

As such relates to this Paragraph 11.2, the Lessee hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

11.3 Lessee Precautions After Commencement of the Term. Upon the Commencement of the Term, the Lessee shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Leased Premises. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

11.4 Lessee Indemnity. Upon the Commencement of the Term, Lessee agrees to indemnify, defend and hold City and Lessor and their respective officers, elected officials, employees, and agents harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, related to, or based upon (i) the presence, release, use, generation, discharge, storage or disposal ("Release") of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Leased Premises, whether such condition occurred before or after the Closing, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Leased Premises ("Violation"), except if and to the extent that such Release or Violation was directly and proximately caused by the Lessor's failure to disclose information regarding the Site Condition about which the Lessor had Actual Knowledge. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. At the request of the Lessee, the City and/or Lessor, as applicable, shall cooperate with and assist the Lessee in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the City and/or Lessor, as applicable, shall not be obligated to incur any expense in connection with such cooperation or assistance.

11.5 Definitions. For the purposes of this Paragraph 11 the following terms shall have the following definitions:

"Actual Knowledge" means the actual knowledge of the Lessor staff members who negotiated the Agreement and this Ground Lease without duty to investigate.

"Governmental Requirements" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Leased Premises is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Commission, the City, the Developer or the Leased Premises.

"Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including,

but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

12. ALTERATION OF IMPROVEMENTS.

Upon completion of the Project pursuant to the requirements of the Agreement, Lessee shall not make or permit to be made any structural alteration of the exterior of the Project, nor demolish all or any part of the Project, without obtaining all required City permits and entitlements, and without obtaining the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Project by Lessee in accordance with Section 10 hereof, or the alteration of the interior portions of the Project. In requesting such consent of the Lessor, Lessee shall submit to Lessor detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of Lessee under this Lease to maintain the Leased Premises in a clean and safe condition, including structural repair and restoration of damaged Project. Lessor shall not be obligated by this Lease to make any improvements to the Leased Premises or to assume any expense therefor. Lessee shall not commit or suffer to be committed any waste or impairment of the Leased Premises, or any part thereof, except as otherwise permitted pursuant to this Lease.

13. DAMAGE OR DESTRUCTION.

13.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. Subject to Section 13.3 below, if during the period of construction, the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Lessee, Lessee shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be maintained in pursuant to this Lease, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Lessee shall complete the same as soon as possible thereafter so that the Project can be occupied in accordance with this Lease. Subject to Section 25.23, in no event shall the repair,

replacement, or restoration period exceed one (1) year from the date Lessee obtains insurance proceeds unless Executive Director or designee, in his or her sole and absolute discretion, approves a longer period of time. Lessor shall cooperate with Lessee, at no expense to Lessor, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Leased Premises do not permit the repair, replacement, or restoration, Lessee may elect not to repair, replace, or restore the Project by giving notice to Lessor (in which event Lessee will be entitled to all insurance proceeds, subject to Lessee's obligations to lenders or other third parties, but Lessee shall be required to remove all debris from the Leased Premises) or Lessee may reconstruct such other improvements on the Leased Premises as are consistent with applicable land use regulations and approved by the Lessor and the other governmental agency or agencies with jurisdiction. In the event Lessee elects not to repair, replace, or restore and give Lessor notice of such election as provided herein, this Lease shall terminate.

13.2. Continued Operations. During any period of repair, Lessee shall continue, or cause the continuation of, the operation of the Leased Premises to the extent reasonably practicable from the standpoint of prudent business management.

13.3 Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If during the period of construction the Project is completely destroyed or substantially damaged by a casualty for which Lessee is not required to (and has not) insured against, then Lessor shall deliver written notice to Lessee of its obligations under this Section 13.3 within thirty (30) days of such event of substantial damage or destruction, and Lessee shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing Lessor with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, Lessee shall remove all debris from the applicable portion of the Leased Premises. As used in this Section 13.3, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Project. In the event that the Lessor delivers such notice to Lessee but Lessee does not timely elect not to repair, replace, or restore the Project as set forth in the first sentence of this Section 13.3, Lessee shall be conclusively deemed to have waived its right not to repair, replace, or restore the Project and thereafter Lessee shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Project in accordance with Section 13.1 above and continue operation of the Project during the period of repair (if practicable) in accordance with Section 13.2 above. In no event, however, shall the Lessee be obligated to expend more than Three Hundred Thousand Dollars (\$300,000) of its own funds (as adjusted as provided below) for each event of "substantial damage" to satisfy its obligations under this Section 13.3 to repair, replace or restore the Project. Such maximum expense number shall increase annually by the percentage change in the Consumer Price Index (All Urban Consumers) (Base Year 1982-84 = 100) for the San Diego area, as published by the United States Department of Labor, Bureau of Labor Statistics, or its successor index, during the last reported one year period. In the event Lessee elects not to repair, replace, or restore, and gives Lessor notice of such election as provided herein, this Lease shall terminate.

14. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER

Except as provided below, Lessee shall not sell, assign, sublease, or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease, or transfer in any

other mode or form of the whole or any part of the Leased Premises (each of which events is referred to in this Lease as an "Assignment"), without prior written approval of Lessor, which approval shall not be unreasonably withheld as more particularly set forth below in this Section 14. Any purported assignment without the prior written consent of Lessor shall render this Lease absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee. No Assignment shall be permitted of less than all of the Site except as to subleases and licenses to operations within the Hotel Project in the normal course of business.

Notwithstanding any other provision of this Lease to the contrary, Lessor approval of an assignment of this Lease or a sublease, or any part of the Leased Premises, shall not be required in connection with any of the following:

(a) The conveyance or dedication of any portion of the Leased Premises to the Lessor or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Project.

(b) Any requested assignment for financing purposes (subject to such financing being considered and approved by Lessor pursuant to Section 15 herein), including the grant of a deed of trust secured by Lessee's leasehold interest hereunder to borrow the funds necessary for construction and permanent financing of the Project.

(c) A Transfer of the Ground Lease from Lessee to the Franchisor following Completion of Construction of the Hotel Project.

Lessor agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 14, provided Lessee delivers written notice to Lessor requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable Lessor to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 14 and as reasonably determined by Lessor. Lessor shall evaluate such proposed transferee or assignee on the basis of its development qualifications and experience and/or qualifications and experience in the operation of facilities similar to the Project, and its financial commitments and resources, and may disapprove any proposed transferee or assignee, which Lessor reasonably determines does not possess sufficient qualifications. An assignment and assumption agreement in form satisfactory to Executive Director or designee shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Lessee's written notice requesting approval of an assignment or transfer pursuant to this Section 14, Lessor shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Lessor reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Lessee shall promptly furnish to Lessor such further information as may be reasonably requested. Review of experience in operating similar developments shall not be required with respect to institutional lenders providing financing pursuant to Section 15 hereof so long as the original Lessee (or a successor that has been expressly approved in writing by Lessor) remains responsible for operating the Project and performing as Lessee pursuant to this Lease. Approval by Lessor of any such sale, assignment, sublease or transfer shall be deemed to relieve Lessee or any approved or permitted assign or successor from any obligations under this Lease.

Lessee shall only sell, assign, sublease, or transfer the Leased Premises as a whole and is not permitted to subdivide the Leased Premises for the duration of this Lease without the prior written approval of Lessor.

