

HOTEL PURCHASE AND SALE AGREEMENT

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HOTEL PURCHASE AND SALE AGREEMENT

THIS HOTEL PURCHASE AND SALE AGREEMENT is made this ____ day of _____, 20__, by and between _____ ("Seller") and _____ ("Purchaser").

R E C I T A L S:

A. Seller is the fee owner of that certain parcel of land (and the improvements and buildings located thereon) legally described in Exhibit A and commonly referred to as the _____, _____, _____ (the "Hotel") and the owner of the Fixtures and Tangible Personal Property, Operating Equipment, Consumables and Miscellaneous Hotel Assets (all as hereinafter defined).

B. The Hotel's facilities include guest and public facilities consisting of ____ (____) rooms, ____ (____) guest room keys, ____ (____) meeting rooms and ____ (____) banquet rooms, administrative offices, service areas and retail space.

C. Seller desires to sell, and Purchaser desires to purchase, the Property upon and subject to the terms and conditions hereinafter set forth.

A G R E E M E N T S:

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, warranties, agreements, covenants and conditions herein contained, and other good and valuable consideration, Seller and Purchaser agree as follows:

ARTICLE I

DEFINITIONS AND REFERENCES

1.1 **Definitions.** As used herein, the following terms shall have the respective meanings indicated below:

Accountants: As defined in Section 8.5(b).

Affiliate: With respect to a specific entity, any natural person or any firm, corporation, partnership, association, trust or other entity which, directly or indirectly, controls, or is under common control with, the subject entity, and with respect to any specific entity or person, any firm, corporation, partnership, association, trust or other entity which is controlled by the subject entity or person. For purposes hereof, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity or the power to veto major policy decisions of any such entity, whether through the ownership of voting securities, by contract or otherwise.

Agreement: This Hotel Purchase and Sale Agreement, including the Exhibits.

Bookings: Contracts for the use or occupancy of guest rooms and meeting and banquet facilities of the Hotel.

Closing: As defined in Section 6.1.

Closing Statements: The Closing Statements required under the provisions of Section 8.5.

Compensation: The direct salaries and wages paid to, or accrued for the benefit of, any Employee, incentive compensation, vacation pay, severance pay, employer's contributions under F.I.C.A., unemployment compensation, workers' compensation, or other employment taxes, and payments under Employee Benefit Plans (as hereinafter defined).

Consumables: All food and beverages (alcoholic, to the extent transferable under applicable law, and non-alcoholic); engineering, maintenance and housekeeping supplies, including soap, cleaning materials and matches; stationery and printing; and other supplies of all kinds, in each case whether partially used, unused or held in reserve storage for future use in connection with the maintenance and operation of the Hotel, which are on hand on the date hereof, subject to such depletion and restocking as shall occur and shall be made in the normal course of business but in accordance with present standards, excluding, however, (i) Operating Equipment (as hereinafter defined) and (ii) all items of personal property owned by Space Lessees (as hereinafter defined) guests, employees or persons (other than Seller or any Affiliate of Seller, unless denominated as an Excluded Asset hereunder) furnishing food or services to the Hotel.

Cut-off Time: 12:01 a.m. on the Closing Date.

Department: _____ Department of Revenue.

Deposit: As defined in Section 3.2.

Documents: Reproducible copies of all plans, specifications, drawings, blueprints, surveys, environmental reports and other documents which Seller has in its possession, or has a right to, as the same relate to the Real Property, including, but not limited to, those relating to any prior or ongoing construction or rehabilitation of the Real Property.

Employee(s): All persons employed by Seller and/or an Affiliate pursuant to Employment Contracts.

Employee Benefit Plans: All employee benefit plans, as that term is defined in Section 3(2)(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") including "multi-employer pension plans" as defined in Section 3(37) of ERISA, and each other employee benefit plan or program (including welfare benefit plans as defined in Section 3(1) of ERISA) to which Seller contributes on behalf of any of the Employees.

Employment Contract(s): Those contracts and agreements, oral or written, with all or any of the executives, staff and employees of Seller and/or an Affiliate for work in or in connection with the Hotel including, but not limited to, individual employment agreements,

union agreements, employee handbooks, group health insurance plans, life insurance plans and disability insurance plans (other than Employee Benefit Plans).

Environmental Laws: As defined in Section 5.1(u).

Environmental Study: As defined in Section 4.3.

Escrow: The escrow created for the purpose of facilitating the transactions contemplated hereby pursuant to the Escrow Instructions (as defined herein).

Escrow Instructions: The escrow instructions to be executed and delivered by the parties (or their respective attorneys who are hereby authorized by the parties to execute same) and the Title Company, as escrowee.

Excluded Assets: The following: (i) those assets, if any, listed in Exhibit B hereto owned and to be retained by Seller or Affiliates of Seller; and (ii) except as provided to the contrary in Section 16.1(f) hereof, all records, files and proprietary operating manuals in the Hotel.

Excluded Permits: Permits and licenses required for the ownership and operation of the Hotel which, under applicable law, are nontransferable.

Final Closing Statement: The Final Closing Statement required under the provisions of Section 8.5.

Fixtures and Tangible Personal Property: All fixtures, furniture, furnishings, fittings, equipment, cars, trucks, machinery, apparatus, signage, appliances, draperies, carpeting and other articles of personal property now located on the Real Property and used or useable in connection with any part of the Hotel, subject to such depletions, resupplies, substitutions and replacements as shall occur and be made in the normal course of business but in accordance with present standards excluding, however: (i) Consumables; (ii) Operating Equipment; (iii) equipment and property leased pursuant to Hotel Contracts (as hereinafter defined); (iv) property owned by Space Lessees, guests, employees or other persons (other than Seller or any affiliate of Seller, unless denominated as an Excluded Asset hereunder) furnishing goods or services to the Hotel; and (v) Improvements (as hereinafter defined).

FIRPTA Certificate: As defined in Section 16.1(m).

Hazardous Material: As defined in Section 5.1(u).

Holdback: As defined in Section 14.4.

Hotel: The hotel referred to in the Recitals.

Hotel Contracts: All service, maintenance, purchase orders, leases and other contracts or agreements, including equipment leases capitalized for accounting purposes, and any amendments thereto, with respect to the ownership, maintenance, operation, provisioning or equipping of the Hotel, or any of the Property, as well as written warranties and guarantees

relating thereto, if any, including, but not limited to, those relating to heating and cooling equipment and/or mechanical equipment, but exclusive, however, of (i) insurance policies, (ii) the Bookings, (iii) the Space Leases (as hereinafter defined), (iv) the Employment Contracts and (v) the Employee Benefit Plans.

Hotel Names: All names or other identifications used in connection with the operation of the Hotel.

Impositions: All taxes and other governmental charges of any kind whatsoever that at any time may be assessed or levied against or with respect to the Property, or any part thereof or any interest therein, including, without limitation, all general and special real estate taxes and assessments or taxes assessed specifically in whole or in part in substitution of general real estate taxes or assessments; any taxes levied upon or with respect to the revenue, income or profits of Seller from all or any part of the Property which, if not paid, will become a lien on all or any part of the Property, or a lien or charge on the rents, revenues or receipts therefrom; all assessed ad valorem taxes; all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and other charges made by any governmental agency for improvements that may be secured by a lien on the Property.

Improvements: The buildings, structures (surface and sub-surface) and other improvements, including such fixtures as shall constitute real property, located on the Land.

Inspection Period: As defined in Section 4.1.

Land: The parcel of real estate described in Exhibit A hereto, together with all rights, title and interest, if any, of Seller in and to all land lying in any street, alley, road or avenue, open or proposed, in front of or adjoining said Land, to the centerline thereof, and all right, title and interest of Seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for the damage to said Land by reason of change of grade of any street.

Legal Requirements: All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments and governmental authorities having jurisdiction of the Hotel (including, for purposes hereof, any local Board of Fire Underwriters and the operation thereof).

Material Bookings: All Bookings for meetings and banquet facilities and, with respect to guest rooms, any contract for _____ () or more room(s) per night.

Material Contracts: All Hotel Contracts which cannot be cancelled by thirty (30) days' or less notice without penalty or premium payment.

Miscellaneous Hotel Assets: All contract rights, leases, concessions, trademarks, logos, copyrights, assignable warranties and other items of intangible personal property relating to the ownership or operation of Hotel, but such term shall not include (i) Bookings; (ii) Hotel Contracts; (iii) Space Leases; (iv) Permits (as hereinafter defined); (v) cash or other funds, whether in petty cash or house banks, or on deposit in bank accounts or in transit for deposit; (vi) books and records (except as provided in Section 16.1(f)); (vii) receivables; (viii) refunds, rebates or other claims, or any interest thereon, for periods or events occurring prior to the Cut-

off Time; (ix) utility and similar deposits; (x) prepaid insurance or other prepaid items; or (xi) prepaid license and permit fees; except to the extent that Seller receives a credit on the Closing Statement for any such item or matter. Miscellaneous Hotel Assets shall include the aggregate face amount of Qualifying Receivables (as hereinafter defined) notwithstanding that, pursuant to Section 8.1(a) Seller shall receive a credit on the Closing Statements therefor in an amount less than the aggregate face amount thereof.

Obligations: All payments required to be made and all representations, warranties, covenants, agreements and commitments required to be performed under the provisions of this Agreement by Seller or Purchaser, as applicable.

Operating Equipment: All china, glassware, linens, silverware and uniforms, whether in use or held in reserve storage for future use, in connection with the operation of the Hotel, which are on hand on the date hereof, subject to such depletion and restocking as shall be made in the normal course of business but in accordance with present standards.

Par: As defined in Section 5.1(j).

Permits: All licenses, franchises and permits, certificates of occupancy, authorizations and approvals used in or relating to the ownership, occupancy or operation of any part of the Hotel, including, without limitation, those necessary for the sale and on-premises consumption of food, liquor and other alcoholic beverages.

Permitted Exceptions: Any liens, encumbrances, restrictions, exceptions and other matters specified in Exhibit C to which title to the Property may be subject on the Closing Date.

Personal Property: All of the Property other than the Real Property.

Preliminary Closing Statement: The Preliminary Closing Statement required by Section 8.5.

Property: (i) The Real Property; (ii) the Fixtures and Tangible Personal Property; (iii) the Operating Equipment; (iv) the Consumables; (v) the transferable right, title and interest of Seller in, to and under the Hotel Contracts and Spaces Leases; (vi) the Bookings; (vii) the Permits (other than Excluded Permits); (viii) the Hotel Names; (ix) the Documents; and (x) all other Miscellaneous Hotel Assets; provided, however, that Property shall not include the Excluded Assets.

Proratable Compensation: Compensation exclusive of severance pay and Employee Benefit Plans.

Purchase Price: As defined in Section 3.1.

