchandise, all charges for services for which
23 charge is made, and the gross receipts from all business
24 transacted, in, upon and from the premises and consignment sales of
25 Lessee's merchandise from any other outlet at the Hotel including
26 but not limited to Banana Cabana and the Diving Shop during the
27 term by Lessee and all others occupying the premises or any part
28 thereof.
29

30 The term "Gross Sales" excludes bona-fide refunds and credits
31 for SERVICES NOT PERFORMED, Hotel employee sales where any discount
32 of 15% or greater is given, newspaper sales, if any, and any
33 Federal, state, or local tax which is collected by the Lessee from
34 its customers for any governing authority provided that said taxes
35 are charged and stated separately and not included in the purchase
36 price.
37

38 The Percentage Rental Provisions apply to all Gross Sales made
39 for cash or upon credit, or partly for cash and partly upon credit,
40 regardless of collections of charges for which credit is given, and
41 to all sales, charges for services and business transacted for
42 which orders are taken in or upon the Premises during the term
43 regardless of whether the services are rendered and the business is
44 transacted in, from or upon the Premises. Each sale, charge or
45 business transaction upon installments, or a contract therefore,
46 shall be treated as a gross sale for the full price of charge in
47 the month during which such sale, charge or contract shall be made.
48

49 (c) Records: Lessee shall keep and preserve full, complete
50 and true records of all Gross Sales, including all cash register
51 tapes, in manner and form satisfactory to Lessor for at least two
52 years following the close of each year. Lessee shall permit Lessor
53 or Lessor's representative to examine or audit the records at any
54 and all reasonable times, and shall, upon Lessor's request, explain
55 the methods of keeping the records.
56

57 (d) Monthly Statements: Lessee shall submit to Lessor on or
58 before the tenth (10th) day of each and every calendar month, at
59 the place then fixed for the payment of Rental a sworn statement of
60 Gross Sales during the preceding calendar month. With each such
61 Monthly Statement, Lessee shall pay to Lessor the Percentage Rental
62 due according to such Monthly Statement. The statement shall be
63 sworn to by Lessee, if an individual; by a partner of Lessee, if a
64 partnership, and by an officer of Lessee, if a corporation.
65

66 (e) Annual Statements: For the purposes hereof, Lease Year
67 shall mean the twelve calendar month period beginning with the
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1 first day of the first full calendar month for which fixed rent is
2 payable pursuant to Paragraph one of the Lease. On or before the
3 twentieth (20th) day following the end of each Lease Year,
4 including the lease year ending upon the expiration of termination
5 of the term of this Lease, Lessee shall deliver to Lessor at the
6 place last fixed for the payment of Rent an Annual Statement
7 certified by an accountant licensed under the laws of this State,
8 showing Gross Sales during the year of the term ended on the last
9 day of the last previous month. The accountant's certificate to
10 the statement shall certify that he made a complete examination of
11 the books, Federal income tax return or returns and cash register
12 tapes of Lessee; that he compared the Gross Sales shown in the
13 statement with the Gross Sales shown in such tax returns and both
14 statements of Gross Sales are consistent and that the statement is
15 prepared in accordance with accepted accounting principles. If any
16 provision of this Lease, or the enforcement thereof by Lessor,
17 requires an accounting for Gross Sales and payment of Percentage
18 Rental for a period less than one Lease Year hereafter referred to
19 as a "short period") or if Lessor and Lessee desire to adjust the
20 accounting period to Lessee's fiscal year which is different from
21 the Lease Year and a short period thereby results at the beginning
22 or end of the term of the Lease, such short period shall be dealt
23 with as follows: If such short period is less than six months in
24 length, it shall be added to the previous year, or if no previous
25 year, to the next succeeding year, and the total period shall be
26 considered as a single period in calculating percentage rental. If
27 such short period is six months or more in length, it shall be
28 considered a separate year. The Annual Statement required by this
29 section shall be filed on the fifteenth (15th) day of the next
30 month following the expiration of such total or short period as the
31 case may be. With each such Annual Statement or statement for a
32 short period Lessee shall pay to Lessor any and all sums due
33 hereunder and then remaining unpaid for the entire period covered
34 by such statement.