Notwithstanding anything else contained in this Section 14, this Lease may be assigned, without the consent of Lessor, to the purchaser at any foreclosure sale relating to a permitted first trust deed encumbrance, whether judicial or non-judicial, or to the beneficiary or mortgagee under any Permitted Encumbrance (as defined in Section 15), pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to such beneficiary or mortgagee in lieu thereof, and may thereafter be assigned by such beneficiary or mortgagee without Lessor's consent, and any such purchaser, beneficiary, mortgagee or assignee shall be liable to perform the obligations herein imposed on Lessee, other than as set forth in Section 15 of this Lease, only for and during the period that such purchaser, beneficiary, mortgagee or assignee is in possession or ownership of the leasehold estate created hereby.

Notwithstanding any provision in this Section 14 to the contrary, in no event shall Lessee make any assignment which would or could be effective beyond the Term (including extensions thereof) without the prior written consent of the Lessor.

15. FINANCING.

15.1 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. The Lessor has heretofore approved the Construction Loan and Lender. In addition, any other Mortgages, deeds of trust and sales and leases-back with respect to Developer's leasehold interest shall be permitted prior to the issuance of a Release of Construction Covenants only with the Lessor's prior written approval in accordance with the Agreement and this paragraph, which shall not be unreasonably withheld or delayed, but only for the purpose of securing loans of funds to be used for financing the design and construction of the Hotel Project (including Hard Costs and Soft Costs, as defined in Exhibit C) permanent financing, and any other purposes necessary and appropriate in connection with development under this Agreement secured only by Developer's leasehold interest. The Lessee shall notify the Lessor in advance of any mortgage, deed of trust or sale and lease-back financing, if the Lessee proposes to enter into the same before Completion of the Construction of the Hotel Project. The words "mortgage" and "trust deed" as used hereinafter shall include sale and lease-back. The Lessee shall not enter into any such conveyance for financing prior to the Ground Lease Conveyance, thereafter, without the prior written approval of the Lessor, which approval the Lessor agrees to give if any such conveyance for financing is given to a responsible financial lending institution or person or entity and if the financing contemplated, together with equity, would provide sufficient funds to undertake the Completion of Construction of the Hotel Project and if the financing is consistent with the terms of this Agreement. The Lessee may enter into a conveyance for financing after the Completion of Construction of the Hotel Project as evidenced by the issuance of the Release of Construction Covenants for all of the Hotel Project without the approval of the Lessor secured only by Developer's leasehold interest.

15.2 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust in the leasehold interest of Developer granted by Lessee as provided herein, whenever the Lessor may deliver any notice or demand to Lessee with respect to any breach or default by the Lessee in Completion of Construction of the Hotel Project, the Lessor shall at the same time deliver to each Holder of record of any mortgage or deed of trust approved by

the Lessor pursuant to this Agreement a copy of such notice or demand. Each such Holder shall (insofar as the rights granted by the Lessor are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to obligate, permit or authorize such Holder to undertake or continue the construction or completion of the Hotel Project, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Lessee's obligations to the Lessor by written agreement reasonably satisfactory to the Lessor. The Holder, in that event, must agree to complete, in the manner provided in this Agreement, the Development Element(s) to which the lien or title of such Holder relates. Any such Holder properly completing any such Development Element shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants. It is understood that a Holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Lessee default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such Holder has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the Holder diligently pursues such proceedings to completion and cures or remedies the Default.

15.3 Failure of Holder to Complete Hotel Project. In any case where, thirty (30) days after the Holder of any mortgage or deed of trust creating a lien or encumbrance upon Developer's leasehold interest in the Site or any part thereof receives a notice from Lessor of a Default by the Lessee in Completion of Construction of any of the Development Elements under this Agreement, and such Holder has not exercised the option to construct as set forth in Paragraph 15.3, or if it has exercised the option but has defaulted hereunder and failed to timely cure such Default, the Lessor may, in addition to any other remedy hereunder, purchase the mortgage or deed of trust by payment to the Holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If Developer's leasehold interest in the Site or any part thereof has vested in the Holder, the Lessor, if it so desires, shall be entitled to a conveyance of such leasehold interest from the Holder to the Lessor upon payment to the Holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage or deed of trust debt at the time Title became vested in the Holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure including reasonable attorneys' fees;
- (c) The net expense, if any (exclusive of general overhead), incurred by the Holder as a direct result of the subsequent management of the Site or part thereof;
- (d) The costs of any improvements made by such Holder;
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Lessor;

(f) Any customary prepayment charges or defeasance costs imposed by the lender pursuant to its loan documents and agreed to by the Lessee;

(g) Any or all other amounts, costs or expenses payable to the Holder under the Holder's loan documents approved pursuant to Section 15.1, and

(h) The Lessor's right to purchase any mortgage or deed of trust under this Paragraph 15.3 shall terminate upon the issuance of a Release of Construction Covenants for all of the Hotel Project.

15.4 Right of the Lessor to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by the Lessee prior to the Completion of the Construction of any of the Development Elements or any part thereof, Lessee shall immediately deliver to Lessor a copy of any mortgage Holder's notice of default. If the Holder has not exercised its option to construct, the Lessor shall have the right but not the obligation to cure the default. In such event, the Lessor shall be entitled to reimbursement from the Lessee of all proper costs and expenses incurred by the Lessor in curing such default.

15.5 Capital Improvement Loan. After completion of Construction of the Project, Lessee may, at any time and from time to time during the Term, upon prior written notice to Lessor and subject to the requirements of Sections 5.3 and 14 hereof, request that Lessor authorize Lessee to mortgage, pledge, hypothecate or otherwise encumber to a federally or state chartered bank or savings and loan, a life insurance company, a mortgage company, a pension fund, investment trust or similar institutional lender (herein called "Lender"), by deed of trust or mortgage or other security instrument, all of Lessee's right, title and interest pursuant to this Lease and the leasehold estate hereby, following thirty (30) days prior written notice to Lessor (which notice shall include an itemization of and budget for the capital improvements to be financed), to secure financing of capital improvements to and capital repairs of the Project ("Capital Improvement Loan(s)"). Lessor shall consider such request in good faith, and may approve, disapprove, or conditionally approve in Lessor's reasonable discretion. The encumbrances securing the Capital Improvement Loan(s), together with refinancing of the Capital Improvement Loan(s) approved by Lessor pursuant to Section 14, and any other loan or encumbrance approved by Lessor pursuant to this Lease shall be deemed to be "Permitted Encumbrances."

The proceeds of any Capital Improvement Loan(s) shall be used solely to pay (i) the costs of construction of capital improvements to the Project, and (ii) the costs of obtaining the Capital Improvement Loan(s).

Notwithstanding anything in this Section 15 to the contrary, Lessee shall not, without the prior written consent of Lessor, which may be given or withheld in Lessor's sole discretion, obtain any Capital Improvement Loan or other conveyance for financing secured by the Project or this Lease, the term of which Capital Project Loan or other conveyance for financing purposes extends beyond the Term.