Qualifying Receivables: Guest ledger receivables (i) incurred in the ordinary course of business in accordance with the Hotel's credit policies consistently applied, or (ii) otherwise approved in writing by Purchaser prior to the Closing Date, but exclusive of any receivables for house accounts, or resulting from payment by check.

Real Property: The Land together with the Improvements located on the Land.

Retained Employees: As defined in Section 13.1.

Searches: As defined in Section 6.3(c)

Section 1445: As defined in Section 16.1(m).

Software Program: The software programs for accounting functions for the general ledger, accounts payable, accounts receivable and payroll for the Hotel.

Space Leases: All leases, licenses, concessions and other occupancy agreements, and any amendments thereto, whether or not of record, for the use or occupancy of any portion of the Real Property excluding, however, Bookings.

Space Lessee: Any person or entity entitled to occupancy of any portion of the Real Property under a Space Lease.

Submittals: As defined in Section 4.1.

Submitted Financial Statements: Those financial statements of the Hotel identified in Exhibit D hereto.

Survey: The survey for the Property prepared in accordance with Section 6.3(a).

Terminated Employees: As defined in Section 13.1.

Title Commitment: The commitment for title insurance issued in accordance with Section 6.3(b).

Title Company: _____.

Title Defect: A lien, claim, charge, security interest or encumbrance other than a Permitted Exception.

Title Documents: As defined in Section 6.3.

Title Papers: As defined in Section 6.3(b).

Title Policy: As defined in Section 7.1(e).

UCC: The Uniform Commercial Code in effect in _____.

Violation: Any condition with respect to the Property which constitutes a violation of any Legal Requirements.

1.2 **References.** Except as otherwise specifically indicated, all references to Section and Subsection numbers refer to Sections and Subsections of this Agreement, and all references to Exhibits refer to the Exhibits attached hereto. The words "hereby," "hereof," "herein,"

"hereto," "hereunder," "hereinafter," and words of similar import refer to this Agreement as a whole and not to any particular Section or Subsection hereof. The word "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this Agreement. Captions used herein are for convenience only and shall not be used to construe the meaning of any part of this Agreement.

ARTICLE II

SALE AND PURCHASE

2.1 **Sale and Purchase.** Seller hereby agrees to sell (or to cause to be sold) to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Property on the terms and subject to the conditions of this Agreement.

ARTICLE III

PURCHASE PRICE

3.1 **Purchase Price; Allocation Thereof.** The purchase price ("Purchase Price") for the Property shall be _____ Dollars (\$_____). The Purchase Price shall be allocated in accordance with the values reasonably attributable to the components of the Property as set forth in Exhibit E hereto.

3.2 **Deposit.** Concurrently herewith, Purchaser is depositing the sum of _____ Dollars (\$_____) (the "Deposit") with the Title Company to secure performance of Purchaser's Obligations hereunder. The Deposit shall be held and invested in U.S. Government obligations, certificates of deposit, money market funds, or in such other interest-bearing investment as Seller and Purchaser shall jointly direct in writing until the Closing Date (except as otherwise provided herein) at which time the Deposit shall be paid as a credit against the Purchase Price and all interest earned thereon shall be returned to Purchaser. Except as hereinafter provided, if the transaction contemplated hereby does not close because of a default by Purchaser hereunder, the parties agree that the Deposit, and all interest earned thereon, shall be delivered to Seller as Seller's sole and exclusive liquidated damages, which amount the parties agree is a reasonable sum considering all of the circumstances existing on the date of this Agreement, including, without limitation, the relationship of such sum to the amount of harm to Seller that reasonably could be anticipated, Seller's anticipated use of the proceeds of sale, and the fact that proof of actual damages would be impossible to determine. Notwithstanding the foregoing, if the transaction contemplated hereby does not close and Purchaser shall not have defaulted hereunder, the Deposit, and all interest earned thereon, shall be returned promptly to Purchaser and Purchaser shall be entitled to pursue against Seller any and all remedies available to Purchaser, at law or in equity.

3.3 **Payment of Balance of Purchase Price.** The balance of the Purchase Price, subject to prorations and adjustments as provided in Section 8.1, shall be paid on the Closing Date by cashier's or certified check or by wire transfer of immediately collectible funds, first, if necessary, to the Title Company and then to an account specified by Seller, against delivery of instruments of transfer and the other documents specified in Section 7.1.

3.4 **No Assumption of Seller's Obligations.** Except as specifically provided herein to the contrary, Purchaser shall not assume, or become obligated with respect to, any Obligation of Seller, including, but not limited to, the following:

(a) Obligations of Seller now existing or which may arise prior to the Cut-off Time with respect to any accounts payable or other payables, except to the extent that Purchaser receives a credit with respect thereto on the Closing Statements;

(b) Obligations prior to the Closing Date of any term, covenant or provision of any Employee Benefit Plan, Employment Contract, Hotel Contract or Space Lease, except to the extent that Purchaser receives a credit with respect thereto on the Closing Statements;

(c) Obligations of Seller now existing or which may hereafter exist by reason of or in connection with any alleged misfeasance or malfeasance by Seller in the conduct of its business, and with respect to any tort liability;

(d) Obligations to Employees with respect to any Compensation (or pursuant to any Employment Contract or Employee Benefit Plan) except to the extent that Purchaser receives a credit with respect thereto on the Closing Statements; and

(e) Obligations of Seller incurred in connection with or relating to the transfer of the Property pursuant to this Agreement, including, without limitation, any federal, state or local income, sales, transfer or other tax incurred by reason of said transfer, all of which shall be the sole responsibility of Seller except the transfer tax, if any, imposed by the City of _____ which shall be the responsibility of Purchaser.

ARTICLE IV

INSPECTION PERIOD

4.1 **Inspection Period.** The "Inspection Period" shall be the period from the date hereof to 11:59 p.m. on the day which is thirty (30) days after the date on which Seller has furnished to Purchaser all of the submittals referred to in Section 4.2 below ("Submittals").

4.2 **Submittals to Purchaser.** Seller, at its expense, shall use commercially reasonable efforts to deliver expeditiously to Purchaser true and correct copies of the following:

(a) the Permits, Hotel Contracts, Employment Contracts, Employee Benefit Plans, a summary of the amounts, dates and creditworthiness of Material Bookings (whether for periods before or after the Closing Date), Space Leases and notices of Violations (if any) listed in Exhibits F, G, H, I, J and K, respectively;

(b) a descriptive summary of the manner in which all Bookings are made, whether oral or written, with or without deposits or firm or contingent commitments for reservations, along with a copy of the written agreements or confirmation letters used in connection with the Bookings;

- (c) a descriptive summary of all pending or threatened litigation listed in Exhibit L;
- (d) the most recent real estate and personal property tax statements for the Property;
- (e) all Documents listed in Exhibit M, including, but not limited to, the plans and specifications;
- (f) the most current inventory of all Fixtures and Tangible Personal Property, Operating Equipment and Consumables;
- (g) all other documents or instruments of record relating to the Property available to Seller;
- (h) copies of all financial reports prepared by the accountant for Seller for the fiscal year of Seller for the five (5) years preceding the date hereof ("Submitted Financial Statements");
- (i) information reflecting the insurance loss history of the Property for the period from _____ to the present and copies of all insurance policies relating to the Property; and
- (j) other documents in Seller's possession, relating to the Property or investigation of the Property, including, without limitation, relating to the environment, health and/or safety.

4.3 **Review and Inspection.** During the Inspection Period, Purchaser shall review the Submittals and shall have the right to enter upon the Real Property to inspect the Property and to conduct non-invasive tests and investigations at its sole cost and expense, except as provided herein. Purchaser shall be responsible for any damage caused by such tests and investigations, except to the extent relating to pre-existing conditions (except to the extent aggravated by the tests or inspections). Seller shall cooperate with Purchaser, or its agents, in arranging such inspections. Without limitation of the foregoing, Purchaser or Purchaser's accountants or both may review the Submitted Financial Statements and, in connection therewith, Seller shall supply such documentation as Purchaser or Purchaser's accountants may reasonably request to facilitate such review. Purchaser shall conduct all such inspections and reviews in confidence and so as not to interfere unreasonably with the operation of the Hotel. During the Inspection Period, Purchaser may conduct an environmental investigation of the Property including, without limitation, relating to the environment, health and/or safety, at Seller's sole cost and expense, to be conducted by an environmental engineering firm selected by Purchaser (the "Environmental Study").

4.4 **Purchaser's Acceptance or Rejection.** If, in its sole and absolute discretion, Purchaser accepts the condition of the Property, it shall give Seller written notice of such acceptance before expiration of the Inspection Period. If Purchaser shall give Seller a notice of disapproval before expiration of the Inspection Period or fails to give such notice, then, without the necessity of further documentation, this Agreement shall be deemed terminated and the

Deposit and all interest earned thereon shall be returned to Purchaser. Purchaser shall pay to Seller the sum of One Hundred Dollars (\$100.00) as fixed and liquidated compensation for such termination, and neither party shall have any further Obligation or liability to the other party hereunder. The parties hereto acknowledge that Purchaser has incurred substantial costs in connection with the negotiation and execution of this Agreement, will incur additional substantial costs in conducting the inspections contemplated by Section 4.3 and would not have entered into this Agreement without the availability of the Inspection Period. Therefore, the parties agree that adequate consideration exists to support the Obligations of the parties hereunder, even before expiration of the Inspection Period.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

5.1 **Representations and Warranties of Seller.** Seller hereby represents and warrants the following to Purchaser:

(a) **Due Organization.** This Agreement has been duly authorized by all requisite action on the part of Seller. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, except as otherwise provided herein, do not require the consent or approval of any governmental authority, nor shall such execution and delivery result in a breach or Violation of any Legal Requirement, or constitute a default (or an event which with notice and passage of time, or both, will constitute a default) under any contract or agreement to which Seller or an Affiliate is a party or by which it or the Property is bound.

(b) **Title to Real Property.** Seller's interest in the Real Property is good and marketable title in fee simple, free and clear of all mortgages, options, liens, charges, easements, agreements, claims, restrictions or other encumbrances of any kind or nature except for the Permitted Exceptions.

(c) **Title to Personal Property.** Seller has good and marketable title to the Personal Property, subject only to the Permitted Exceptions. All items of Personal Property have been fully paid for to the extent that normal business practice permits, except those items which are subject to installment payments and with respect to which there are no installments due which are delinquent.

(d) **Permits.** (i) Exhibit F identifies all existing Permits and is complete and correct in all material respects; (ii) such Permits constitute all of the Permits currently necessary for the ownership and operation of the Hotel, including, but not limited to, the food and beverage licenses required to sell and serve food and liquor at the Hotel; (iii) to Seller's knowledge, no default has occurred in the due observance or condition of any Permit which has not been heretofore corrected; (iv) to Seller's best knowledge, no Space Lessee has received any notice from any source to the effect that there is lacking any Permit needed in connection with the operation of the Hotel or any restaurant, bar or other operation connected therewith; and (v) all Permits (except those Permits which are designated Excluded Permits in Exhibit F) are assignable to Purchaser.