35
36 (f) Contesting Lessee's Statements: If Lessor is not
37 satisfied with any Monthly, Annual or other Statement, Lessor shall
38 serve notice upon Lessee of Lessor's dissatisfaction within one
39 hundred eighty (180) days after Lessor's receipt of the Statement
40 complained of, and it shall not be necessary for Lessor to specify
41 therein the grounds for Lessor's dissatisfaction. Unless within
42 ten (10) days after service of Lessor's notice of dissatisfaction
43 Lessee satisfies Lessor with respect to such statement, Lessor
44 shall have the right to make an audit of all books and records of
45 Lessee, including Lessee's bank accounts, which in any way pertain
46 to or show Gross Sales. Such audit shall be made by an accountant
47 to be selected by Lessor, and all expenses of the audit shall be
48 paid by Lessee if the report of the account shows the statement
49 complained of to have contained error prejudicial to Lessor's
50 receipt of Rent in an amount equal to or greater than two percent
51 (2%) of the amount of Rent reported by the Lessee's statement for
52 the period of the audit; otherwise to be paid by Lessor. The final
53 audit of the accountant made pursuant to this Section (f) shall be
54 conclusive upon the parties, and Lessee shall pay to Lessor within
55 five (5) days after a copy of the public accountant's final report
56 has been delivered to Lessee the amount, if any, shown thereby to
57 be due to Lessor. If Lessor makes any such audit, all Statements
58 made by Lessee after the Statement complained of and until ten (10)
59 days after Lessor receives the final report of the public
60 accountant shall be subject to Lessor's notice of dissatisfaction.
61 "Accountant" as used in this section means an accountant licensed
62 under the laws of any state.

63
64 (g) Failure to Deliver Statements: If Lessee omits to
65 prepare and deliver promptly and Monthly, Annual or other Statement
66 required by the Percentage Rental Provisions, Lessor may elect to
67 treat Lessee's omission as a substantive breach of this Lease
68 entitling Lessor to terminate this Lease and Lessee's right to
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1 possession of the Premises, or to make an audit of all books and
2 records of Lessee, including Lessee's bank accounts, which in any
3 way pertain to or show Gross Sales, and to prepare the Statement or
4 Statements which Lessee failed to prepare and deliver. Such audit
5 shall be made and such Statement or Statements shall be prepared by
6 a public accountant to be selected by Lessor. The Statement or
7 Statements, so prepared, shall be conclusive on Lessee, and Lessee
8 shall pay all expenses of the audit and other services.
9

10 (h) Limitation: By this Lease, Lessor does not acquire any
11 right, title or interest in or to any property of Lessee except
12 such rights as are specifically stated in the Lease. Lessor is not
13 and never shall be liable to any creditor of Lessee or to any
14 claimant against the estate or property of Lessee for any debt,
15 loss, contract or other obligation of Lessee. The relationship
16 between Lessor and Lessee is solely that of Landlord and tenant,
17 and is not and never shall be deemed a partnership or joint
18 venture.
19

20 (i) Restriction: During the term of this Lease, Lessee shall
21 not, without Lessor's advance written consent, engage or
22 participate, directly or indirectly, as owner, principal, employee
23 or agent, or furnish financial or other aid or support to, any
24 business enterprise or undertaking which is in any manner or degree
25 competitive with the stated use of the demised Premises for which
26 this Lease is made and which business enterprise or undertaking is
27 situated within a radius of two city blocks (not less than 600
28 feet) in all directions from the Building in which the demised
29 Premises are located.
30

31 (j) Damages for Lessee Default: The provisions of Article 9
32 herein notwithstanding, it is understood and agreed that in
33 computing damages for rental due under this Lease, the value of
34 percentage rental for any period subsequent to the termination of
35 this Lease, or the termination of Lessee's right to possession,
36 shall be an amount per a year equal to one-third (1/3) of the total
37 percentage rent paid by Lessee for the last three (3) full lease
38 years immediately preceding such termination, and if less than
39 three (3) full years shall have elapsed, such value shall be an
40 amount per year equal to the average yearly percentage theretofore
41 paid.
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