16. INDEMNITY.

Lessee shall defend, indemnify, assume all responsibility for, and hold Commission and City, and their respective officers, employees, agents, and representatives harmless from, all claims,

demands, damages, defense costs or liability of any kind or nature (including attorneys' fees and costs) and for any damages to property or injuries to persons, including accidental death, which may be caused by or arise out of the Lessee's performance or failure to perform its obligations pursuant to this Lease, or activities with respect to the Project, whether such activities or performance thereof be by the Lessee or by anyone employed or contracted with by the Lessee and whether such damage shall accrue or be discovered before or after termination of this Lease, or from any defect in the Leased Premises or the Project, or from any displacement of residents or liability for relocation assistance pursuant to Government Code Section 7260, *et seq.*, due to the acts of Lessee hereunder. Lessee shall not be liable for property damage or bodily injury occasioned by the negligence of, willful misconduct of, or breach of this Lease by City and/or Lessor or its agents or employees. In addition to the above, the provisions of the Agreement shall also be applicable.

17. INSURANCE.

17.1. Insurance to be Provided by Lessee. During the Term, Lessee, at its sole cost and expense, shall itself take out and maintain, or cause to be taken out and maintained, the following insurance coverage, in addition to any insurance which may be required pursuant to the Agreement:

(a) Maintain or cause to be maintained a policy or policies of all-risk property insurance. Such insurance policy shall be maintained in an amount not less than one hundred percent (100%) of the "Full Insurable Value" of the Project, as defined herein in this Section 17.

(b) Maintain or cause to be maintained, in an amount not less than Five Million Dollars (\$5,000,000), combined single limit, comprehensive general liability insurance. The required amount of insurance shall be subject to increases as Lessor may reasonably require from time to time, but not more frequently than every twenty-four (24) months. In no event shall such increase or increases exceed the increase during such period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup "All Items," in the geographical area applicable to the Escondido area. Lessee agrees that provisions of this Paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, activities of its sublessees or the activities of any other person or persons for which Lessee is otherwise responsible.

(c) Maintain or cause to be maintained by the Property Manager worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee and/or Property Manager in connection with the Leased Premises and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Leased Premises or the operation thereof by Lessee or Property Manager.

17.2. Definition of "Full Insurable Value." The term "Full Insurable Value" as used in this Section 17 shall mean the actual replacement cost of the Project, including the cost of construction of the Project, architectural and engineering fees, applicable governmental fees, and inspection and supervision. Full Insurable Value of the Project shall exclude those tenant

improvements which are required to be insured by office subtenants. Lessee shall maintain the insurance policy required by Section 17.1(a) hereof at the current Full Insurable Value of the Project.

17.3. General Insurance Provisions. All policies of insurance provided for in this Section 17, except for the workers' compensation insurance, shall name Lessee and any subtenant as the insured and the Lessor, and their respective officers, employees, agents, and representatives, as additional insureds, as their respective interests may appear. All property casualty insurance policies shall include the interest of any Lessee's Mortgagee, and may provide that any loss is payable jointly to Lessee and Lessee's Mortgagee in which event such policies shall contain standard mortgage loss payable clauses. Lessee agrees to timely pay or cause to be timely paid all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Lessee agrees to submit policies of all insurance required by this Section 17 of this Lease, or certificates evidencing the existence thereof, to Lessor on or before the effective date of this Lease, indicating full coverage of the contractual liability imposed by this Lease. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Lessor. All policies shall be written by good and solvent insurers qualified to do business in California and reasonably acceptable to the Executive Director or designee. All policies or certificates of insurance shall also: (i) provide that such policies shall not be cancelled or limited in any manner without at least thirty (30) days prior written notice to Lessor; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by Lessor and shall contain a waiver of subrogation for the benefit of the Lessor.

17.4. Failure to Maintain Insurance. If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Lessor shall have the right, at Lessor's election, and upon ten (10) days prior notice to Lessee, to procure and maintain such insurance. The premiums paid by Lessor shall be treated as added rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

17.5. Insurance Proceeds Resulting from Loss or Damage to Project. All proceeds of insurance with respect to loss or damage to the Project during the term of this Lease shall be payable, under the provisions of the policy of insurance, to Lessee, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Project in accordance with plans and specifications approved in writing by Lessor. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such proceeds shall be used to repay any outstanding loans secured by encumbrances upon the Leased Premises, and any remaining proceeds shall be apportioned between Lessee and Lessor as their interests may appear. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Project, such proceeds shall be payable in accordance with mortgage loan documents.

In the event this Lease is terminated by mutual agreement of Lessor and Lessee and the Project is not restored, repaired or rebuilt, the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve shall be jointly retained by Lessor and Lessee and shall be applied first to any payments due under this Lease from Lessee to Lessor, second to restore the Leased Premises to their original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Leased Premises, and finally any excess shall be apportioned between Lessee and Lessor as their interests may appear, and Lessee shall have no

further obligation hereunder to restore, repair or rebuild the Project; provided, however, that within any period when there is an outstanding mortgage upon the Project, such proceeds shall be applied in accordance with mortgage loan documents. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

In the event this Lease is partially terminated by mutual agreement of Lessor and Lessee and a portion of the Project is not restored, repaired or rebuilt, a pro rata portion of the insurance proceeds and proceeds of the Capital Replacement Reserve and Operating Reserve attributable to the portion of the Improvements which has been terminated shall be jointly retained by Lessor and Lessee and shall be applied first to any payments due under this Lease from Lessee to Lessor, second to restore the applicable portion of the Leased Premises to their original condition and to a neat and clean condition, third to repay any outstanding loans secured by encumbrances upon the Leased Premises, and finally any excess shall be apportioned between Lessee and Lessor as their interests may appear, and Lessee shall have no further obligation hereunder to restore, repair or rebuild the applicable portion of the Project subject to termination; provided, however, that within any period when there is an outstanding mortgage upon Lessee's interest in the Project, such proceeds shall be applied in accordance with mortgage loan documents. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

18. EMINENT DOMAIN.

In the event that the Leased Premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between Lessor and Lessee (or mortgagee, if a mortgage is then in effect), the interests of Lessor and Lessee (or mortgagee) in the award and the effect of the taking upon this Lease shall be as follows:

(a) In the event of such taking of only a part of the Leased Premises, leaving the remainder of the Leased Premises in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Lease shall terminate and end as to the portion of the Leased Premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Leased Premises not so taken and from and after such date the rental required by this Lease to be paid by Lessee to Lessor shall be reduced in the proportion which the number of square feet so taken bears to the total number of square feet in the Leased Premises.

(b) In the event of taking of only a part of the Leased Premises, leaving the remainder of the Leased Premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable and economically feasible for the conduct thereon of the uses permitted hereunder, as reasonably determined by the Lessee, this Lease and all right, title and interest thereunder shall cease on the date title to the Leased Premises or the portion thereof so taken vests in the condemning authority.

(c) In the event the entire Leased Premises is taken, this Lease and all of the right, title and interest thereunder, shall cease on the date title to the Leased Premises so taken vests in the condemning authority.

(d) In the event of taking of only Lessee's leasehold interest in the Leased Premises, this Lease shall terminate.

(e) Promptly after a partial taking, at Lessee's expense and in the manner specified in provisions of this Lease related to maintenance, repairs, alterations, Lessee shall restore the Project, to the extent possible and as permitted by law, and to the extent of condemnation proceeds received by Lessee, so as to place them in a condition suitable for the uses and purposes for which the Leased Premises was leased.