(e) **Hotel Contracts.** Exhibit G identifies all Hotel Contracts and the information noted therein is complete and correct in all material respects. Except as disclosed in Exhibit G, there is no default under any Hotel Contract. Seller has provided (or will provide during the Inspection Period) true and correct copies of all Hotel Contracts to Purchaser. Each Hotel Contract (other than the Hotel Contracts designated as Material Contracts on Exhibit G) may be cancelled upon thirty (30) days' or less notice without penalty or premium payment.

(f) **Hotel Names.** Exhibit O hereto identifies all Hotel Names and is complete and correct in all respects. Seller has not received any notice that the use of such Hotel Names infringes on the rights of a third party.

(g) **Space Leases.** Exhibit J identifies all Spaces Leases and is complete and correct in all material respects. Except as disclosed in Exhibit J, there is no default under any Space Lease. Seller has given (or will give, during the Inspection Period) to Purchaser true and correct copies of all Space Leases. Seller owns all right, title and interest of the lessor under each Space Lease.

(h) **Commissions.** Except as may be disclosed in Exhibits G or J and other than in the ordinary course of business in connection with Bookings, there are no commissions or referral fees relating to the Hotel currently outstanding, nor will there be any such commissions or referral fees outstanding, on or before the Closing Date.

(i) **Impositions.** (i) all Impositions due and payable as of the date of this Agreement in connection with the operation of the Hotel have been paid, unless the same is listed in Exhibit N hereto; (ii) in connection therewith, Seller (or its agents or employees on Seller's behalf) has filed all tax returns and reports required to be filed by it as of the date of this Agreement with all taxing authorities requiring the same; and (iii) Exhibit N accounts for all accrued, but unpaid, Impositions.

(j) **Fixtures, Tangible Personal Property.** Each guest room contains a complete set of furniture and furnishings appropriate for a guest room of a luxury hotel, including, but not limited to, at least one (1) color television set and two (2) telephone. The quantities of Fixtures and Tangible Personal Property, Consumables and Operating Equipment in the Hotel, including physical reserves, are sufficient for the proper and efficient operation of the Hotel in accordance with the standards of operation heretofore maintained by Seller. Seller shall continue to maintain the same at a level consistent with the average maintenance for the twelve (12) months preceding the date hereof ("Par") and in any event, as to Operating Equipment, not less than as follows:

(i) _____ percent (___%) Par on all room linens and towels;

(ii) _____ percent (___%) Par on restaurant table linens, china and silverware; and

(iii) _____ percent (___%) Par on banquet table linen, china and silverware.

(k) **Submitted Financial Statements.** The Submitted Financial Statements for the Hotel (which shall include the income of restaurants, bars, retail rental space and garage portions of the Hotel, if any) fairly present the results of operation of the Hotel for the periods indicated, and were prepared in accordance with generally accepted hotel accounting principles applied on a consistent basis, and, to Seller's best knowledge, there has been no material adverse change in the results of the operations of the Hotel since the statement dated for the period ended _____, 20____, the certified public accountants who prepared the Submitted Financial Statements, shall certify the amount of the net income of the Hotel for the year ended _____, 20____, which net income shall be income after all fixed and operating expenses, but before debt service or depreciation. Such certification shall be done in accordance with generally accepted hotel accounting principles consistently applied by such accountants in preparation of such financial statements and shall be delivered to Purchaser at least ten (10) days before the expiration of the Inspection Period.

(l) **Material Bookings.** Exhibit I identifies all Material Bookings for periods from and after the day which is twenty-five (25) days after the date hereof. The representation and warranty made by Seller in this subsection shall not be deemed to be, in any manner, a guarantee of any Bookings, or of the income potential represented thereby.

(m) **Pending Litigation.** Except as described in Exhibit L, there are no actions, suits or proceedings, pending or threatened against Seller or affecting any of Seller's rights, in each case, with respect to the Property, at law or in equity, or before any federal, state, municipal or other governmental agency or instrumentality, which might result in any order, injunction, decree or judgment having an adverse effect on the Hotel or the Property, nor is Seller aware of any facts which to its knowledge might result in any action, suit or proceedings. Except as noted in Exhibit K, the Hotel complies with all Legal Requirements. Except as noted in Exhibit K, Seller has not received any notice of any Violation of a Legal Requirement which has not been heretofore corrected. Prior to the Closing Date, any uncured Violations listed in Exhibit K and any other Violations that arise shall be cured by Seller at its sole expense.

(n) **Condemnation.** There are no pending, or, to the knowledge of Seller, threatened, condemnation proceedings or condemnation actions against the Real Property or any of the rights-of-way located adjacent thereto.

(o) **Zoning.** The Land is currently zoned for its present use.

(p) **Assessments.** No governmental assessment for sewer, sidewalk, water, paving, electrical, power or other improvements is pending or threatened, except as may be set forth in Exhibit C.

(q) **Labor Disputes.** During the three (3) years preceding the date hereof, the Property has not experienced any labor disputes or labor trouble other than routine grievances or organizational efforts, none of which have had a material adverse effect on the operations of the Property.

(r) **Employees.** Exhibit H is a complete list of all Employees with their salaries, positions and terms of employment; and (i) except as set forth on Exhibit H, Seller is not a party to any Employment Contract and no union is presently serving as collective bargaining agent for any Employees; (ii) to the best of Seller's knowledge, no union presently is conducting or planning to conduct an organizational campaign for any Employees; and (iii) with the exception of the Employee Benefit Plans listed in Exhibit P, there is no pension, profit-sharing, bonus or other employee benefit plan relating to current or past Employees.

(s) **Utilities.** All utility equipment and facilities required for the operation and use of the Hotel are located on the Property and all agreements for providing utilities are with direct providers.

(t) **Material Changes.** There are no facts or circumstances not disclosed to Purchaser of which Seller has knowledge, which have or could have a material adverse effect upon the Hotel. Seller agrees to notify Purchaser immediately of such facts or circumstances if it becomes aware of the same.

(u) **Environmental Matters.** Prior to and during Seller's ownership of the Property, (i) no Hazardous Materials have been located on the Property in violation of applicable Environmental Laws (as defined below) or have been released in, on, under or from the Property; (ii) no underground storage tanks have been located on the Property; (iii) the Property has never been used as a dump for waste material; and (iv) the Property and its prior uses comply with, and at all times have complied with, any applicable governmental law, regulation or requirement relating to environmental, health and/or safety matters or Hazardous Materials ("Environmental Laws").

The term Hazardous Materials shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; oil, petroleum products and any derivative thereof, and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. { 1910.1200 et seq.; and industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.

Additionally, but not in lieu of Seller's affirmative undertakings set forth herein, Seller agrees to indemnify, defend and hold harmless Purchaser and its affiliates from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs personal

injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Purchaser or its affiliates) as a result of (i) the inaccuracy or breach of any such representation or warranty, or (ii) any matter, condition or act involving Environmental Laws or Hazardous Materials which existed on or arose prior to the Closing Date and which failed to comply with the Environmental Laws in effect as of the Closing Date or any existing common law theory based on nuisance or strict liability in existence as of the Closing Date, regardless of whether or not Seller had knowledge of same as of the Closing Date.

(v) **Hotel Names.** Exhibit O identifies all Hotel Names which are used in the business of operating the Hotel and is complete and correct in all material respects.

(w) **Software.** Exhibit G identifies all of the Software used in connection with the ownership and operation of the Hotel. Seller is the owner or licensee of the Software and, except as listed in Exhibit G, the Software and all rights thereunder are transferable to Purchaser without restriction.

(x) **Documents.** Exhibit M is a list of all of the Documents; Seller knows of no other document or instrument relating to the Hotel, or the ownership or operation thereof.

(y) **Pension Plan.** This transaction will constitute a "complete withdrawal," as that term is defined in Section 4203 of the Employee Retirement Income Security Act of 1974, as amended, by Seller from the multi-employer pension plan identified in Exhibit P hereto.

(z) **Seller's Knowledge.** For the purposes of this Section 5.1, the phrases "to the best of Seller's knowledge," "to Seller's knowledge" and similar phrases shall imply a reasonable investigation by Seller and its agents.

Except as specifically set forth herein or in the documents to be delivered pursuant hereto, Seller has not made and does not make or give any warranties or representations.

5.2 **Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants the following to Seller:

(a) **Authority.** Purchaser has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof.

(b) **No Conflict.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, breach, result in a default under, or violate any commitment, document or instrument to which Purchaser is a party or by which it is bound.

Purchaser is not relying on any warranty or representation made by any person acting on Seller's behalf as to the physical condition, past or future income, expenses or operations of the Hotel or

any other matter or thing affecting or related to the Property, except as disclosed in this Agreement, in the Submittals and otherwise in the documents and instruments provided by Seller to Purchaser.

5.3 **Duration of Representations and Warranties.** All representations and warranties contained in Sections 5.1 and 5.2 shall be deemed restated on and as of the Closing Date and shall survive the Closing.

ARTICLE VI

CLOSING MATTERS

6.1 **Closing.** The closing of the transaction contemplated hereby (the "Closing") shall take place at the offices of the Title Company on a date (the "Closing Date") to be specified by written notice from Purchaser to Seller, such date to be not earlier than fifteen (15) days after the date of such notice, and, in any event, the Closing Date shall be not later than the day which is ninety (90) days after the expiration of the Inspection Period. The Closing shall be effected pursuant to the Escrow Instructions.

6.2 **New York Style Closing.** at the request of either party, the transaction shall be closed by means of a "New York Style Closing," with the concurrent delivery of the documents of title, transfer of interests, delivery of the title policy described in Section 7.1(e) and the payment of the Purchase Price. Seller shall provide and pay for any undertaking (the "Gap Undertaking") to the Title Company necessary for the New York Style Closing to occur. Seller and Purchaser shall each pay fifty percent (50%) of the charges of the Title Company for such New York Style Closing.

6.3 **Survey, Title Commitment and Searches.** Seller shall deliver to Purchaser the following (hereinafter referred to collectively as the "Title Documents") within twenty (20) days from the date hereof:

(a) **Survey.** Five (5) copies of a Plat of Survey of the Property prepared by a surveyor licensed by the State of _____, in conformity with the minimum detail requirements and the current standards for Land Title Surveys of the American Title Association, the American Congress on Surveying and Mapping and the National Society of Professional Surveyors and such standards as are required by the Title Insurer as a condition to the removal of any survey exceptions from the Title Commitment, certified to Purchaser, its lender, if any, and the Title Insurer after the date hereof, showing, without limitation of the foregoing requirements, the following information with respect to the Property:

- (i) the legal description and boundaries thereof;
- (ii) the location and street and common addresses of all Improvements situated thereon;

(iii) the location, course and recording numbers, if applicable, of all water, gas, electric, sewer line and other easements, either visible or recorded and party walls;

(iv) public and private streets, roads, alleys and highways and their common or official names;

(v) record and physical access to and from a public road or way;

(vi) no encroachments thereon or by any Improvements located thereon on adjacent property;

(vii) the amount of gross square feet and net square feet (that is, after deducting the area of that portion of the Property, if any, lying in the existing or proposed right-of-way of a public street or road) contained in the Real Property;

(viii) building lines or other restrictions affecting the Property; and

(ix) whether any portion of the Property is located in an area designated as being subject to flood hazards or flood risks or wetlands by any agency of the United States of America.

(b) **Title Commitment.** A Title Commitment for an ALTA Form B Owner's Title Policy issued by the Title Company in the amount _____ Dollars (\$ _____) (to be increased at Closing to amount of the Purchase Price) showing title to the Real Property in Seller, subject only to the Permitted Exceptions, containing full extended coverage over all general exceptions, a 3.1 zoning endorsement (amended to include parking location, survey and contiguity endorsements, an endorsement that the real estate tax bills for the Property do not include taxes pertaining to other real estate, and such other endorsements as may be reasonably requested by Purchaser, and dated after the date hereof. Seller shall also deliver full and legible copies of all documents ("Title Papers") referred to in the Title Commitment.

(c) **Searches.** UCC, judgment and tax lien searches in the names of Seller covering a date not earlier than seven (7) days prior to the date hereof (the "Searches") showing no Title Defect as to the Property unless the same is to be paid by Seller and released at or prior to Closing.

(d) **Defects.** With respect to the Title Documents required to be provided, as aforesaid, if the same shall reflect any facts that would result in a Title Defect, Seller shall have thirty (30) days from the expiration of the Inspection Period within which to cure or remove the Title Defect. Seller shall be obligated to remove mortgages, deeds of trust and other liens or encumbrances of a definite and ascertainable amount, which the parties agree may be removed by the use of the proceeds of sale at Closing as provided in Section 6.3(e) below. In the alternative, Seller may make arrangements satisfactory to the Title Company for the cure (including insurance over) or removal of record of any such Title Defect. If any such Title Defect is not cured or otherwise provided for as aforesaid on or prior to the thirtieth (30th) day from the expiration of the Inspection

Period, Purchaser shall either: (i) terminate this Agreement, in which event (hereinafter referred to as "Election No. 1") the Deposit, and all interest earned thereon, shall be returned to Purchaser and the parties shall have no further Obligation or liability to each other hereunder; or (ii) accept the Title Commitment, Survey or Searches as is, with the right, however, to deduct the amount of Title Defects represented by liens or encumbrances of a definite or ascertainable amount from the Purchase Price payable at Closing (hereinafter referred to as "Election No. 2"). Title Defects which are acceptable as part of Election No. 2 shall thereupon be deemed to be Permitted Exceptions and Exhibit C shall be amended, if necessary, to include such additional Permitted Exceptions. Election No. 2 shall be made by Purchaser giving Seller written notice thereof within five (5) days after notice of Seller's inability to cure or remove the Title Defect and in the absence of notice of Election No. 2 within such five (5) day period, Purchaser shall be deemed to have elected Election No. 1. In the event Purchaser elects Election No. 1 and a Title Defect was created or suffered by Seller, Purchaser shall be paid by Seller the actual costs of Purchaser's investigation not to exceed _____ Dollars (\$_____) in addition to recovery of the Deposit and all interest accrued thereon.

(e) **Removal of Liens.** If on the Closing Date there shall be any Title Defect which is capable of satisfaction by the payment of money, then Seller shall either (a) use a portion of the Purchase Price to satisfy the same, provided Seller shall simultaneously either deliver to Purchaser at Closing instruments, in recordable form, sufficient to satisfy such Title Defect of record, together with the cost of recording or filing said instrument; or (b) in the alternative, make arrangements with the Title Company, in advance of Closing, whereby Seller will deposit with the Title Company sufficient monies, acceptable to the Title Company, to induce the Title Company to issue the Title Policy to Purchaser, either free of any such Title Defect or with insurance which "insures over" such Title Defect. Purchaser agrees to provide at Closing separate certified checks as requested, to facilitate the satisfaction of any such Title Defects, if a request therefor is made within a reasonable time prior to the Closing Date. The existence of any Title Defects capable of satisfaction by the payment of money shall not be deemed to be Title Defects for the purposes of cure periods, as provided in Section 6.3(d) if Seller shall comply with the foregoing requirements.

(f) **Escrow.** This Agreement shall not be merged into the Escrow Instructions but the Escrow Instructions shall be deemed auxiliary to this Agreement and, as between the parties hereto, the provisions of this Agreement shall govern and control.

ARTICLE VII

CLOSING DELIVERIES

7.1 **Seller's Deliveries.** At Closing, Seller shall deliver, or cause to be delivered to Purchaser, the following, each of which shall be in form and substance acceptable to counsel for Purchaser and, in the case of documents of transfer or conveyance, shall be accepted or consented to by all parties required to make such transfer or conveyance effective:

(a) a recordable warranty deed from Seller to Purchaser subject only to the Permitted Exceptions;

(b) a Bill of Sale, with special covenants of title, transferring to Purchaser all of Seller's right, title and interest in and to each and every item of Fixtures and Tangible Personal Property, Documents, Consumables and Operating Equipment to be transferred hereunder subject only to Permitted Exceptions, and with respect to any vehicles included therein, such separate forms of assignment as are required to be filed with any governmental agency to effect such change in registration of ownership;

(c) all of the Bookings, Hotel Contracts, Space Leases, Permits and other tangible Miscellaneous Hotel Assets, together with an assignment conveying and transferring to Purchaser all of Seller's right, title and interest in, to and under the Bookings, Hotel, Contracts, Space Leases, Permits (other than Excluded Permits) and all other Miscellaneous Hotel Assets;

(d) the certificates referred to in Section 10.1(b) hereof;

(e) an ALTA Form B Owner's Title Insurance Policy, issued in exact conformity with the Title Commitment, in favor of Seller, by the Title Company, in the amount of the Purchase Price, showing good and marketable fee simple title in the Real Property, to be vested in Seller, subject only to Permitted Exceptions (the "Title Policy");

(f) a FIRPTA Certificate;

(g) estoppel letters from all of the Space Lessees in the form of Exhibit J-1 and any estoppel certificates for Hotel Contracts which may be required pursuant to Section 10.1(f);

(h) appropriate instruments conveying or transferring Seller's right, title and interest in and to the Software to Purchaser;

(i) Affidavit of Title for the Real Property, in customary form;

(j) a certification of the representation and warranty of Seller contained in Section 5.1(u) and indemnification from Seller to Purchaser for any costs, expenses, liabilities or losses which result from any inaccuracy or breach thereof and a certification by Seller that any clean-up required or recommended by the Environmental Study has been completed in accordance with the recommendations of the Environmental Study;

(k) a Bulk Sales Stop Order from the Department dated not earlier than fifteen (15) days before the Closing Date, and a full release of Claims from the Department with respect to all debts owned by Seller;

(l) notices to Space Lessees of change in ownership of the Hotel, if requested by Purchaser;

- (m) appropriate assignments of the insurance policies designated by Purchaser to be assigned to Purchaser at Closing, if any;
- (n) evidence of termination of the Terminated Employees;
- (o) the opinion of Seller's counsel as provided by Section 10.1(c); and
- (p) certification of the Department of Water and Sanitation for the City of _____ that there are no outstanding water and/or sewer charges for the Hotel;
- (q) the Preliminary Closing Statement; and
- (r) State of _____, County of _____ and City of _____ documentary stamp and transfer tax declarations.

7.2 **Purchaser's Deliveries.** At the Closing, Purchaser shall cause to be delivered to Seller that portion of the Purchase Price required to be paid pursuant to Section 3.3 hereof, together with the certificate referred to in Section 9.1(b) hereof, and the opinion of Purchaser's counsel as provided by Section 9.1(c) the Preliminary Closing Statement, and State of _____, County of _____ and City of _____ transfer tax declarations.

7.3 **Concurrent Transactions.** All documents or other deliveries required to be made by Purchaser or Seller at Closing, and all transactions required to be consummated concurrently with Closing, shall be deemed to have been delivered and to have been consummated simultaneously with all other transactions and all other deliveries, and no delivery shall be deemed to have been made, and no transaction shall be deemed to have been consummated, until all deliveries required by Purchaser, or its designee, and Seller shall have been made, and all concurrent or other transactions shall have been consummated.

7.4 **Further Assurances.** Seller and Purchaser, at the Closing, or at any time or from time to time thereafter, upon request of either party, will execute such additional instruments, documents or certificates as either party deems reasonably necessary in order to convey, assign and transfer the Property to Purchaser hereunder.

7.5 **Possession.** Possession of the Property shall be delivered at Closing. Subject to the provisions of Section 16.1(f) Excluded Assets (other than any thereof under leases to be assumed by Purchaser) shall be removed from the Hotel by Seller, at its expense, on, or within thirty (30) days after, the Closing Date. Seller, at its expense, shall make all repairs necessitated by such removal but shall have no obligation to replace any Excluded Asset so removed.

ARTICLE VIII

ADJUSTMENTS AND PRORATIONS; CLOSING STATEMENTS

8.1 **Adjustments and Prorations.** The following matters and items shall be apportioned between the parties hereto or, where appropriate, credited in total to a particular party, as of the Cut-off Time as provided below:

(a) **Qualifying Receivables; Trade Accounts Payable.** Qualifying Receivables and trade accounts payable shall be identified as of the Cut-off Time. Purchaser is purchasing Qualifying Receivables and is assuming trade accounts payable. Seller shall receive a credit equal to ninety-five percent (95%) of Qualifying Receivables as of the Cut-off Time. Purchaser shall receive a credit for all trade accounts payable as of the Cut-off Time. Notwithstanding the foregoing, each party shall receive a credit equal to one-half of the amount of transient guest room rentals for the full night which begins on the day immediately preceding the Closing Date. Purchaser will honor, for its account, the terms and rates of all pre-closing reservations confirmed by Seller for dates after the Closing Date. Any pre-closing down payments made to Seller on confirmed reservations for dates after the Closing Date will be credited to Purchaser at the Closing. Any post-closing down payments made to Seller on confirmed reservations for dates after the Closing Date will be forwarded to Purchaser upon receipt.

(b) **Taxes and Assessments.** All ad valorem taxes, special or general assessments, personal property taxes, attorneys' fees directly related to the reduction of taxes or assessments, water and sewer rents, rates and charges, vault charges, canopy permit fees, and other municipal permit fees shall be apportioned between the parties. If the amount of any such item is not ascertainable on the Closing Date, the credit therefor shall be based on one hundred ten percent (110%) of the most recent available bill and shall be reproporated upon receipt of the actual tax bill.