(f) In the event of any taking under subparagraphs (a), (b), (c) or (d) hereinabove, that portion of any award of compensation attributable to the fair market value of the Leased Premises or portion thereof taken, valued as subject to this Lease, shall belong to Lessor. That portion of any award attributable to the fair market value of Lessee's leasehold interest in the Leased Premises and Improvements pursuant to this Lease, and any separate award made to Lessee for loss of business or for the taking of Lessee's fixtures and improvements, shall belong to Lessee; provided, however, that within the period during which there is an outstanding mortgage on the Project, the mortgagee shall be entitled to Lessee's portion of the award, consistent with the loan documents between Lessee and the mortgagees. This Section 18 shall be Lessee's sole and exclusive remedy in the event of any taking. Lessee hereby waives the benefits of California Code of Civil Procedure § 1265.130.

(g) In the event of a partial taking, where the Lease remains in effect and Lessee is obligated to restore or repair the Project, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Project to the extent necessary to restore or repair the Project and any remaining severance damages shall be payable to Lessor. Said award shall be used for the restoration, repair or rebuilding of the Project in accordance with plans and specifications approved in writing by Lessor to the extent necessary to restore or repair the Project and any remaining severance damages shall be payable to Lessor. The value of each interest for the purpose of apportionment under this Section shall be the fair market value of such interests at the time of the taking.

(h) Notwithstanding the foregoing provisions of this Section, Lessor may, in its discretion and without affecting the validity and existence of this Lease, transfer Lessor's interests in the Leased Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by Lessor, Lessee (or mortgagee if a mortgage is then in effect) and Lessor shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Project taken by the authority.

(i) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of Lessor and Lessee.

19. ANTI-DISCRIMINATION.

Lessee herein covenants by and for itself, its successors and assigns, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,

and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph.

(i) In leases: The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

“Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph.”

(ii) In contracts: There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

20. [INTENTIONALLY LEFT BLANK].

21. COMPLIANCE WITH LAW.

Lessee agrees, at its sole cost and expense, to itself comply, and to use its best commercially reasonable efforts to secure compliance by all contractors and subtenants of the Leased Premises, with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Leased Premises, as well as operations conducted thereon, and to faithfully observe and secure compliance by all contractors and subtenants of the Leased Premises with, in the use of the Leased Premises all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessor levied upon Lessee or the Leased Premises, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the Leased Premises. Lessee shall use good faith efforts to prevent subtenants from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by subtenants of the Leased Premises. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them, or any of them, whether Lessor be a party thereto or not, that Lessee, sublessee or permittee has violated any such ordinance or statute in the use of the Leased Premises shall be conclusive of that fact as between Lessor and Lessee, or such sublessee or permittee.

22. ENTRY AND INSPECTION.

Lessor reserves and shall have the right during reasonable business hours (except in cases of emergency), upon forty-eight (48) hours prior notice (except in cases of emergency) to Lessee by the Executive Director or designee, to enter the Leased Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Leased Premises or to inspect the operations conducted thereon, subject to the Lessor's indemnification obligations as set forth in Section 16 hereof.

23. RIGHT TO MAINTAIN.

In the event that the entry or inspection by Lessor pursuant to Section 22 hereof discloses that the Leased Premises are not in a decent, safe, and sanitary condition, Lessor shall have the right, after thirty (30) days written notice to Lessee (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by Lessor in having such necessary maintenance work done in order to keep the Leased Premises in a decent, safe and sanitary condition, provided that the Lessor delivers such notice which is required hereunder. The rights reserved in this Section shall not create any obligations on Lessor or increase obligations elsewhere in this Lease imposed on Lessor.

24. EVENTS OF DEFAULT AND REMEDIES.

24.1. Events of Default by Lessee. Subject to the force majeure provisions of Section 25.22 hereof, the occurrence of any one (1) or more of the following shall constitute an event of default hereunder:

(a) Lessee shall fail to start the construction of the Hotel Project, as required by the Schedule of Performance and then only after Notice and an opportunity to cure ; or

(b) Lessee shall abandon or substantially suspend construction of the Hotel Project for a period of ninety (90) days and then only after Notice and an opportunity to cure; or

(c) Lessee shall fail to cause the Completion of Construction of each Development Element on or before the respective dates for each as set forth in the Schedule of Performance.

(d) Lessee shall abandon or surrender the Leased Premises; or

(e) Lessee shall fail or refuse to pay, within ten (10) days of notice from Lessor that the same is due, any installment of rent or any other sum required by this Lease to be paid by Lessee; or

(f) Lessee shall fail to comply with the Acquisition of Covenants Agreement attached to the Agreement as Attachment No. 10 and hereby incorporated herein by reference; or

(g) Lessee shall fail to materially perform any covenant or condition of the Agreement, this Lease, and/or any loan documents executed by Lessee which are permitted pursuant to the foregoing, other than as set forth in subparagraphs (a) or (b) above, and any such failure shall not be cured within thirty (30) days following the service on Lessee of a written notice from Lessor specifying the failure complained of, or if it is not reasonably practicable to cure or remedy such failure within such thirty (30) day period, then Lessee shall not be deemed to be in default if Lessee shall commence such cure within such thirty (30) day period and thereafter diligently prosecute such cure to completion; or

(h) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, Lessee's (i) application for, consent to or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; or (viii) suffering or permitting to continue unstayed and in effect for thirty (30) consecutive days any attachment, levy, execution or seizure of all or a portion of Lessee's assets or of Lessee's interest in this Lease.

24.2. Remedies of Lessor. In the event of any such default as described in Section 24.1, Lessor may, at its option:

(a) Terminate this Lease and immediately regain possession of the Leased Premises; or

(b) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Lessor in enforcing this provision) to the account of Lessee, which charge shall be due and payable within thirty (30) days after presentation by Lessor of a statement of all or part of said costs;

(c) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Lessor in enforcing this provision) from the proceeds of any insurance;

(d) Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee to correct or cause to be corrected said default;

(e) Have a receiver appointed to take possession of Lessee's interest in the Leased Premises, with power in said receiver to administer Lessee's interest in the Leased Premises, to collect all funds available to Lessee in connection with its operation and maintenance of the Leased Premises; and to perform all other consistent with Lessee's obligation under this Lease as the court deems proper; and

(f) Maintain and operate the Leased Premises, without terminating this Lease;

24.3. Damages. Damages which Lessor recovers in the event of default under this Lease shall be those which are then available under applicable California case and statutory law to lessors for leases in the State of California including, but not limited to, any accrued but unpaid rent and the worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the date of award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

24.4. Rights and Remedies are Cumulative. The remedies provided by this Section 24 are not exclusive and shall be cumulative to all other rights and remedies possessed by Lessor. The exercise by Lessor of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Lessee.

24.6. Rights of Lenders.

(a) Cure by Mortgagee. Any mortgagee shall have the right, at any time during the Term, while this Lease is in full force and effect:

(i) to do any act required by Lessee hereunder, and all such acts done or performed shall be effective as to prevent a forfeiture of Lessee's rights hereunder as if the same had been done or performed by Lessee;

(ii) to rely on the security afforded by the leasehold estate, and to acquire and to succeed to the interest of Lessee hereunder by foreclosure, whether by judicial sale, by power of sale contained in any security instrument, or by deed given in lieu of foreclosure, and thereafter convey or assign title to the leasehold estate so acquired to any other person, firm or corporation.