(c) **Utility Contracts.** Telephone and telex contracts and contracts for the supply of heat, steam, electric power, gas, lighting and any other utility service shall be apportioned between the parties, with Seller receiving a credit for each deposit, if any, made by Seller as security under any such public service contracts if the same is transferable and provided such deposit remains on deposit for the benefit of Purchaser. Where possible, cut-off readings will be secured for all utilities on the Closing Date.

(d) **Hotel Contracts and Space Leases.** Any amounts prepaid or payable under any Hotel Contracts and Space Leases shall be apportioned between the parties. Any percentage rentals under Space Leases shall be prorated on the basis of the ratio of the number of days expired before Closing to the number of days after closing, for the current percentage rent period of the Space Lease. All security deposits held by Seller shall be transferred to Purchaser and all obligations with respect to such security deposits shall be assumed by Purchaser.

(e) **License Fees.** Fees paid or payable for Permits (other than Excluded Permits) shall be apportioned between the parties.

(f) **Hotel Matters.**

- (i) Advance payments, if any, under Bookings for Hotel facilities;
- (ii) Coin machine, telephone, washroom and checkroom income; and
- (iii) Commissions to credit and referral organizations.

(g) **Insurance.** Prepaid premiums for policies of insurance shall be apportioned between the parties. Seller shall assign such of its policies of insurance for the Property which has been designated by Purchaser to be assigned to Purchaser as of the Closing Date.

(h) **Employment Contracts.** Seller shall be responsible for, and shall pay when due, all Compensation of Terminated Employees. Seller shall be responsible for, and shall pay when due, all Compensation of Retained Employees, other than Proratable Compensation, until the Cut-off Time. Proratable Compensation of Retained Employees shall be prorated as of the Cut-off Time. Purchaser assumes no Employment Contracts but shall be responsible for, and shall pay when due, all Proratable Compensation of Retained Employees to the extent it receives a credit therefor in the Closing Statement. Purchaser assumes no obligation with respect to any Employee Benefits all of which, together with any sums due any Terminated Employee as a consequence of the termination of his employment, shall be the responsibility of Seller.

(i) **Consumable Items.** The cost of any Consumables or Operating Equipment which are at a level below the level required to be maintained under this Agreement shall be credited to Purchaser.

(j) **Other.** Such other items as are provided for in this Agreement or as are normally prorated and adjusted in the sale of a hotel, including, without limitation, all petty cash funds and cash in house banks, and all deposits and prepaid items which inure to the benefit of the Purchaser.

8.2 **Payment.** Any net credit due to Seller as a result of the adjustments and prorations under Section 8.1 shall be paid in cash at the time of Closing.

8.3 **Receivables.** Purchaser is not purchasing any of the receivables of the Hotel, other than the Qualifying Receivables referred to in Subsection 8.1(a) above. Seller shall be solely responsible for the collection of such accounts receivable. If Purchaser shall receive any payment made on any unpurchased accounts receivable within ninety (90) days after the Closing Date, it shall promptly remit such payment to Seller. With regard to any collection made from any person or entity who is indebted to the Hotel both with respect to accounts receivable accruing prior to the Closing Date and to the accounts receivable accruing subsequent to the Closing Date, such collection shall be applied as designated by the payor, but if there is no designation, then any such collections received within ninety (90) days after the Closing Date shall be applied first to the indebtedness accrued prior to the Closing Date, but thereafter, any such collections shall be applied first to the payment in full of any amounts due to Purchaser on accounts accruing subsequent to the Closing Date.

8.4 **Accounts Payable.** Purchaser is assuming trade accounts payable as above provided.

8.5 **Closing Statements.**

(a) **Preparation.** Each party shall cause its designated representatives to enter the Hotel only at reasonable times and without unreasonably interfering with

operations, both before and after the Closing Date, for the purpose of making such inventories, examinations and audits of the Hotel, and of the books and records of the Hotel, as they deem necessary to make the adjustments and prorrations required under this Article 8, or under any other provisions of this Agreement. Based upon such inventories, examinations and audits, at the Closing, the representatives of the parties shall jointly prepare and deliver to each party a Preliminary Closing Statement which shall show the net amount due either to Seller or Purchaser as a result thereof, and such net amount will be added to, or subtracted from the payment of the cash balance of the Purchase Price to be paid to Seller pursuant to Section 3.3 hereof. Within thirty (30) days following the Closing Date, Seller and Purchaser shall agree on a Final Closing Statement setting forth the final determination of all items to be included on the Closing Statements. The net amount due Seller or Purchaser, if any, by reason of adjustments in the Preliminary Closing Statement as shown in the Final Closing Statement, shall be paid in cash by the party obligated therefor within ten (10) days following the date of the Final Closing Statement.

(b) **Disputes.** In the event the representatives of the parties are unable to reach agreement with respect to preparation of the Preliminary Closing Statement then, except as hereinafter provided, the disputed amount shall be held in the Escrow, pending agreement of the parties or the determination of the Accountants (as defined herein) and the Closing shall occur. Purchaser shall be required to deposit in the Escrow any additional sum of the disputed amount which it may be required to pay. In the event of a dispute regarding the amount of the payment required to be made by Purchaser pursuant to Section 3.3 hereof involving more than _____ Dollars (\$_____) in the aggregate, Purchaser may elect to postpone the Closing, for a period not to exceed sixty (60) days pending resolutions by the Accountants. Any such dispute shall survive and shall be subject to later resolution pursuant to this Section 8.5. In the event the representatives of the parties are unable to reach agreement with respect to the Closing Statements, the parties shall submit their dispute to a firm of independent certified public accountants of recognized standing in the hotel industry (the "Accountants") and the determination of such firm shall be conclusive on both parties hereto.

(c) **Period for Recalculation.** Notwithstanding the foregoing, if at any time within six (6) months following the Closing Date, either party discovers any items which should have been included in the Closing Statements but were omitted therefrom, then such items shall be adjusted in the same manner as if their existence had been known at the time of the preparation of the Closing Statements. The foregoing limitations shall not apply to any items which, by their nature, cannot be finally determined within the periods specified.

ARTICLE IX

CONDITIONS TO SELLER'S OBLIGATIONS

9.1 **Conditions.** Seller's obligation to close hereunder shall be subject to the occurrence of each of the following conditions, any one or more of which may be waived by Seller in writing.

(a) **Purchaser's Compliance with Obligations.** Purchaser shall have complied with all Obligations required by this Agreement to be complied with by Purchaser.

(b) **Truth of Purchaser's Representations and Warranties.** The representations and warranties of Purchaser contained in Section 5.2 were true in all material respects when made, and are true in all material respects on the Closing Date (or any deferred Closing Date) and Seller shall have received a certificate to that effect signed by an authorized agent of Purchaser.

(c) **Opinion of Purchaser's Counsel.** Purchaser shall have delivered to Seller a favorable written opinion of _____ in connection with this transaction, dated the Closing Date, as to (i) the power and authority of Purchaser to execute and deliver this Agreement, (ii) the due authorization, execution and delivery by Purchaser of this Agreement, and (iii) the legality, validity and, as to Purchaser, the binding effect of this Agreement (subject to the effect of bankruptcy and similar laws affecting the enforcement of creditors' rights generally and to the discretion of a court of equity to enforce equitable remedies).

9.2 **Failure of Conditions.** If any of the conditions enumerated in Section 9.1 are not fulfilled and, as a consequence thereof, Seller elects to terminate this Agreement, such failure shall be deemed a default by Purchaser hereunder and the consequences thereof shall be governed by the provisions of Section 3.2.

ARTICLE X

CONDITIONS TO PURCHASER'S OBLIGATIONS

10.1 **Conditions.** Purchaser's obligation to close hereunder shall be subject to the occurrence of each of the following conditions, any one or more of which may be waived by Purchaser in writing.

(a) **Seller's Compliance with Obligations.** Seller shall have complied with all Obligations required by this Agreement to be complied with by Seller.

(b) **Truth of Seller's Representations and Warranties.** The representations and warranties of Seller contained in Section 5.1 were true in all material respects when made, and are true in all material respects on the Closing Date (or any deferred Closing Date) and Purchaser shall have received a certificate signed by each of the Beneficiaries to that effect.

(c) **Opinion of Seller's Counsel.** There shall have been delivered to Purchaser a favorable opinion of _____, counsel to Seller in connection with this transaction, dated the Closing Date as to (i) the power and authority of Seller to execute and deliver this Agreement; (ii) the due authorization, execution and delivery by Seller of this Agreement and all other documents required to be executed and delivered by Seller pursuant to Section 7.1 hereof; and (iii) the legality, validity and, as to Seller, the binding effect of this Agreement and all other documents required to be executed and

delivered by Seller pursuant to Section 7.1 hereof (subject in each case to the effect of bankruptcy and similar laws affecting creditors' rights generally and to the discretion of a court of equity to enforce equitable remedies).

(d) **Obtaining of Excluded Permits.** Purchaser shall have obtained (or otherwise assured itself of the availability of in its own or its designee's name), all Permits of the type designated as Excluded Permits in Exhibit F, except liquor licenses and permits, necessary for the operation of the Hotel. Purchaser agrees to use commercially reasonable efforts (and Seller, at Purchaser's expense, agrees to cooperate fully with Purchaser in such regard) to obtain all such Excluded Permits.

(e) **Governmental Approvals.** Except as provided to the contrary in subsection (d) above, if this transaction, or any part or parts hereof, or the consummation of any of the transactions herein contemplated, shall require authorization or approval of any governmental agency having jurisdiction, all such authorizations and approvals shall have been obtained and shall be in full force and effect on and as of the Closing Date. Seller agrees to use its commercially reasonable efforts and all due diligence to cause such authorizations or approvals to be obtained, and Purchaser agrees to cooperate with Seller in all reasonable respects with respect thereto, but at the sole cost and expense of Seller. If such authorizations and approvals shall not have been obtained on or prior to the last day for Closing hereinabove provided, the Closing Date may be deferred, at the election of Purchaser, for an additional period of time, not to exceed thirty (30) days, as shall be necessary to obtain any authorizations or approvals not then obtained.

(f) **Estoppel Certificates: Hotel Contracts.** Purchaser shall notify Seller, in writing at least thirty (30) days prior to the Closing Date, of the Material Contracts for which Purchaser requires estoppel certificates. Each of said estoppel certificates shall be in writing from the parties to such Material Contract stating that such Material Contract is in full force and effect, has not been amended or modified except as therein indicated, that such party consents to the assignment to Purchaser and that no party is then in default under such Material Contract (or if any default is known to exist, or would arise with the giving of notice or the passage of time, stating the nature of such default). The estoppel certificates herein referred to shall be in form and substance reasonably satisfactory to Purchaser and dated not more than thirty (30) days prior to the Closing Date.