If the mortgagee or Lessee shall have furnished, in writing, to Lessor a request for notice, in the event of any default or breach hereunder on the part of Tenant, then Lessor will not terminate this Lease by reason of such default or breach if the mortgagee shall, within sixty (60) days after the expiration of the applicable cure periods set forth herein and service on mortgagee of written notice from Lessor or Lessor's intention to terminate this Lease, either (i) cure such default if the same can be cured by the payment of money; or, if such is not the case (ii) undertake, in writing, to perform all covenants of this Lease capable of performance by mortgagee. In the event of such undertaking, mortgagee shall be deemed to have cured such default if mortgagee proceeds in a timely and diligent manner to accomplish said cure; provided, however, that if in order to accomplish such cure, mortgagee must foreclose on its security interest or obtain leave of the court as in the case of bankruptcy proceedings, such default shall be deemed cured, nevertheless, if mortgagee shall have made every reasonable effort to obtain such leave in a timely and diligent manner or shall have commenced foreclosure proceedings. Provided that mortgagee cures any additional defaults in the manner and within the time herein specified, the inability of mortgagee to cure a default based upon Lessee's bankruptcy or insolvency or other non-curable default shall not permit Lessor to terminate the Lease on account of such default. Further, this Section shall not be deemed to obligate mortgagee to undertake or cure any default based upon Lessee's bankruptcy or insolvency, or other non-curable default.

This obligation of mortgagee for the performance of the terms of this Lease shall terminate upon the sale, transfer or assignment of the right, title and interest of mortgagee in the leasehold estate to any other person, firm or corporation.

Any provisions contained in this Lease to the contrary notwithstanding, any mortgagee of the Leased Premises or its assignee, may enforce such mortgage and acquire title to the leasehold estate in any lawful manner; and, pending foreclosure of any such mortgage, may take possession of the Leased Premises.

(b) New Lease on Termination of this Lease. In the event this Lease is terminated for any reason, any mortgagee shall have the right within sixty (60) days after receipt of notice of such termination to demand that Lessor execute a new lease of the Leased Premises with mortgagee as Lessee hereunder. In such event mortgagee shall immediately execute a new lease which shall be for the unexpired term of this Lease (and shall include any unexpired option extension terms) and shall otherwise be identical with the terms of this Lease and shall have the same priority as this Lease. Such new lease shall be executed and delivered by the Lessor to the mortgagee within sixty (60) days after receipt by the Lessor of written notice from the mortgagee of such election to obtain a new lease and upon payment by the mortgagee of all sums owing by Lessee under the provisions of this Lease (less the rent and other income actually collected by Lessor in the meantime from any sublessees or other occupants of the Premises) and upon performance by the mortgagee of all other obligations of Lessee under the provisions of this Lease with respect to which performance is then due and which are susceptible of being cured by the mortgagee. After such termination of this Lease and prior to the expiration of the period within which mortgagee may elect to obtain such new lease from the Lessor, Lessor shall refrain from executing any new subleases or amending, canceling or terminating any existing subleases without the prior written consent of the mortgagee.

(c) Consent of Mortgagee. Notwithstanding the provisions of this Lease to the contrary, until such time as the indebtedness of Lessee to mortgagee shall have been fully paid, Lessor shall not, without the prior written consent of mortgagee first had and obtained, accept any

surrender of this Lease, consent to any modification hereof or consent to the assignment hereof or of any part or portion of the term created thereby or of any of interest therein.

25. MISCELLANEOUS.

25.1 Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Lease.

25.2 Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of San Diego, North County, State of California, in any other appropriate court in that County, or in the Federal District Court in the District of California in which the Leased Premises is located.

25.3 Acceptance of Service of Process. In the event that any legal action is commenced by Lessee against Lessor, service of process on Lessor shall be made by personal service upon the Chairman or Executive Director or designee of Lessor, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Lessor against Lessee, service of process on Lessee shall be made by personal service upon Lessee or in such other manner as may be provided by law, and shall be effective whether made within or without the State of California.

25.4 Attorneys' Fees And Court Costs. In the event that either Lessor or Lessee shall bring or commence an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor in addition to whatever other relief such prevailing party may be entitled.

25.5 Financial Statement; Inspection of Books And Records. Lessee shall submit to the Lessor on an annual basis, not later than June 30 of each year during the term of this Lease, a financial statement for the operation of the Leased Premises, which is prepared by a certified public accounting firm or prepared internally on a GAAP basis of accounting. In addition, Lessor shall have the right (at Lessee's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of Lessee pertaining to the Leased Premises as pertinent to the purposes of this Lease. Lessee also has the right (at Lessor's office, upon not less than forty-eight (48) hours' notice, and at all reasonable times) to inspect the books and records of Lessor pertaining to the Leased Premises as pertinent to the purposes of this Lease.

25.6 Interest. Any amount due Lessor that is not paid when due shall bear interest from the date such amount becomes an event of default under Section 24.1 until it is paid. Interest shall be at a rate equal to the lesser of (i) the discount rate established by the San Francisco office of the Federal Reserve Bank, plus two percent (2%), on the first day of the month such amount becomes due, and (ii) the maximum rate permitted by applicable law.

25.7 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the

other shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

To Lessor: Escondido Community Development Commission
201 North Broadway
Escondido, California 92025
Attn: Executive Director
cc: Commission Counsel

To Lessee: Escondido Development, LLC

c/o Transcan Development, LLC
3189 Danville Boulevard, Suite 425
Alamo, California 94507.,
Attn: Robert Bahen

C. W. Clark, Inc.
4180 La Jolla Village Drive, Suite 405
La Jolla, CA 92037
Attn: Craig W. Clark

With copies to: Sheppard, Mullin, Richter & Hampton, LLP
501 West Broadway, Suite 1900
San Diego, CA 92101
Attn: Christopher B. Neils, Esq.

or to such other address as either party shall later designate for such purposes by written notice to the other party. Lessor shall also give copies of such notices to any Lender or mortgagee which has requested such notice. Notices shall be deemed effective upon personal delivery or within three (3) days after mailing thereof as provided above; provided, however that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice to the delivering party shall be effective on the third day after the attempted delivery or deposit in the United States mail.

25.8 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Lease.

25.9 Non-Merger of Fee And Leasehold Estates. If both Lessor's and Lessee's estates in the Leased Premises or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of Lessor and Lessee's Mortgagee. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of Lessor, terminate all or any existing sublease or subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all such existing subleases or subtenancies.

25.10 Holding Over. The occupancy of the Leased Premises after the expiration of the Term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.

25.11 Conflict of Interest. No member, official or employee of Lessor shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested.

Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

25.12 Non-Liability of City and Commission Officials And Employees. No member, official, officer, employee, agent, or representative of City and/or Commission shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Lessor or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

25.13 Relationship. The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Lease be deemed to create a partnership or joint venture.

25.14 Waivers And Amendments. All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Lessor or Lessee. The waiver by Lessor of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach of Lessee of any term, covenant or condition of this Lease, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of Lessor to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent Lessor from enforcing any provision hereof.

All amendments hereto must be in writing and signed by the appropriate authorities of Lessor and Lessee.

The Lessee's mortgagee permitted by this Lease shall not be bound by any waiver or amendment to this Lease without Lessee's mortgagee giving its prior written consent.

25.15 Non-Merger With Agreement. None of the terms, covenants or conditions agreed upon in writing in the Agreement and other instruments between the parties to this Lease with respect to obligations to be performed, kept or observed by Lessee or Lessor in respect to the Leased Premises or any part thereof, shall be deemed to be merged with this Lease.

25.16 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

25.17 Terminology. All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of the Lease itself. Except for terms expressly defined in this Lease, all terms shall have the same meaning as set forth in the Agreement.

25.18 Recordation. A Memorandum of this Lease, in the form attached hereto as Exhibit "D", shall be recorded at or within five (5) working days after the time the Lease is executed.

25.19 Entire Agreement; Duplicate Originals; Counterparts. Except as set forth in Section 25.16, this Lease sets forth the entire understanding of the parties with respect to Lessee's ground lease of the Leased Premises. This Lease is executed in three (3) duplicate originals and counterparts, each of which is deemed to be an original. This Lease includes four (4) exhibits, Exhibits A, B, C and D.

25.20 Binding Effect. This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

25.21 Estoppel Certificate. Each of the parties shall at any time and from time to time upon not less than twenty (20) days' prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by Lessee may be relied upon by Lessor or any successor in interest to Lessor or any prospective mortgagee or encumbrance thereof, and it being further intended that any such statement delivered by Lessor may be relied upon by any prospective assignee of Lessee's interest in this Lease or any prospective mortgagee or encumbrance thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge. The party requesting an estoppel certificate or other certification under the terms of this Lease shall pay to the other party all reasonable fees and costs incurred by such party in connection with the review, negotiation and modification, if required, of such estoppel certificate or other certification. Lessor shall deliver to Lessee a Subordination, Non-disturbance and Attornment Agreement signed by the lien holder, if applicable.

25.22 Force Majeure. In addition to specific provisions of this Lease, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Lease shall be extended, where delays or Defaults are due to causes beyond the control or without the fault of the party claiming an extension of time to perform, which may include the following: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City, the Commission or any other public or governmental agency or entity (other than the acts or failures to act of the City or Commission

which shall not excuse performance by City). Notwithstanding anything to the contrary in this Lease, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party as follows: (a) for any cause other than unusually heavy rainfall, within thirty (30) days of the commencement of the cause; and (b) for the cause of unusually heavy rainfall, within sixty (60) days of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the mutual agreement of Lessor and Lessee.

25.23 Quiet Enjoyment. Lessor does hereby covenant, promise and agree to and with Lessee that Lessee, for so long as Lessee is not in default hereof, shall and may at all times peaceably and quietly have, hold, use, occupy and possess the Leased Premises throughout the Term.

25.24 Commission Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by Lessor, the Executive Director, or his or her designee is authorized to act on behalf of Lessor unless specifically provided otherwise or the law otherwise requires.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their lawfully authorized officers.

LESSOR:

**ESCONDIDO COMMUNITY
DEVELOPMENT COMMISSION**, a public
body, corporate and politic

By: _____
_____, Chairman

ATTEST:

Commission Secretary

APPROVED AS TO FORM:

Commission Legal Counsel

STRADLING YOCCA CARLSON & RAUTH

Special Legal Counsel to Commission

<SIGNATURE PAGE CONTINUES ON FOLLOWING PAGE >

LESSEE:

ESCONDIDO DEVELOPMENT, LLC,
a Delaware limited liability company

By: Transcan Escondido Hotel Owners, LLC,
a Delaware limited liability company
Co-Managing Member

By: _____
Robert Bahen,
Managing Member

By: **C. W. CLARK, INC.,**
a California corporation,
Co-Managing Member

By: _____
Craig W. Clark,
President

APPROVED AS TO FORM:

Developer's Legal Counsel

EXHIBIT A MAP

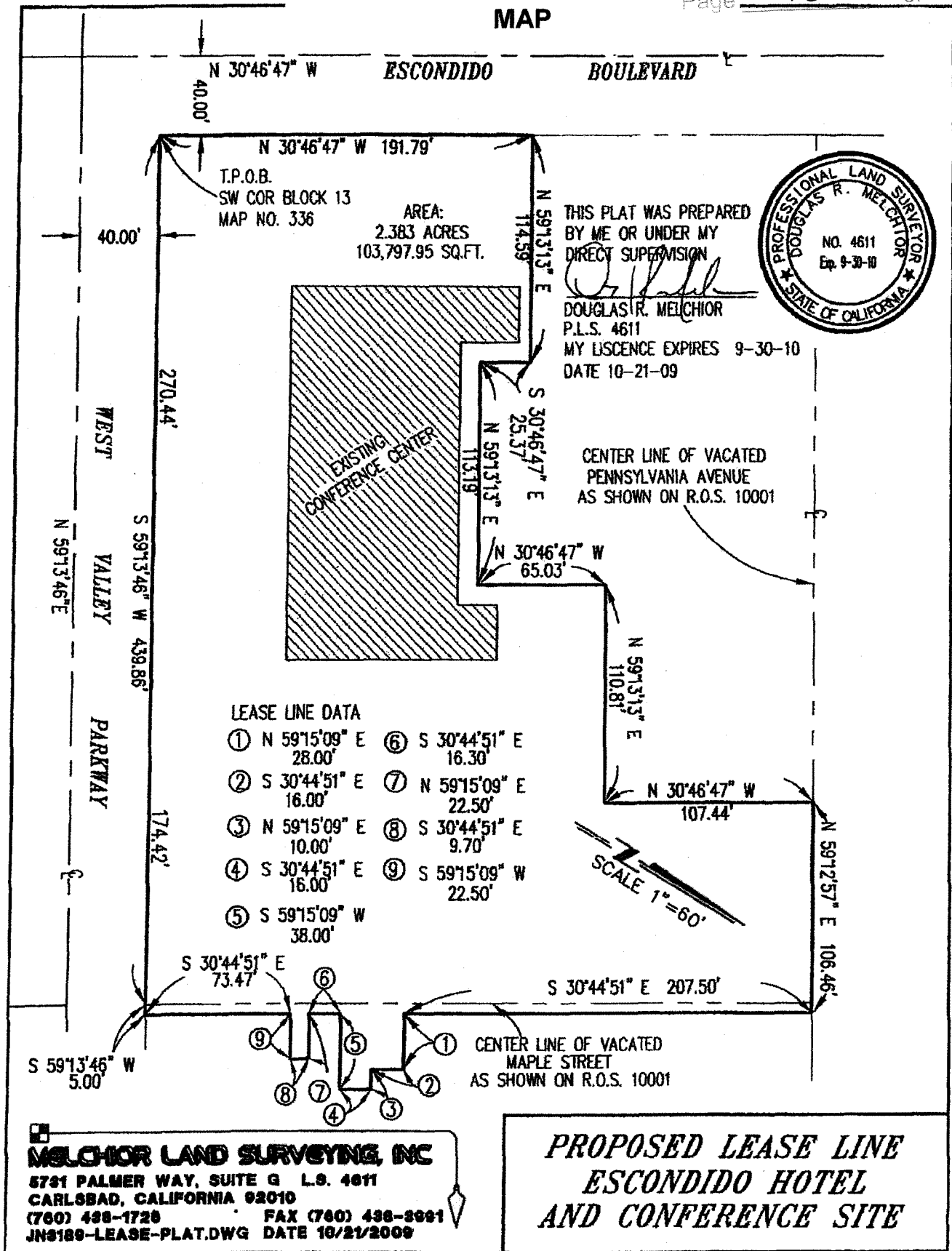


EXHIBIT "B"