(g) **No Pending Adverse Litigation.** On the Closing Date, there shall not then be pending or, to the knowledge of either Purchaser or Seller, threatened, any litigation, administrative proceeding, investigation or other form of governmental enforcement, or executive or legislative proceeding which, if determined adversely, would restrain the consummation of any of the transactions herein referred to, declare illegal, invalid or non-binding any of the covenants or obligations of the parties herein, or have a material and adverse effect on the operations or cash flow of the Hotel, or materially and adversely affect the value of the Property or the ability of Purchaser, after the Closing, to operate the Hotel in the manner contemplated hereby, other than those matters previously disclosed and approved by Purchaser.

10.2 **Failure of Conditions.** If any of the conditions enumerated in subsections (d), (e), (f) and (g) of Section 10.1 are not fulfilled, then the sole remedy of Purchaser shall be to terminate this Agreement (whereupon the Deposit, and all interest earned thereon, shall be returned to Purchaser and neither party shall have any further Obligations or liability hereunder unless the failure to fulfill such condition constitutes, or results from, either (i) a material breach of an express representation or warranty made by Seller hereunder, or (ii) a material default of an express covenant made by Seller hereunder, in which event Purchaser shall be entitled to pursue against Seller any and all remedies available to Purchaser, at law or in equity. If any of the conditions enumerated in subsections (a), (b) and (c) of Section 10.1 are not fulfilled and, as a consequence thereof, Purchaser elects to terminate this Agreement, such failure shall be deemed a default by Seller hereunder, the Deposit referred to in Section 3.2, and all interest earned thereon, shall be promptly returned to Purchaser, and Purchaser shall be entitled to pursue against Seller any and all remedies available to Purchaser, at law or in equity. Notwithstanding the foregoing, if Purchaser shall terminate this Agreement on a date sooner than thirty (30) days prior to closing for a failure of any of the conditions enumerated in subsections (d), (e) or (f) then Purchaser shall forfeit its Deposit and all interest earnings thereon to Seller.

ARTICLE XI

ACTIONS AND OPERATIONS PENDING CLOSING

11.1 **Actions and Operations Pending Closing.** Seller agrees that after the expiration of the Inspection Period and the Closing Date:

(a) Except as may be provided to the contrary in Section 5.1(i) hereof, the Hotel will continue to be operated and maintained substantially in accordance with present standards.

(b) Seller will not enter into any new Material Contract or Space Lease, or cancel, modify or renew any existing Material Contract or Space Lease, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. If Purchaser fails to respond to a request for consent within fifteen (15) business days after receipt of such request, such consent shall be deemed given.

(c) Seller shall have the right, without notice to or consent of Purchaser, to make Bookings in the ordinary course of business, at no less than the Hotel's standard rates including customary discounted rates. Additionally, Seller agrees to entertain in good faith Purchaser's suggestions relating to the policy of the Hotel with respect to future Bookings and extensions of credit.

(d) Seller shall use commercially reasonable efforts to preserve in force all existing Permits and to cause all those expiring to be renewed prior to the Closing Date. If any such Permit shall be suspended or revoked, Seller shall promptly so notify Purchaser and shall take all measures necessary to cause the reinstatement of such Permit without any additional limitation or condition.

(e) Seller shall notify Purchaser promptly if Seller becomes aware of any transaction or occurrence prior to the Closing Date which would make any of the representations or warranties of Seller contained in Section 5.1 not true in any material respect.

(f) Seller will maintain in effect all policies of casualty and liability insurance, or similar policies of insurance, with the same limits of coverage which it now carries with respect to the Hotel.

(g) Seller will not dispose of any of the Property, except in the ordinary course of business and in accordance with this Agreement.

(h) Seller shall allow Purchaser and its agents or representatives to inspect the Property, and all books and records relating thereto, at such times as Purchaser may reasonably request, provided such inspection does not unreasonably interfere with the continued operation of the Hotel in the ordinary course of business. Purchaser shall also have the right to have, and Seller shall provide accommodations for, a full-time on-site representative to observe the operations of the Hotel. Such accommodations shall be rent-free except for those nights when all other guest rooms at the Hotel are fully occupied, in which event Purchaser shall reimburse Seller for such nights at the Hotel's lowest corporate rate for such accommodations. Purchaser agrees that the results of all such observations will be treated as confidential, and Purchaser shall not disclose the same to any other person or entity except for Purchaser's counsel, accountants, and other agents or representatives consulted in connection with the acquisition of the Hotel. In the event that the sale is not consummated, any and all reports, and financial and operating information obtained by Purchaser or its representatives shall be returned to the Seller.

ARTICLE XII

CASUALTIES AND TAKINGS

12.1 Casualties.

(a) If any damage to the Property shall occur prior to the Closing Date by reason of fire, windstorm, hail, explosion or other casualty, and if, in Purchaser's reasonable judgment, the cost of repairing such damage will exceed _____ Dollars (\$_____) Purchaser may elect to: (i) terminate this Agreement by giving written notice to Seller in which event the Deposit, and all interest earned thereon, shall be returned to Purchaser and neither party shall have any further Obligations or liability whatsoever to the other hereunder or (ii) receive an assignment of all of Seller's rights to any insurance proceeds (including business interruption proceeds) relating to such damage and acquire the Property without any adjustment in the Purchase Price, provided that, in such latter event, Seller shall pay to Purchaser the amount of any deductible under applicable insurance policies.

(b) If, in the reasonable business judgment of the insurance adjuster or other representative of the insurer of the Property, the cost of repairing such damage will not

exceed _____ Dollars (\$_____) the transactions contemplated hereby shall close without any adjustment in the Purchase Price, Purchaser shall receive an assignment of all of Seller's rights to any insurance proceeds (including business interruption proceeds) and Seller shall pay to Purchaser the amount of any deductible under applicable insurance policies.

12.2 **Takings**. In the event of the actual or threatened taking (either temporary or permanent) in any condemnation proceedings by exercise of right of eminent domain, of all or any part of the Real Property, between the date hereof and the Closing Date, and if, in Purchaser's reasonable judgment, such taking will result in the inability to conduct the operations of the Hotel substantially in accordance with the present standards, Purchaser may elect to: (i) terminate this Agreement by giving written notice to Seller, in which event the Deposit, and all interest earned thereon, shall be returned to Purchaser and neither party shall have any further Obligations or liability whatsoever to the other hereunder or (ii) receive an assignment of all of Seller's rights to any condemnation award relating to such taking and acquire the Property without any adjustment in the purchase price.

ARTICLE XIII

EMPLOYEES

13.1 **Employees, Compensation and Indemnification**. Purchaser shall have the continuing right to review all employment records and files of, and to interview, Employees. At least eighteen (18) days prior to the Closing Date, Purchaser shall identify those Employees to whom it does not intend to offer continued employment at the Hotel. Such Employees, together with those electing to transfer, as aforesaid, are referred to herein as "Terminated Employees." All other Employees are referred to herein as "Retained Employees." Seller shall terminate its employer-employee relationship with all Terminated Employees, other than those electing to transfer as aforesaid, as of the Cut-off Time. Purchaser agrees to offer new employment agreements to all Retained Employees, for such terms and upon such conditions as Purchaser may determine in its absolute discretion. With the exception of Proratable Compensation of Retained Employees, which Purchaser agrees to pay when due, Seller shall be solely responsible for all Compensation and other liabilities with respect to Employees and liabilities and obligations to Employees pursuant to any Employment Contract. Purchaser shall not be responsible for any such liability or obligations and Seller agrees to indemnify and hold Purchaser harmless from and against any such liability or obligations. All Compensation (other than Proratable Compensation of Retained Employees obligations, liabilities and claims (including any under the Fair Labor Standards Act)) to or by any Employee of Seller arising or occurring prior to the Cut-off Time shall be the responsibility of Seller. Purchaser shall not be responsible for any liability or obligations thereof and Seller agrees to indemnify and hold Purchaser harmless from and against same. To the extent Purchaser receives a credit therefor on the Closing Statement, Purchaser agrees to indemnify and hold Seller harmless from and against any liability or obligations with respect to Proratable Compensation of Retained Employees. Purchaser shall not assume or be liable upon any Employment Contract of Seller.

13.2 **Vacation Pay**. Seller shall be solely responsible for all incentive pay and vacation pay for Terminated Employees, other than those electing to transfer as aforesaid, and

shall provide Terminated Employees, other than those electing to transfer as aforesaid, with the vacation pay they have earned, or the pro rata part of the vacation pay they would have earned upon the anniversary date of their employment, as of the Closing Date.

ARTICLE XIV

INDEMNITIES

14.1 **Seller's Indemnity**. Seller agrees to indemnify, defend (with Purchaser having the right to retain counsel for the purpose of participating in such defense), at its sole cost and expense) and hold Purchaser harmless against and with respect to the following:

(a) except to the extent that Purchaser receives a credit therefor on the Closing Statement, any and all obligations, liabilities, claims, accounts, demands, liens or encumbrances, whether direct or contingent and no matter how arising, in any way related to the Property and arising or accruing on or before the Closing Date or in any way related to or arising from any act, conduct, omission, contract or commitment of Seller or any predecessor in interest of Seller, at any time or times on or before the Closing Date (including, but not limited to, any damage to property or injury to or death of any person or referred to in Section 13.1 above); without limitation on the generality of the foregoing, Seller indemnifies Purchaser from any claim or judgment under any lawsuit or proceeding filed or pending prior to the Closing Date against the Property, or any part thereof, and any costs or expenses (including reasonable attorneys' fees) heretofore or hereafter incurred in connection with any such lawsuit or proceeding;

(b) any loss or damage to Purchaser resulting from any inaccuracy in or breach of any representation or warranty of Seller or resulting from any breach or default by Seller of any Obligation of Seller under this Agreement; and

(c) all costs and expenses, including reasonable attorneys' fees, related to any actions, suits or judgments incident to any of the foregoing.

14.2 **Purchaser's Indemnity**. Purchaser agrees to indemnify, defend (with Seller having the right to retain counsel for the purpose of participating in such defense, at its sole cost and expense and hold Seller harmless against and with respect to the following:

(a) any loss or damage to Seller, subsequent to the Closing Date, resulting from any inaccuracy in or breach of any representation or warranty of Purchaser under this Agreement;

(b) any injury to person or property causing any loss or damage to Seller resulting from or arising out of work performed by Purchaser pursuant to Section 11.1(h) hereof;

(c) any and all damage to Seller resulting from or arising out of Purchaser's operation of the Property after the Closing Date; and

(d) all costs and expenses, including reasonable attorneys' fees, related to any actions, suits or judgments incident to any of the foregoing.

14.3 **Notice of Claims.** Seller and Purchaser, as applicable, shall promptly notify the other in the event any claim is made against Seller or Purchaser as to which the other party has agreed to indemnify and the indemnitor shall thereupon undertake to defend and hold the indemnitee saved and harmless therefrom.