LEGAL DESCRIPTION
OF
HOTEL AND CONFERENCE CENTER SITE

A PORTION OF BLOCK 13 OF RANCHO RINCON DEL DIABLO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND DESCRIBED AS FOLLOWS:

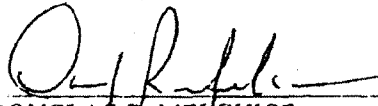
BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID BLOCK NO. 13 OF SAID RANCHO RINCON DEL DIABLO ACCORDING TO SAID MAP NO. 336; THENCE ALONG THE WESTERLY LINE OF SAID BLOCK 13, BEING ALSO THE EASTERLY RIGHT-OF-WAY OF ESCONDIDO BOULEVARD (FORMERLY KNOWN AS NUTMEG STREET) NORTH 30°46'47" WEST, 191.79 FEET; THENCE LEAVING SAID WESTERLY LINE NORTH 59°13'13" EAST, 114.59 FEET; THENCE SOUTH 30°46'47" EAST, 25.37 FEET; THENCE NORTH 59°13'13" EAST, 113.19 FEET; THENCE NORTH 30°46'47" WEST, 65.03 FEET; THENCE NORTH 59°13'13" EAST, 110.81 FEET; THENCE NORTH 30°46'47" WEST, 107.44 FEET TO A POINT ON THE CENTER LINE OF FORMER PENNSYLVANIA AVENUE (VACATED TO PUBLIC USE); THENCE NORTHEASTERLY ALONG SAID CENTERLINE OF FORMER PENNSYLVANIA AVENUE (VACATED TO PUBLIC USE) NORTH 59°12'57" EAST, 106.46 FEET TO A POINT 5.00 FEET EASTERLY MEASURED AT RIGHT ANGLES TO THE CENTERLINE OF FORMER MAPLE STREET (VACATED TO PUBLIC USE); THENCE SOUTHERLY PARALLEL TO AND 5.00 FEET EASTERLY OF SAID CENTER LINE OF FORMER MAPLE STREET (VACATED TO PUBLIC USE) SOUTH 30°44'51" EAST, 207.50 FEET; THENCE NORTH 59°15'09" EAST, 28.00 FEET; THENCE SOUTH 30°44'51" EAST, 16.00 FEET; THENCE NORTH 59°15'09" EAST, 10.00 FEET; THENCE SOUTH 30°44'51" EAST 16.00 FEET; THENCE SOUTH 59°15'09" WEST 38.00 FEET; THENCE SOUTH 30°44'51" EAST 16.30 FEET; THENCE NORTH 59°15'09" EAST 22.50 FEET; THENCE SOUTH 30°44'51" EAST 9.70 FEET; THENCE SOUTH 59°15'09" WEST 22.50 FEET; THENCE PARALLEL TO AND 5.00 FEET EASTERLY OF SAID CENTERLINE SOUTH 30°44'51" EAST, 73.47 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 13 OF SAID RANCHO RINCON DEL DIABLO, BEING ALSO THE NORTHERLY RIGHT-OF-WAY LINE OF WEST VALLEY PARKWAY (FORMERLY KNOWN AS OHIO AVENUE); THENCE WESTERLY ALONG SAID RIGHT-OF-WAY SOUTH 59°13'46" WEST, 5.00 FEET TO A POINT ON THE CENTER LINE OF SAID FORMER MAPLE STREET (VACATED TO PUBLIC USE); THENCE CONTINUING WESTERLY ON SAID RIGHT-OF-WAY SOUTH 59°13'46" WEST, 439.86 FEET TO THE POINT OF BEGINNING.

CONTAINING: 103,797.95 SQ. FT

2.383 ACRES MORE OR LESS

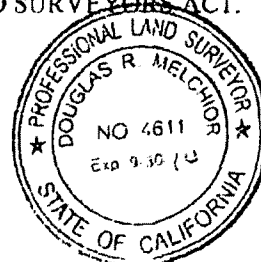
ATTACHED HERETO AND MADE A PART HEREOF THIS LEGAL DESCRIPTION IS A PLAT LABELED EXHIBIT "B"

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.


DOUGLAS R. MELCHIOR
P.L.S. 4611

LICENSE EXPIRES 9-30-10

10-21-2009
DATE



A circular seal for a Professional Land Surveyor in the State of California. The outer ring contains the text "PROFESSIONAL LAND SURVEYOR" at the top and "STATE OF CALIFORNIA" at the bottom, separated by two stars. The inner circle contains the name "DOUGLAS R. MELCHOR" at the top, the number "NO. 4811" in the center, and the expiration date "Exp 9-30-10" at the bottom.

EXHIBIT C

RENT

1. The following terms shall have the following meaning:

- (a) **"Additional Rent"** is defined in paragraph 2(b) and 2(d) hereof.
- (b) **"Asset Management Fees"** means management fees paid by the Lessee to manage the Lessee's investment excluding base and incentive fees paid to Operator.
- (c) **"Capital Event"** means the sale transfer, assignment or refinancing of the Hotel Project.
- (d) **"Lessor Investment"** means the Covenant Acquisition Consideration paid by the Lessor with interest accruing at the rate of four percent (4%) per annum, compounded, commencing on the date(s) on which the Lessor expends such Lessor Investment.
- (e) **"Developer Costs for the Hotel"** means the Hard Costs incurred and paid by Developer, as determined pursuant to the Computation Process, for the construction of the Hotel and the refurbishing of the Conference Center in accordance with the plans and specifications approved by the Lessor as provided in this Agreement from and after the Date of this Agreement to the Completion of Construction of the Hotel Project.
- (f) **"Developer Equity Investment"** means the cash contributed by Developer to pay Hard Costs and Soft Costs in excess of the amounts provided by the Construction Loan, less the Covenant Acquisition Consideration. This balance may increase over time by the amount of equity reinvested by the infusion of additional equity by Developer for Major Capital Expenditures. In a refinancing, any Net Proceeds in excess of the outstanding debt amounts are defined as a return of equity and would serve to reduce the Developer Equity Investment by a like amount.
- (g) **"Construction Loan"** means that certain loan in the principal amount of Fifty-Five Million, Eighty-One Thousand, Two Hundred Fifty Dollars (\$55,081,250) between Developer and Lender as evidenced by the Construction Loan Agreement and Promissory Note.
- (h) **"Gross Revenue"** means all revenue, income and receipts from Hotel operations including without limitation, guest room rental revenue, meeting room revenue, food revenue, beverage revenue, telephone revenue, rental revenue, miscellaneous revenue and other revenue, income and receipts of every kind that accrue or are accounted for on an accrual basis in conformity with the Uniform System. Each credit or installment transaction shall be treated as revenue for the full price in the month during which such credit or installment transaction is made, regardless of whether or when Lessee receives actual payment therefor. Gross Revenue shall not include, or if included there shall be deducted (but only to the extent the same have been included as Gross Revenue):

- (i) transaction privilege, sales, use, excise and gross receipts taxes on any of the foregoing transactions which are paid to the taxing authorities by Lessee;
- (ii) service charges, interest and collection expenses received or receivable for credit transactions, as well as other charges or fees paid by Lessee to credit card companies, banks and similar organizations resulting from the use of credit or debit cards by guests, patrons or customers;
- (iii) bad debts and chargebacks, to the extent previously included as Gross Revenue;
- (iv) gross receipts of Lessee's subtenants or concessionaires, but all rents or fees payable to Lessee by its subtenants and concessionaires shall be included as Gross Revenue;
- (v) gratuities to Hotel employees, including, without limitation, gratuities or service charges added to a customer's bill or statement in lieu of gratuities or tips which the Operator and/or Lessee is obligated to turn over to an employee as compensation;
- (vi) insurance proceeds (except any insurance proceeds received in reimbursement for lost revenues);
- (vii) Net Proceeds;
- (viii) receipts from condemnation; and
- (ix) all sums and credits received in settlement of claims or loss or damage of merchandise, or otherwise against third parties arising out of or during the course of operation of the Hotel, except to the extent the cost thereof was included in Operating Expenses.

(i) **"Hard Costs"** means the actual and direct third party construction costs incurred and paid by Developer from and after the Date of this Agreement to the date upon which Completion of Construction occurs for the applicable Development Element, including grading and site preparation, required onsite and offsite improvements, building construction, permit and inspection fees charged by any public agency, performance or completion bond premiums, title insurance premiums and title insurance endorsements, surveys, hazardous materials remediation, construction loan fees, points and interest, and all ad valorem property taxes and assessments.

(j) **"Major Capital Expenditures"** is defined in the Uniform System.

(k) **"Net Proceeds"** means the proceeds of any sale, transfer, assignment or refinancing, net of normal and customary transaction costs such as brokerage commissions, title insurance, and escrow fees not to exceed six percent (6%) of gross proceeds.

(l) **"Net Operating Income"** means Gross Revenue less Operating Expenses, measured separately for each year.

(m) **"Operating Expenses"** shall mean the following costs and expenses incurred in operating the Hotel computed in accordance with the accrual basis in accordance with the Uniform System of Accounts:

- (i) all costs of sales, salaries, wages, fringe benefits, payroll taxes and other costs related to Hotel employees whether employed by Owner or Manager;
- (ii) departmental, administrative and general expenses of the Hotel and the cost of Hotel advertising and business promotion, heat, light and power and routine repairs, maintenance and minor alterations treated as Operating Expenses and all other expenses not otherwise specifically herein enumerated which constitute administrative and general expenses of the operation of a hotel;
- (iii) the cost of inventories and operating equipment consumed in the operation of the Hotel;
- (iv) all fees paid under the Franchise Agreement between Owner and Franchisor (if any);
- (v) a reasonable reserve for collectable accounts receivable as determined by Operator;
- (vi) all costs and fees of independent accountants or other third parties who perform services directly related to the operation of the Hotel;
- (vii) costs and expenses for property, casualty, liability, terrorist, worker's compensation, and any other insurance;
- (viii) base and incentive fees paid to Operator;
- (ix) reserves and/or expenditures for furniture, fixtures, operating equipment and capital items;
- (x) Base Rent;
- (xi) real and personal property taxes and assessments;
- (xii) Such other costs and expenses otherwise reasonably necessary for the proper and efficient operation of the Hotel.

Specifically excluded from Operating Expenses are debt service payments, income taxes, depreciation, Additional Rent, Capital Event Additional Rent, and Ownership Expenses such as Asset Management Fees and partnership expenses.

(n) **"Ownership Expenses"** means any expense paid by the Lessee that is not related to operations of the Hotel and pertains to the obligations of the Lessee, or the partners of Lessee, with respect to the ownership and/or operation of the Hotel.

(o) **"Pro Forma Gross Revenue"** is defined in paragraph 2(c) hereof.

(p) **"Soft Costs"** means the following actual third party costs incurred and paid by Developer from and after the Date of this Agreement until the date upon which Completion of Construction of the applicable Development Element occurs: architectural, engineering and other predevelopment consulting and professional fees, a developer fee of not to exceed five percent (5%) of Hard Costs, a general contractor fee not to exceed five percent (5%) of Hard Costs, testing and inspection costs, legal, accounting and insurance (excluding title insurance).

(q) **"Uniform System"** means the then-current Uniform System of Accounts for the lodging industry, or any successor thereto, as promulgated by the American Hotel & Lodging Association, or any successor thereof.

All capitalized terms not defined herein shall have the meanings set forth in the DDA, and the Lease.

2. Rent.

Beginning the first day (January 1st) of the year immediately after the start of the Operating Period, Lessee shall pay to Lessor as annual rental for the preceding year the Base Rent described below and on each consecutive anniversary thereof:

(a) Base Rent (**"Base Rent"**). For a period of ten (10) years from the date on which the Hotel Commences Operation, no Base Rent shall be payable. For year eleven (11), Base Rent shall be one percent (1.0%) of Gross Revenue and shall increase one percent (1.0%) each year beginning in year twelve and ending in year fifteen (15) to a maximum percentage of five percent (5.0%) from year fifteen (15) through fifty-five (55). The following schedule summarizes Base Rent:

	Base Rent (% of Gross Revenue)
Years 0-10	0% of Gross Revenue
Year 11	1%
Year 12	2%
Year 13	3%
Year 14	4%
Year 15-55	5%

(b) Additional Rent (**"Additional Rent"**). If Gross Revenue for any year exceeds the Pro Forma Gross Revenue (described in (c) below) by more than one million dollars, then five percent (5.0%) of the Gross Revenues in excess of the Pro Forma Gross Revenue is payable as Additional Rent. For example, the Pro Forma Gross Revenue in Year 11 is \$17,401,777. Assume Gross Revenue in Year 11 is \$20,000,000. Because Gross Revenue in Year 11 exceeds Pro Forma

Gross Revenue in Year 11 by more then \$1,000,000, Additional Rent would be due in the amount of \$129,911.15 and Base Rent would be \$200,000, as follows:

Additional Rent

Gross Revenue in year 11	\$ 20,000,000.00
Pro Forma Gross Revenue in year 11	<17,401,777.00>
	\$ 2,598,223.00
	X 5%
Additional Rent Due	\$ 129,911.15

Base Rent

Gross Revenues	\$ 20,000,000.00
	X 1%
Base Rent	\$ 200,000.00

(c) Pro Forma Gross Revenue from the first twelve (12) month period following the date on which the Hotel Commences Operations through expiration or sooner termination of the Term is, as follows:

Year	Proforma Gross Revenue
1	\$10,664,657
2	\$12,432,224
3	\$13,854,164
4	\$14,241,371
5	\$14,528,323
6	\$14,979,525
7	\$15,436,322
8	\$15,898,883
9	\$16,367,378
10	\$16,894,929
11	\$17,401,777
12	\$17,923,830
13	\$18,461,545
14	\$19,015,391
15	\$19,585,853
16	\$20,173,429
17	\$20,778,632
18	\$21,401,991
19	\$22,044,050
20	\$22,705,372
21	\$23,386,533
22	\$24,088,129
23	\$24,810,773
24	\$25,555,096
25	\$26,321,749
26	\$27,111,401
27	\$27,924,743
28	\$28,762,486
29	\$29,625,360
30	\$30,514,121