14.4 **Holdback.** To secure Seller's Obligations after the Closing Date, Purchaser shall have the right at the Closing hereunder to hold back such amount from the Purchase Price as shall be reasonably necessary to satisfy and complete the Obligations of Seller, including, without limitation, the indemnification of any claims made against Seller for the period on and prior to the Closing (the "Holdback"). On the Closing Date, Seller and Purchaser shall mutually establish the amount of the Holdback. In the event Seller and Purchaser shall not be able to agree upon the amount of the Holdback, then the amount of the Holdback shall be _____ Dollars (\$_____).

ARTICLE XV

NOTICES

15.1 **Notices.** Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (herein collectively called "Notices") required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight express courier, postage prepaid, addressed to the party to be so notified as follows:

If intended for Seller, to: _____

With copies to: _____

If intended for Purchaser, to: _____

With copies to: _____

Notice mailed by registered or certified mail shall be deemed received by the addressee three (3) days after mailing thereof. Notice personally delivered shall be deemed received when delivered. Notice mailed by overnight express courier shall be deemed received by the addressee

two (2) days after mailing thereof. Either party at any time may change the address for notice to such party by mailing a Notice as aforesaid.

ARTICLE XVI

ADDITIONAL COVENANTS

16.1 **Additional Covenants.** In addition, the parties agree as follows:

(a) **Expenses.** Seller shall be responsible for the payment of all sales, use and the State of _____ and County of _____ transfer taxes, fifty percent (50%) of all escrow fees, all costs of the Survey, and all title insurance premiums and charges for the issuance of the Title Policy and fifty percent (50%) of the charges for the "New York Style Closing." Purchaser shall be responsible for the payment of all recording fees, one hundred percent (100%) of any money lender's escrow fee, all transaction and transfer fees of the City of _____, fifty percent (50%) of all other escrow fees and fifty percent (50%) of the charges for the "New York Style Closing." The fees and expenses of Seller's designated representatives, accountants and attorneys shall be borne by Seller, and the fees and expenses of Purchaser's designated representatives, accountants and attorneys shall be borne by Purchaser.

(b) **Brokerage.** Seller and Purchaser each hereby represent and warrant to the other that, with the exception of _____ to whom Seller shall pay all commissions due, neither has dealt with any broker or finder in connection with the transaction contemplated hereby, and each hereby agrees to indemnify, defend and hold the other harmless against and from any and all manner of claims, liabilities, loss, damage, attorneys' fees and expenses, incurred by either party and arising out of, or resulting from, any claim by any such broker or finder in contravention of its representation and warranty herein contained.

(c) **Guest Baggage.** All baggage of guests who are still in the Hotel on the Closing Date, which has been checked with or left in the care of Seller shall be inventoried, sealed and tagged jointly by Seller and Purchaser on the Closing Date. Purchaser hereby indemnifies Seller against any claims, losses or liabilities in connection with such baggage arising out of the acts of omissions of Purchaser after the Closing Date. Seller hereby indemnifies Purchaser against any claim, losses or liabilities with respect to such baggage arising out of the acts or omissions of Seller prior to the Closing Date.

(d) **Safe Deposits.** Immediately after the Closing, Seller shall send written notice to guests or tenants or other persons who have safe deposit boxes, advising of the sale of the Hotel to Purchaser and requesting immediate removal of the contents thereof or the removal thereof and concurrent re-deposit of such contents pursuant to new safe deposit agreements with Purchaser. Seller, at its own expense, shall have a representative present when the boxes are opened, in the presence of a representative of the Purchaser. Purchaser shall not be liable or responsible for any items claimed to have been in such

boxes unless such items are so removed and re-deposited, and Seller agrees to indemnify and hold harmless Purchaser from and against any such liability or responsibility.

(e) **Tax Appeal Proceedings.** Seller shall be entitled to receive and retain the proceeds from any tax appeals or protests for tax fiscal years prior to the tax fiscal year in which the Closing Date occurs. In the event an application to reduce real estate taxes is filed for the period during which Seller was the owner of the Real Property, Seller shall be entitled to a reparation of real estate taxes upon receipt of and based upon the reduction. Purchaser shall pay its pro rata share of the attorneys' fees directly related to the reduction as and when due. Seller shall continue to process any pending appeals or protests with respect to the tax fiscal year in which the Closing Date occurs, and the net proceeds from any such proceedings, after payment of attorneys' fees, will be prorated between the parties, when received, as of the Closing Date.

(f) **Books and Records.** The transaction contemplated hereby includes the books and records of Seller (except those relating to performance of employees) pertaining strictly to the business of the Hotel. Purchaser covenants and agrees that such books and records will remain in the Hotel for examination and audit by Seller and its agents after the Closing as provided in this clause (f). Books and records not pertaining strictly to the business of the Hotel may be removed by Seller within a reasonable time after the Closing Date. Purchaser agrees to preserve all books and records, files and correspondence, for at least five (5) years after the Closing Date, and not to destroy or dispose of the same, for at least five (5) years after the Closing Date. Purchaser agrees to provide access to Seller and its representatives, to such books, records, files and correspondence at all reasonable times.

(g) **Hart-Scott-Rodino Act.** If it shall be determined that the within transaction is subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. { 18(a) (1976) as amended (the "Hart Act") then notwithstanding anything to the contrary contained in Section 10.1(e) hereof, each party shall forthwith proceed to make the necessary filings, and take all other actions necessary to comply with the Hart Act and the rules and regulations thereunder. If such requirements have not been fulfilled by the Closing Date, then the Closing Date shall be adjourned until such requirements have been fulfilled, but not more than sixty (60) days. If such requirements have not been fulfilled prior to the expiration of such sixty (60) day period, Seller or Purchaser, by notice to the other, may terminate this Agreement in which event the Deposit, and all interest earned thereon, shall be returned to Purchaser and neither party shall have any further Obligation or liability to the other party hereunder.

(h) **Survival of Covenants.** The representations, warranties, obligations, covenants, agreements, undertakings and indemnifications of Seller contained herein shall survive the Closing.

(i) **Purchaser's Investigation and Inspections.** Any investigation or inspection conducted by Purchaser, or any agent or representative of Purchaser, pursuant to this Agreement, in order to verify independently Seller's satisfaction of any conditions

precedent to Purchaser's Obligations hereunder or to determine whether Seller's warranties are true and accurate, shall not affect (or constitute a waiver by Purchaser of) any of Seller's Obligations hereunder or Purchaser's reliance thereon.

(j) **Construction.** This Agreement shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Purchaser and Seller have contributed substantially and materially to the preparation of this Agreement.

(k) **Publicity.** All notice to third parties and all other publicity concerning the transactions contemplated hereby shall be jointly planned and coordinated by and between Purchaser and Seller. None of the parties shall act unilaterally in this regard without the prior written approval of the other; however, this approval shall not be unreasonably withheld or delayed.

(l) **General.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one and the same instrument. This Agreement (including all exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings, if any, with respect thereto and may not be amended, supplemented or terminated, nor shall any Obligation hereunder or condition hereof be deemed waived, except by a written instrument to such effect signed by the party to be charged. This Agreement shall be governed by and construed in accordance with the laws of the State of _____. The warranties, representations, agreements and undertakings contained herein shall not be deemed to have been made for the benefit of any person or entity, other than the parties hereto and their permitted successors and assigns. Seller has no right to assign its rights or to delegate its duties hereunder. Captions used herein are for convenience only and shall not be used to construe the meaning of any part of this Agreement.

(m) **FIRPTA and State Taxes.**

(i) Seller agrees to furnish Purchaser with an executed Certification in the form attached hereto as Exhibit R ("FIRPTA Certificate") and such other evidence as Purchaser may reasonably request, to establish that Seller is not a foreign person for the purpose of Section 1445 of the Internal Revenue Code of 1986, as amended ("Section 1445"). In the event that Seller does not furnish such Certification or a qualifying statement for the U.S. Treasury Department that the transaction is exempt from the withholding requirements of Section 1445, Seller agrees that the Escrowee shall be directed to pay such amount required by law to the Internal Revenue Service in accordance with the laws and regulations regarding the withholding requirements of Section 1445.

(ii) Seller shall notify the Department and the _____ Department of Labor of the pending sale on or before thirty (30) days after expiration of the Inspection Period and shall deliver copies of such notices to

Purchaser pursuant to Section 15.1 hereof. The parties shall withhold in the Holdback any amounts required by the Department or the Department of Labor until the appropriate agency furnishes Seller and Purchaser with a letter advising that all sales and income taxes and contributions for unemployment compensation due to the State of _____ from the Seller have been paid and releasing Purchaser from any withholding requirements or the period of time to furnish such letter in accordance with the applicable statutes of the State has expired, whichever is earlier.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed, all as of the day and year first above written.

SELLER:

_____, a(n)

By: _____
Its: _____

PURCHASER:

_____, a(n)

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

**[INSERT LEGAL DESCRIPTION OF THE LAND COMPONENT OF THE REAL
PROPERTY BEING SOLD PURSUANT TO THE HOTEL PURCHASE AND SALE
AGREEMENT TO WHICH THIS EXHIBIT A IS ATTACHED]**

Street Address: _____

Property (Tax) Identification No.: _____,

EXHIBIT B

EXCLUDED ASSETS

**[LIST ASSETS (REAL, PERSONAL, FIXTURES, TANGIBLES AND INTANGIBLES)
TO BE RETAINED BY SELLER PER TERMS OF HOTEL PURCHASE AND SALE
AGREEMENT TO WHICH THIS EXHIBIT B IS ATTACHED]**

EXHIBIT C

PERMITTED EXCEPTIONS

[LIST ALL LIENS, ENCUMBRANCES, RESTRICTIONS AND OTHER MATTERS AFFECTING TITLE TO THE PROPERTY, WHETHER CURRENTLY REFLECTED ON THE TITLE INSURANCE COMMITMENT OR POLICY FOR THE PROPERTY, WHICH ARE DEEMED ACCEPTABLE UNDER THE HOTEL PURCHASE AND SALE AGREEMENT TO WHICH THIS EXHIBIT C IS ATTACHED]

EXHIBIT D

SUBMITTED FINANCIAL STATEMENTS

**[ATTACH CURRENT FINANCIAL STATEMENTS AND RECORDS OF THE HOTEL
(TO BE) DELIVERED BY SELLER TO PURCHASER]**

EXHIBIT E

ALLOCATION OF PURCHASE PRICE

The parties hereto agree that, upon closing hereunder, the Purchase Price shall be allocated to the components of the Property as follows:

Land	\$ _____
Improvements	\$ _____
Fixtures and Tangible Personal Property	\$ _____
Operating Equipment	\$ _____
Consumables	\$ _____
Bookings	\$ _____
Hotel Contracts and Space Leases	\$ _____
Intellectual Property, Hotel Names, Permits, Documents	\$ _____
Goodwill and Miscellaneous	\$ _____
Other	\$ _____
Total	\$ _____

EXHIBIT F

PERMITS

**[LIST ALL PERMITS, LICENSES, FRANCHISES, CONSENTS, AUTHORIZATION
AND APPROVALS USED IN THE OWNERSHIP AND OPERATION OF THE HOTEL –
EXCLUDE ANY SUCH NON-ASSIGNABLE OR TRANSFERABLE PERMITS]**

EXHIBIT G

HOTEL CONTRACTS AND COMMISSIONS

**[LIST ALL EXISTING CONTRACTS TO BE TRANSFERRED TO PURCHASER
AND (MATERIAL) COMMISSIONS DUE]**

EXHIBIT H

EMPLOYEE AND EMPLOYMENT CONTRACTS

**[LIST ALL INDIVIDUAL OR GROUP EMPLOYMENT AGREEMENTS,
COLLECTIVE BARGAINING AND LABOR UNION AGREEMENTS]**

EXHIBIT I

MATERIAL BOOKINGS

[LIST ALL PENDING CONTRACTS]

EXHIBIT J

SPACE LEASES AND COMMISSIONS

**[LIST EXISTING KIOSK AND SPACE LEASES, OCCUPANCY AGREEMENTS AND
LICENSES AND COMMISSION ARRANGEMENTS AND AGREEMENTS]**

EXHIBIT J-1

SPACE LESSEE ESTOPPEL LETTER

**[ATTACH COPY OF FORM OF ESTOPPEL LETTER FROM LESSEES, TENANTS,
LICENSEES AT THE HOTEL TO BE DELIVERED BY SELLER TO PURCHASER AT
OR PRIOR TO CLOSING]**

EXHIBIT K

NOTICES OF VIOLATIONS

**[LIST ALL NOTICES (WRITTEN OR ORAL) RECEIVED FROM ANY
GOVERNMENTAL AGENCY, INSURANCE COMPANY OR PRIVATE PARTY
REFLECTING OR ASSERTING ANY VIOLATIONS]**

EXHIBIT L

PENDING OR THREATENED LITIGATION

**[DESCRIBE ALL PENDING LITIGATION AND ANY THREATS
OF LITIGATION OR ACTION RECEIVED WITH RESPECT TO THE HOTEL,
ITS OWNERSHIP, OPERATION OR SALE]**

EXHIBIT M

DOCUMENTS

**[LIST DOCUMENTS PER DELIVERY REQUIREMENTS SET FORTH IN THE
HOTEL PURCHASE AND SALE AGREEMENT TO WHICH THIS EXHIBIT M IS
ATTACHED AS MODIFIED PER SPECIFIC TERMS OF TRANSACTION]**

EXHIBIT N

IMPOSITIONS

[LIST ALL APPLICABLE TAXES AND FEES BY CATEGORY]

EXHIBIT O

HOTEL NAMES

**[LIST ALL HOTEL NAMES USED IN THE OPERATION OF THE
HOTEL AND TO BE TRANSFERRED TO PURCHASER]**

EXHIBIT P

EMPLOYEE BENEFIT PLANS

**[LIST ALL EMPLOYEE BENEFIT, RETIREMENT,
INSURANCE AND WELFARE PLANS]**

EXHIBIT Q

ESCROW INSTRUCTIONS

[SEE ATTACHED]

SAMPLE FORM

PURCHASER'S DEED AND MONEY ESCROW INSTRUCTIONS

_____, 200_

_____ Title Insurance Company

Attn.: _____

Telephone: _____

Facsimile: _____

*Re: Purchase and Sale Agreement and Escrow Instructions dated _____
(the "Agreement") by and between _____ ("Seller")
and _____ ("Buyer") for property commonly known as
_____ (the "Property"), as legally described in
_____ Title Insurance Commitment No. _____*

Ladies and Gentlemen:

As you are aware, _____ ("ABC") represents the Purchaser, and
_____ ("XYZ") represents the Seller, in connection with the above-
referenced transaction. This letter shall constitute the Purchaser's Deed and Money Escrow
Instructions ("Escrow Instructions") on behalf of Purchaser to _____ Title
Insurance Company, ("Escrow Agent") with respect to the above-referenced transaction. The
closing is scheduled to be effective _____, _____, 200_.

On or before _____, 200_, Seller or _____ shall deposit the following
documents with you, which have been executed by or on behalf of Seller, except as otherwise
noted:

1. Special Warranty Deed ("Deed");
2. Real Estate Transfer Tax Declaration forms from Illinois, Cook County and City of Chicago as executed in counterpart by the Seller ("Transfer Declarations");
3. General Assignment and Assumption ("General Assignment") (four (4) originals executed in counterpart by Seller);
4. Bill of Sale ("Bill of Sale") (two (2) originals executed in counterpart by Seller);
5. FIRPTA Certificate ("FIRPTA") (two (2) originals executed by Seller);
6. 1099 Solicitation (one (1) original executed by Seller);
7. Owner's ALTA Statement (one (1) original executed by Seller);

8. Personal Undertaking (GAP) (one (1) original executed by Seller);
9. Personal Undertaking (“Undertaking”) regarding replacement of entryway (one (1) original executed by Seller);
10. Copy of Termination of Existing Management Agreement;
11. Seller’s Authority Documents regarding the conveyance of the Property;
12. Closing Statement (signed via facsimile, in counterpart);
13. Closing Letter (two (2) originals signed by Seller).

The documents set forth in Paragraph A – Items 1 through 13 above are sometimes collectively referred to in this letter as the “Seller Documents”.

On or before _____, 200_, Purchaser shall cause \$_____ plus or minus prorations and deposits as set forth on the Closing Statement (collectively, the “Purchaser’s Funds”).

On or before _____, 200_, ABC, on behalf of Purchaser, shall deposit with you, which have been executed by or on behalf of Purchaser, except as otherwise noted.

1. Bill of Sale (two (2) originals executed in counterpart by Purchaser);
2. Transfer Declaration as executed in counterpart by the Purchaser;
3. General Assignment (four (4) originals executed in counterpart by Purchaser);
4. Broker’s Invoice;
5. Resolution authorizing the transaction (two (2) originals executed by Purchaser);
6. Lender’s Loan documents pursuant to Lender’s Instruction Letter dated _____, 200_ (“Lender’s Instructions”);
7. The Closing Statement (signed via facsimile, in counterpart); and
8. Closing Letter (two (2) originals signed by Purchaser).

The documents set forth in Paragraph C – Items 1 through 8 above are sometimes collectively referred to in this letter as the “Purchaser Documents.” The Purchaser Documents and the Seller Documents are collectively referred to as the “Documents.”

The Purchaser Documents are being deposited by ABC with you in escrow and not for the benefit of Seller or any other party (other than Purchaser), but in trust solely for the benefit of Purchaser to be held and acted upon pursuant to the terms of this letter and any subsequent written or telephonic instructions from _____ of ABC, on behalf of Purchaser.

By executing this letter below, you agree: (i) to act with respect to the Purchaser Documents as provided in this letter, and (ii) if requested by Purchaser or ABC at any point prior to your receipt of the confirmation necessary to proceed under Paragraph F of this letter, to return the Purchaser Documents to or at the direction of Purchaser or ABC immediately upon demand to ABC.

Once you (i) have received all of the Purchaser Documents, (ii) have received the Purchaser's Funds, (iii) have received all of the Seller Documents from Seller or XYZ, (iv) have received any and all other documents and instructions from Purchaser that you will require in order to take the actions set forth in Paragraph F hereof, (v) are unconditionally prepared and irrevocably committed to issue the Title Policy in the format of the Title Proforma attached hereto as Exhibit A, and (vi) are unconditionally prepared to take the actions set forth in Paragraph F hereof, you will notify the undersigned that you are prepared to act as set forth in Paragraph F below. Upon receiving verbal or written confirmation (via telecopy or electronic mail) from the undersigned that all other conditions precedent to the closing of the purchase and sale of the Property by Seller and Purchaser have occurred or been waived, you shall act in accordance with Paragraph F below.

Upon satisfaction of the contingencies set forth in Paragraph E above:

1. Date all undated Documents the date of closing;
2. Submit to the undersigned via facsimile or email a copy of all Seller's Documents with exhibits attached for Purchaser's approval;
3. Disburse all funds you receive in connection with the transaction pursuant to and in accordance with the Closing Statement.
4. Affix the transfer stamps to the Deed, if any;
5. Record the Deed in the Recorder's Office;
6. Record any loan documents as instructed in Lender's Instructions; and
7. Deliver to ABC by overnight courier or via messenger
 - (i) two (2) originals of Seller Document 3;
 - (ii) one (1) original of Seller Documents 4, 5, 12 and 13;
 - (iii) a copy of Seller Documents 6, 7, 8, 9, 10 and 11;
 - (iv) two (2) originals of Purchaser Document 3;
 - (v) one (1) original of Purchaser Documents 1, 7 and 8;
 - (vi) fully executed copy of the Transfer Declarations;
 - (vii) file stamped copy of the recorded deed (and the original Deed when available from the Recorder's Office); and
 - (viii) file stamped copies of lender's recorded documents.

Purchaser shall incur no expense with respect to the closing (other than the costs set forth in the Closing Statement).

If you are unable to comply with the terms of these instructions by 10:00 a.m. CST on _____, 200_, please contact the undersigned immediately. These instructions may be modified, amended, supplemented or revoked at any time by the Purchaser or ABC, on behalf of Purchaser.

[signature page follows]

Please acknowledge _____ Title Insurance Company, acceptance of these Escrow Instructions by executing and returning a copy of this letter signed by you in the space provided. Whether or not you sign this letter as requested, your act in releasing any funds or releasing or recording any documents shall constitute your irrevocable agreement to comply with the terms of these Escrow Instructions. Thank you for your assistance in this transaction.

Very truly yours,

FOR PURCHASER:

ABC

Accepted and Agreed to this ____ day of
_____ 200_ by

**TITLE
INSURANCE COMPANY**

By: _____

Name: _____

Title: _____

EXHIBIT A
TITLE PROFORMA

EXHIBIT R

FIRPTA CERTIFICATE

[SEE ATTACHED]

FIRPTA AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445 of the Code), the owner of a disregarded entity (which holds legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by _____, a(n) _____ (“Seller”), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations); and
2. Seller is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Income Tax Regulations; and
3. Seller’s U.S. employer tax identification number is _____; and
4. Seller’s office address is _____.

Seller understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

[signature page follows]

[signature page for FIRPTA]

The undersigned declares that she/he has examined this certification and to the best of her/his knowledge and belief it is true, correct and complete, and she/he further declares that she/he has authority to sign this document on behalf of Seller.

Dated: _____, 2007

SELLER:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

I, _____ a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that _____, the _____ of _____, personally known to me, appeared before me this day in person and severally acknowledged that in such capacity he/she signed and delivered the said Instrument as his/her free and voluntary act and as the free and voluntary act and deed of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2007.

Notary Public

My Commission expires:
