

This article is brought to you by:

howtovalueahotel.com

A website containing the largest collection of books, articles, software, and courses focused on the valuation of hotels. Most of the site's content can be immediately downloaded for free.

Other websites focused on hotel valuations and investing include:

hotellearningonline.com

certifiedhotelappraiser.org

hotelvaluationsoftware.com

hotelinvestmentlibrary.com

certified-hotel-valuation-software-consultant.com

internationalassociationofhotelappraisers.org

mortgage-equitysoftware.com

steverushmore.com



held constant except for inflationary increases. A basic management fee of 3.0 percent (based on total revenue) has been deducted as well as a 4.0 percent reserve for replacement (also based on total revenue) to provide a fund for the replacement of furniture, fixtures, and equipment.

A property lease and a management contract structure is assumed for each scenario in the Exhibits. The terms for these structures are based on typical provisions found in the marketplace. It should be noted that, beyond their use in REIT structures, hotel property leases are no longer common and therefore the assumed terms are based on the historic use of these instruments.

As stated previously, the rent paid under hotel property leases has typically been determined by the "25, 10 and 5" lease. The actual dollar amounts yielded by this formula for both hotels are shown in Exhibit 19-5.

Usually, under such an agreement the landlord owns the land and improvements and is responsible for the payment of real estate taxes. The tenant owns the personal property and pays all operating expenses.

Exhibit 19-6 shows how the net income realized by Hotel A is divided between the hotel company (tenant) and the property owner (landlord) under a property lease.

The net income realized by the tenant starts with the net income from the projection of income and expense. The landlord pays the real estate taxes out of the rent, so the amount deducted for real estate taxes can be added back to the net income. The rent is deducted from the net income and is calculated using the rental formula set forth above. The result of these calculations is the net to the tenant.

The net to the landlord is based on the previously calculated rent minus the property tax obligation. Because the tenant is assumed to own the furniture, fixtures, and equipment, a reserve for replacement has not been deducted from the net to the landlord.

The terms of the management contract assume a basic management fee of 3 percent of total revenue plus an incentive fee equal to 10 percent of house profit (income before fixed charges) after deducting the 3 percent base fee. Exhibit 19-7 shows how the net income for Hotel A is divided between the hotel company and the property owner under a management contract.

The net to the management company is the total of the basic management fee plus the incentive fee; the net to the owner is equal to the residual net income remaining after deducting the total management fee.

A comparison of each structure is made for Hotel A in Exhibit 19-8 by totaling the income to each party over a seven-year period assuming both a lease and management contract.

Hotel B has a lower starting occupancy and a longer and slower income build-up and as a consequence produces much different results from Hotel A. Exhibit 19-9 shows how the net income of Hotel B would be divided between the hotel company (tenant) and the property owner (landlord), assuming a property lease. As can be seen, the net income realized by the tenant is actually negative for the first four years, while the landlord, on the other hand, realizes a positive cash flow.

Exhibit 19-10 assumes a management contract structure for Hotel B and shows how the net income is shared between the hotel company and property owner. Exhibit 19-11 compares each structure by totaling the income to each party over the seven-year period.

In this scenario, the hotel company would want to operate the hotel with a management contract, while the property owner would realize more income from a lease. In fact, if the transaction were structured as a lease, the hotel company would have a cash flow shortfall of almost \$4 million during the first seven years of operation. For many of the smaller hotel companies, this degree of exposure is not acceptable.

Comparing the economic benefits to the hotel company under a lease with those under a management contract, it becomes apparent that the potential upside benefit

Exhibit 19-3 Hotel A—Projection of Income and Expense

	Year #1		Year #2		Year #3		Year #4		Year #5		Year #6		Year #7	
Number of Rooms	300		300		300		300		300		300		300	
Occupancy	58.00%		65.00%		70.00%		73.00%		73.00%		73.00%		73.00%	
Average Rate	\$95.00		\$101.65		\$107.75		\$113.14		\$117.66		\$122.37		\$127.26	
Days Open	365		365		365		365		365		365		365	
Occupied Rooms	63,510		71,175		76,650		79,935		79,935		79,935		79,935	
	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross
Revenue														
Rooms	6,033	54.9	7,235	56.4	8,259	57.3	9,044	58.0	9,405	58.0	9,782	58.0	10,173	58.0
Food	3,212	29.2	3,624	28.3	3,980	27.7	4,271	27.3	4,442	27.3	4,620	27.3	4,804	27.3
Beverage	1,285	11.7	1,450	11.3	1,592	11.1	1,708	10.9	1,777	10.9	1,848	10.9	1,922	10.9
Telephone	248	2.3	285	2.2	316	2.2	342	2.2	355	2.2	370	2.2	384	2.2
Other Income	214	1.9	229	1.8	243	1.7	256	1.6	267	1.6	277	1.6	288	1.6
Total	10,992	100.0	12,823	100.0	14,390	100.0	15,621	100.0	16,897	100.0	17,571	100.0	17,571	100
Departmental Expenses														
Rooms	1,505	24.9	1,631	22.5	1,745	21.1	1,845	20.4	1,919	20.4	1,996	20.4	2,075	20.4
Food and Beverage	3,562	79.2	3,833	75.5	4,082	73.3	4,305	72.0	4,478	72.0	4,657	72.0	4,843	72.0
Telephone	169	68.1	182	63.9	194	61.4	205	59.9	213	60.0	222	60.0	231	60.2
Other Income	134	62.6	141	61.6	147	60.5	154	60.2	160	59.9	166	59.9	173	60.1
Total	5,370	48.9	5,787	45.1	6,168	42.9	6,509	41.7	6,770	41.7	7,041	41.7	7,322	41.7
Departmental Income	5,622	51.1	7,036	54.9	8,222	57.1	9,112	58.3	9,476	58.3	9,856	58.3	10,249	58.3
Operating Expenses														
Administrative and General	953	8.7	1,022	8.0	1,087	7.6	1,145	7.3	1,191	7.3	1,239	7.3	1,288	7.3
Management Fee	330	3.0	385	3.0	432	3.0	469	3.0	487	3.0	507	3.0	527	3.0
Marketing	572	5.2	613	4.8	652	4.5	687	4.4	715	4.4	743	4.4	773	4.4
Franchise Fees	241	2.2	289	2.3	330	2.3	362	2.3	376	2.3	391	2.3	407	2.3
Property Operations and Maintenance	623	5.7	668	5.2	710	4.9	748	4.8	778	4.8	809	4.8	842	4.8
Energy	554	5.0	582	4.5	610	4.2	637	4.1	663	4.1	689	4.1	717	4.1
Total	3,273	29.8	3,559	27.8	3,821	26.5	4,048	25.9	4,210	25.9	4,378	25.9	4,554	25.9
House Profit	2,349	21.3	3,477	27.1	4,401	30.6	5,064	32.4	5,266	32.4	5,478	32.4	5,695	32.4
Fixed Expenses														
Property Taxes	349	3.2	363	2.8	378	2.6	393	2.5	409	2.5	425	2.5	442	2.5
Insurance	121	1.1	126	1.0	131	0.9	136	0.9	142	0.9	147	0.9	153	0.9
Reserve for Replacement	440	4.0	513	4.0	576	4.0	625	4.0	650	4.0	676	4.0	703	4.0
Total	910	8.3	1,002	7.8	1,085	7.5	1,154	7.4	1,201	7.4	1,248	7.4	1,298	7.4
Net Income	1,439	13.0	2,475	19.3	3,316	23.1	3,910	25.0	4,065	25.0	4,230	25.0	4,397	25.0

Exhibit 19-4 Hotel B—Projection of Income and Expense

	Year #1		Year #2		Year #3		Year #4		Year #5		Year #6		Year #7	
Number of Rooms	300		300		300		300		300		300		300	
Occupancy	45.00%		48.00%		50.00%		52.00%		52.00%		52.00%		52.00%	
Average Rate	\$95.00		\$101.65		\$107.75		\$113.14		\$117.66		\$122.37		\$127.26	
Days Open	365		365		365		365		365		365		365	
Occupied Rooms	49,275		52,560		54,750		56,940		56,940		56,940		56,940	
	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross	Total \$	% Gross
Revenue														
Rooms	4,681	52.8	5,343	54.0	5,899	54.8	6,442	55.5	6,700	55.5	6,968	55.5	7,246	55.5
Food	2,705	30.5	2,935	29.7	3,136	29.2	3,350	28.8	3,484	28.8	3,623	28.8	3,768	28.8
Beverage	1,082	12.2	1,174	11.9	1,254	11.7	1,340	11.5	1,394	11.5	1,449	11.5	1,507	11.5
Telephone	199	2.2	219	2.2	235	2.2	253	2.2	263	2.2	274	2.2	285	2.2
Other Income	202	2.3	213	2.2	223	2.1	234	2.0	244	2.0	253	2.0	263	2.0
Total	8,869	100.0	9,884	100.0	10,747	100.0	11,619	100.0	12,085	100.0	12,567	100.0	13,069	100.0
Departmental Expenses														
Rooms	1,389	29.7	1,472	27.6	1,551	26.3	1,633	25.3	1,698	25.3	1,766	25.3	1,837	25.4
Food and Beverage	3,332	88.0	3,521	85.7	3,699	84.3	3,887	82.9	4,043	82.9	4,204	82.9	4,373	82.9
Telephone	157	78.9	166	75.8	175	74.5	184	72.7	191	72.6	199	72.6	207	72.6
Other Income	132	65.3	138	64.8	144	64.6	150	64.1	156	63.9	162	64.0	168	63.9
Total	5,010	56.5	5,297	53.6	5,569	51.8	5,854	50.4	6,088	50.4	6,331	50.4	6,585	50.4
Departmental Income	3,859	43.5	4,587	46.4	5,178	48.2	5,765	49.6	5,997	49.6	6,236	49.6	6,484	49.6
Operating Expenses														
Administrative and General	905	10.2	956	9.7	1,005	9.4	1,055	9.1	1,097	9.1	1,141	9.1	1,187	9.1
Management Fee	266	3.0	297	3.0	322	3.0	349	3.0	363	3.0	377	3.0	392	3.0
Marketing	543	6.1	574	5.8	603	5.6	633	5.4	658	5.4	685	5.5	712	5.4
Franchise Fees	187	2.1	214	2.2	236	2.2	258	2.2	268	2.2	279	2.2	290	2.2
Property Operations and Maintenance	591	6.7	625	6.3	657	6.1	689	5.9	717	5.9	746	5.9	775	5.9
Energy	545	6.1	570	5.8	595	5.5	620	5.3	645	5.3	671	5.3	698	5.3
Total	3,037	34.2	3,236	32.8	3,418	31.8	3,604	30.9	3,748	30.9	3,899	31.0	4,054	30.9
House Profit	822	9.3	1,351	13.6	1,760	16.4	2,161	18.7	2,249	18.7	2,337	18.6	2,430	18.7
Fixed Expenses														
Property Taxes	349	3.9	363	3.7	378	3.5	393	3.4	409	3.4	425	3.4	442	3.4
Insurance	121	1.4	126	1.3	131	1.2	136	1.2	142	1.2	147	1.2	153	1.2
Reserve for Replacement	355	4.0	395	4.0	430	4.0	465	4.0	483	4.0	503	4.0	523	4.0
Total	825	9.3	884	9.0	939	8.7	994	8.6	1,034	8.6	1,075	8.6	1,118	8.6
Net Income	(3)	0.0	467	4.6	821	7.7	1,167	10.1	1,215	10.1	1,262	10.0	1,312	10.1

from the lease is limited while the downside risk is significant. At the same time, the hotel company is exposed to an actual cash loss with a property lease if the hotel experiences a slow occupancy build-up. The limited upside benefits afforded by total property leases have led hotel companies in recent years to avoid this structure and enter instead into either management contracts or property ownership.

Management companies eager to secure a particular location or property have offered guarantees to the ownership, effectively reducing the risk to ownership while allowing the operator to participate in the upside potential.

Exhibit 19-5 Projected Rent

Hotel A (normal occupancy build-up) (\$000)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Rooms	\$1,508	\$1,809	\$2,065	\$2,261	\$2,351	\$2,446	\$2,543
Food	161	181	199	214	222	231	240
Beverage	129	145	159	171	178	185	192
Other Income	92	103	112	120	124	129	134
Total Rent	\$1,890	\$2,238	\$2,535	\$2,765	\$2,875	\$2,991	\$3,110

Hotel B (normal occupancy build-up) (\$000)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Rooms	\$1,170	\$1,336	\$1,475	\$1,611	\$1,675	\$1,742	\$1,812
Food	135	147	157	168	174	181	188
Beverage	108	117	125	134	139	145	151
Other Income	80	86	92	97	101	105	110
Total Rent	\$1,494	\$1,686	\$1,849	\$2,009	\$2,090	\$2,173	\$2,260

Exhibit 19-6 Division of Hotel A Net Income Under Property Lease

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Net Income	\$1,439	\$2,475	\$3,316	\$3,910	\$4,065	\$4,230	\$4,397
Plus RE Tax	349	363	378	393	409	425	442
Less Rent	1,890	2,238	2,535	2,765	2,875	2,991	3,110
Net to Tenant	(\$102)	\$600	\$1,159	\$1,538	\$1,599	\$1,664	\$1,729
Rent	1,890	2,238	2,535	2,765	2,875	2,991	3,110
Less RE Tax	349	363	378	393	409	425	442
Net to Landlord	\$1,541	\$1,875	\$2,157	\$2,372	\$2,466	\$2,566	\$2,668

Exhibit 19-7 Division of Hotel A Net Income Under Management Contract (\$000)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Basic Fee	\$330	\$385	\$432	\$469	\$487	\$507	\$527
Plus Incentive Fee	<u>235</u>	<u>348</u>	<u>440</u>	<u>506</u>	<u>527</u>	<u>548</u>	<u>570</u>
Net to Management Company	\$565	\$733	\$872	\$975	\$1,014	\$1,055	\$1,097
Net Income	1,439	2,475	3,316	3,910	4,065	4,230	4,397
Less Management Fee	<u>330</u>	<u>385</u>	<u>432</u>	<u>469</u>	<u>487</u>	<u>507</u>	<u>527</u>
Net to Owner	\$1,109	\$2,090	\$2,884	\$3,441	\$3,578	\$3,723	\$3,870

Exhibit 19-8 Hotel A Under Lease vs. Management Contract

	Management Company	Property Owner
Lease	\$8,188,000	\$15,644,000
Management Contract	6,310,000	20,695,000

Exhibit 19-9 Division of Hotel B Net Income Under Property Lease (\$000)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Net Income	(\$3)	\$467	\$821	\$1,167	\$1,215	\$1,262	\$1,312
Plus RE Tax	349	363	378	393	409	425	442
Less Rent	<u>1,494</u>	<u>1,686</u>	<u>1,849</u>	<u>2,009</u>	<u>2,090</u>	<u>2,173</u>	<u>2,260</u>
Net to Tenant	(\$1,148)	(\$856)	(\$650)	(\$449)	(\$466)	(\$486)	(\$506)
Rent	1,494	1,686	1,849	2,009	2,090	2,173	2,260
Less RE Tax	<u>349</u>	<u>363</u>	<u>378</u>	<u>393</u>	<u>409</u>	<u>425</u>	<u>442</u>
Net to Landlord	\$1,145	\$1,323	\$1,471	\$1,616	\$1,681	\$1,748	\$1,818

Exhibit 19-10 Division of Hotel B Net Income Under Management Contract (\$000)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Basic Fee	\$266	\$297	\$322	\$349	\$363	\$377	\$392
Plus Incentive Fee	<u>82</u>	<u>135</u>	<u>176</u>	<u>216</u>	<u>225</u>	<u>234</u>	<u>243</u>
Net to Management Company	\$348	\$432	\$498	\$565	\$588	\$611	\$635
Net Income	(3)	467	821	1,167	1,215	1,262	1,312
Less Management Fee	<u>266</u>	<u>297</u>	<u>322</u>	<u>349</u>	<u>363</u>	<u>377</u>	<u>392</u>
Net to Owner	(\$269)	\$170	\$499	\$818	\$852	\$885	\$920

Exhibit 19-11 Hotel B Under Lease vs. Management Contract

	Management Company	Property Owner
Lease	(\$4,562,000)	\$10,803,000
Management Contract	\$3,677,000	\$3,875,000

¶ 19.05 TYPES OF HOTEL MANAGEMENT COMPANIES**[1] First-Tier and Second-Tier**

The management companies that enter into management contracts with hotel owners are generally classified as either first-tier or second-tier. First-tier companies operate lodging facilities for third parties under management contracts and provide day-to-day operational supervision and property management as well as national or regional customer recognition through their trade names. Hilton, Hyatt, Marriott, and Sheraton are examples of first-tier management companies. Second-tier management companies also operate lodging facilities for third parties and provide day-to-day supervision and management. They do not, however, provide any customer recognition through their corporate name, but make use of franchise affiliations to generate customer identification. Examples of second-tier management companies are Interstate Hotels, American General Hospitality, Richfield Hospitality, and Hospitality Equity Investors.

[2] Pre-Opening and Technical Services

In addition to daily operations, management companies also frequently contract to provide pre-opening services and technical services. Pre-opening services are provided by the management company before the opening of a facility to the public. Typical services include a pre-opening plan and budget, personnel recruiting and training, sales and advertising, purchasing, and establishing an account system and controls. Pre-opening services may be used at both newly developed hotels and existing properties that change ownership. Fees for such services are generally separate from and in addition to those charged for management supervision.

Technical services are provided by hotel management companies during the planning, design, and construction stages of a new hotel development. These services include design and facilities planning, architectural assistance and review, interior design and lighting recommendations, and mechanical and food facilities installation. Technical services are also available for the expansion and renovation of existing properties. As is the case with pre-opening services, fees for technical services are generally separate from and in addition to fees charged for management supervision.

¶ 19.06 MANAGEMENT CONTRACTS

Management contracts have certain advantages and disadvantages to both the hotel company and property owner. In order to negotiate and structure an equitable agree-

ment, both parties should understand each other's motivations for entering into a management contract.

[1] Advantages for Operator

[a] Inexpensive, Rapid Expansion

Because management contracts typically require very little in the way of capital outlay on the part of the operator, their use can make possible inexpensive and rapid chain expansion with a low level of investment. In fact, on occasion, in order to secure a management contract, hotel companies contribute working capital in the form of a loan or some other small good-faith investment. As mentioned previously, management companies may also extend guarantees to ownership, but are typically paid a higher incentive fee if this is the case. The management fee set by the contract is generally structured so that the basic fee, which is a guaranteed flow of income computed as a percentage of total revenue, is more than sufficient to cover the hotel company's home office overhead and operating expenses. The lead time involved with developing new hotels is eliminated for operators willing to take over existing properties. Additional supervisory staff and some home office overhead is all that is required in order to do so.

[b] Low Downside Risk

Under a typical management contract, the hotel owner is financially responsible for all working capital, operating expenses, and debt service. The management company has no financial exposure and essentially covers its operating expenses and makes a small profit from the basic management fee and makes an even larger profit from any incentive fee.

[c] Critical Mass

While the actual operating expense and home office cost of providing hotel management services is minimal, a critical mass of properties under contract is necessary in order to cover the cost of key operational executives and home office and support staff and still generate acceptable profits. First-tier management companies also usually offer a computerized reservation system, so their fixed overhead is generally greater than that of a second-tier operator. The size of the critical mass varies depending on the class and types of hotels operated, along with the nature of the services offered by the management company. The typical range of critical mass for a first-tier company is forty to fifty hotels under contract; for second-tier companies, the range is usually ten to fifteen hotels.

Luxury hotels require a greater critical mass than budget operations because home office support must be more extensive. Similarly, convention-oriented chains with extensive group marketing needs require a larger critical mass than chains catering primarily to commercial travelers.

[d] Quality Control

Management contracts allow hotel companies to maintain control of both physical and operational quality. Hotel companies, particularly the more well-known first-tier chains, are always concerned about maintaining a favorable public image. A hard-

earned reputation can be tarnished quickly if a single property suffers from physical and managerial neglect. Consequently, a management contract provides the necessary level of quality control for a hotel operator. With an unrestricted management policy and an adequately funded reserve for replacement, a management company has almost total control of the quality and image of its properties. In a franchise relationship, on the other hand, where a hotel merely carries a chain identification and there is no central managerial control, it is much more difficult to maintain a uniform level of quality. Several hotel chains, including Hyatt, Four Seasons, and Motel 6, follow a general policy of not franchising in order to have total quality and operational control over their hotels.

[e] No Depreciation Expense

Management contracts are attractive to public hotel companies because the cash flow they realize is often close to what ownership of a property would provide, yet they allow the company to avoid the depreciation expenses for which a property owner is liable. Management fees paid to hotel companies are considered ordinary income for income tax purposes, but if a hotel company owns a hotel, the income it realizes is eroded by depreciation expenses required for both the improvements and the personal property under current tax regulations.

Publicly held hotel companies find management contracts particularly rewarding because they can minimize the amount of depreciation expenses shown on their income statements, thus enhancing their price/earnings ratio and making their stock more attractive to investors.

[2] Disadvantages for Operators

[a] Residual Benefits of Ownership Eliminated

Any increase in the value of a hotel generated by the management company over the course of a management contract accrues to the benefit of the owner when the hotel is sold or refinanced.

During the early 1990s, many second-tier hotel companies provided short-term management contracts to lending institutions in order to assist with their distressed foreclosures. Many of the management companies that successfully reestablished cash flow and economic value in problem hotels were rewarded by losing their contracts when the properties were sold to new owners.

[b] Minimal Input in Ownership Decisions

Most management agreements apply minimal restrictions on the owner's ability to transfer ownership to another party. An undercapitalized owner, for example, can restrict cash needed to cover shortfalls and adversely affect the operation and quality of the property. Also, as with any relationship, a management contract requires cooperation from both parties; a difficult owner can make life miserable for a management company by imposing any number of unreasonable demands.

[c] Dependence on Finances of Owner

If the cash flow generated by a hotel operation is not sufficient to cover operating expenses and debt services, the hotel operator is totally dependent on the owner for pro-

viding necessary funds. No matter how thoroughly a management company investigates the creditworthiness of a hotel owner prior to entering into an agreement, adverse circumstances can quickly deplete anyone's financial resources. The risk to a hotel management company goes beyond the inconvenience of insufficient operating capital or a deferral of needed furniture replacement; it could ultimately result in the loss of a management contract as a result of bankruptcy or foreclosure. Beside the negative effect on a management company's income and reputation, such a cancellation (on the part of a bankruptcy court or foreclosing lender) seldom involves payment of a cancellation fee to the management company.

[d] Contract Termination

Hotel management contracts often contain cancellation provisions, typically upon a sale, that allow owners to terminate the agreement upon payment of a stipulated cancellation fee. The disruption in management deployment and public identity, however, can be damaging especially to a first-tier operator.

[3] Advantages for Owner

[a] Acquisition of Operational Expertise

Hotel management contracts provide owners with the essential operational expertise necessary for establishing and preserving the long-term profitability of their investment. At the same time, a management contract allows owners to keep such ownership benefits as cash flow, depreciation deductions, tax benefits, value enhancement, refinancing opportunities, and possession of the property after the contract expires.

[b] Immediate Name Recognition

A management contract with a first-tier management company immediately gives the owner's hotel a national or regional identification. This recognition is achievable only through a second-tier management company if coupled with a franchise affiliation.

[c] Quality Management

In recent years, hotel lenders and investors have become more knowledgeable about the industry. One aspect of this increased sophistication is the emphasis now placed on quality management as a key component of a successful hotel venture. In addition to evaluating the local market for transient accommodations, the area and neighborhood characteristics, and the actual real estate itself, hotel lenders and investors take great interest in the ability and financial track record of a proposed operator. Most lenders and investors require that an established hotel management company be put in charge of the day-to-day operations of any hotel in which they have an interest. Some even demand that a professional hotel asset manager supervise the hotel company.

If the operator is a second-tier company, it generally must have a franchise affiliation in order to attract the necessary financing. While including a nationally known hotel company as part of the project team does not guarantee financing, it does show positive interest on the part of the operator that can favorably influence the investment decisions of the lender.

[4] Disadvantages for Owner**[a] Loss of Operational Control**

A management contract gives the operator total operational control of the property. If the management company operates the hotel in a competent manner, this loss of control is not a problem. However, if the property is mismanaged, the owner may find it very difficult to remove the incompetent operator. As a result, a greater number of management agreements have included specific standards that allow owners to terminate operators who do not achieve certain levels of performance. However, even with stringent performance criteria, the process of removing a poor management company must be timely; the reputation of the hotel can be badly damaged if new management is not quickly in place.

[b] Liability for All Ongoing Expenses

The owner of a hotel under a management contract is financially liable for all costs and expenses, including fixed charges and debt service. This means that even though the manager's neglect or incompetence may actually cause the financial loss, the owner is still ultimately responsible for funding the negative cash flow. For this reason, a well-structured management contract should contain incentives for the operator to maximize revenues and minimize expenses. Deferring a portion of the management fee to be paid as a percentage of a defined level of profit creates a financial incentive for an operator to manage efficiently. Essentially, through an incentive management fee, the management company's earnings become directly tied to the profits of the hotel. The actual contractual structure of the operator's incentive fee can often create greater or less incentive. For example, if an incentive fee is based on 10 percent of income before fixed charges and paid only if sufficient income remains after debt service, the operator would have a greater incentive to maximize revenue and minimize expenses than if the incentive fee was payable whether or not a positive cash flow was generated. This formula can be further modified to produce even greater operator incentive by requiring the management company to forever forfeit the incentive fee if the income after debt service is insufficient, rather than merely deferring and accumulating the fee until repayment can be made from future cash flows.

[c] Termination of Operator

Most management agreements are difficult for owners to terminate prematurely or without a sale. First-tier management companies, concerned about adverse publicity from losing their identification within a particular market generally require a non-cancellable contract that exceeds ten years in length, in addition to one or more extension clauses. Second-tier operators usually accept a shorter relationship, but often insist on provisions limiting the owner's ability to terminate at an earlier date. The inability of an owner to unilaterally terminate a hotel management contract for poor performance can significantly increase its exposure to financial loss. To reduce these risks, management contracts should be written with specific performance standards tied to cancellation provisions. In addition, owners often negotiate an all-purpose contract buy-out clause that allows for the removal of the management company at any time upon payment of a stipulated amount.

[d] Sale of Property

The sale of a hotel property is often much more difficult if it must be sold subject to an existing management contract. Hotel companies rarely purchase hotels operated by other companies; therefore, an ongoing noncancellable contract reduces the number of possible buyers and consequently increases the time required to find a qualified buyer. For this reason, the sale of a hotel with management in place often brings a lower price than if the property were sold without management. A buy-out provision gives an owner the option of selling the hotel subject to the existing agreement or purchasing the contract and selling the hotel unencumbered by management. (See Chapter 20 for a discussion of such provisions.)

[e] Cost of Management

The cost of management can absorb a substantial portion of the cash generated by a hotel. Simply put, quality hotel management is expensive. Depending on the operator and the terms of the management contract, the total management fee, expressed as a percentage of the cash flow after debt service, can be as much as 70 to 85 percent. If the occupancy level is low, as in the case of a newly opened hotel, the total management fee could exceed the cash flow after debt service, meaning the owner would have to contribute additional capital to the venture. To assist owners during start-up periods and provide lenders with an additional debt service cushion, most hotel management companies will subordinate their incentive fee to debt service. This means that if the income before debt service is insufficient to cover the mortgage payment, the management company would either forgo or defer their incentive management fee.

[f] High Downside Risks

Owners of lodging facilities face downside risks that are due to the high amount of fixed costs associated with the operation of a hotel or motel. As occupancies drop, losses escalate rapidly because many of the fixed hotel expenses cannot be cut back. The use of property leases shifts this downside risk from the owner to the operator, but under a management contract, any negative cash flow is the responsibility of the owner.

[g] Operator May Favor Own Property

A conflict of interest always exists when a hotel company both owns and operates properties for its own account and operates hotels for nonrelated third parties. Because a hotel company generally receives a greater economic benefit from sending guests to its owned hotels rather than to properties it manages, the possibility for unfair practices is always present. Owners should be aware of this basic conflict and be sure that management agreements include provisions restricting possible abuse.

¶ 19.07 MANAGEMENT COMPANIES

Once an owner has decided to use the services of a hotel management company, a decision must be made as to whether a first- or second-tier operator should be selected. A first-tier hotel management company provides the owner with a publicly identifi-

able name (e.g., Hilton, Sheraton, or Marriott) and management expertise. A second-tier management company has no “brand-name” image and therefore can offer only management expertise.

[1] Advantages of First-Tier Companies

[a] Cost

The cost of a first-tier management company is often less than that of a second-tier operator and the requisite franchise affiliation. Second-tier management companies provide no national identification, so the cost of a franchise affiliation must be added to the second-tier management fee in order to reflect the same benefits of a first-tier company.

[b] Corporate Identity

First-tier companies have a strong interest in running successful operations. Consequently, some chain affiliations, as previously noted, are available only by management contract. The primary reason these companies have for not franchising is the desire to maintain total control over the operational and physical quality of the property.

[c] More Efficient Operations

First-tier companies, perhaps because they are complete operating entities, tend to be more unified and seem to have a better ability to implement company managerial and operational philosophies than do second-tier companies operating under a franchise affiliation. For example, on-site first-tier management personnel are often more familiar with the chain’s home office systems, procedures, and personnel and can take greater advantage of the various services offered than can second-tier personnel in a similar situation. A franchise affiliation tends to be more detached and the productive interaction between the property and home office is frequently reduced.

[d] Convention and Group Sales Capability

Convention and group sales require a very specialized form of marketing that necessitates a massive capital investment in order to gather information detailing the specific meeting requirements of associations, organizations, corporations, and groups. It takes years of effort to assemble this information into a usable format. Since the data is so specialized, only a few hotel chains (e.g., Marriott, Sheraton, Hilton, and Hyatt) have made this infrastructure investment and effectively use it for group sales. Most franchise organizations and second-tier hotel operators do not accumulate the information that would enable them to compete in the convention and group sales markets with first-tier companies.

[e] Ease of Financing

First-tier hotel management companies tend to be more “financible”; that is, lenders in the hotel field, as well as equity investors, are often more comfortable lending money to projects operated by recognizable, “brand-name” management companies. Whether the perception that a name operator reduces risk is correct or not, first-tier

hotel management companies usually find it easier to acquire financing than do most second-tier operators.

[2] Disadvantages of First-Tier Companies

[a] Restrictions on Property Size

First-tier hotel management companies do not often manage smaller properties; most first-tier companies have size requirements for the hotels they will operate under a management contract. Generally, hotels of fewer than 200 units are considered too small by these operators. First-tier companies believe that their organizational structure and overhead cannot be sustained by such smaller properties. Exceptions are made, however, for factors such as desirable locations or unique property characteristics that would make a particular contract attractive to a management company.

[b] Restrictions on Financial Condition

First-tier hotel management companies are concerned about their image and the negative effect that adverse publicity might have on their name and reputation. For this reason, first-tier companies generally avoid involvement with financially distressed hotels because of the increased likelihood that their name might be associated with a bankruptcy or foreclosure.

[c] Restrictions on Contract Terms

The term of contract for a first-tier management company is typically longer than that for a company in the second tier. Most first-tier companies require contract terms of at least ten years. Because a first-tier operator is actually granting a license for the use of its name, management contracts with first-tier operators incorporate many of the same provisions as a franchise agreement. First-tier lodging chains operating under a nationally recognizable trade name generally want to maintain a presence at a particular location for an extended period of time. A short-term contract, which would allow the removal of the trade name of the first-tier company from the property after a relatively short amount of time, might result in an appearance of instability and thus undermine the traveling public's image of the company.

[d] Restrictions on Terminations

Termination provisions are often more difficult to obtain from a first-tier hotel management company because it has its name, and therefore its reputation, prominently displayed on the hotels it manages. Given this stake, first-tier companies must be careful to present to their customers the appearance of long-term stability. Because early contract termination generates adverse publicity for the operator, management companies are reluctant to provide the property owner with any form of termination provision that might end a contract early. During the past several years, the use of performance termination standards has become more common by both first- and second-tier companies. Generally tied to some specified level of profits, these performance criteria allow owners to terminate operators who fail to achieve satisfactory results.

[e] Less Flexibility in Negotiations

First-tier hotel companies typically have more rigid requirements than do second-tier companies when it comes to the specific terms of a management contract. Provisions such as a reduced length of term, performance cancellations, contract buy-out, and exclusive operating territories are more difficult to obtain. This inflexibility might be attributable to the general sense that first-tier hotel companies have a stronger bargaining position and can impose stricter terms on less experienced owners.

[f] Difficulty of Negotiations

The actual negotiating process between a first-tier hotel company and a property owner can be longer and more difficult than that involving most second-tier operators. Large hotel companies usually use experienced mid- to upper-level executives to perform the actual negotiating, and while these employees have the authority to develop the specific terms of an agreement, the final structure is generally subject to the approval of a higher-level executive committee. Often this committee will want to make changes to the agreement, and the negotiating process must then be resumed. Second-tier hotel companies are generally smaller and usually less formal in their negotiating procedures, so property owners can often deal directly with the company's decision maker, facilitating the approval process considerably.

[g] Operating Information Difficult to Obtain

Some of the most critical information needed to fully evaluate the ability of a hotel management company is actual operating data (specifically, profit and loss statements) from properties similar to the hotel under consideration. Without these statements, a property owner cannot verify that the management company is capable of running an efficient operation. Most hotel companies that have proven track records find little difficulty in allowing owners to confidentially review their financial statements.

First-tier management companies tend to be more restrictive than second-tier companies in releasing operating information and other data pertaining to their management ability. Again, this seeming lack of cooperation may be attributable to a sense of superior bargaining power, but it should not be permitted to lead to refusal of an owner's legitimate request for necessary information.

[3] Advantages of Second-Tier Companies**[a] Flexibility in Negotiations**

Second-tier management companies are basically less strict in their overall requirements than first-tier companies. In particular, they are more likely to accept shorter contract terms, agree to more demanding performance criteria, and allow more reasonable buy-out provisions. This flexibility, in addition to a general willingness to quickly structure management contracts and take over a wide variety of operations, causes them to be preferred by lenders looking for interim hotel management after a foreclosure.

[b] Individual Attention

Smaller management companies are likely to give properties more individual attention. Most second-tier hotel management companies are smaller than first-tier opera-

tors, so they often can provide a hotel with more individual high-level management attention. This ability is important for distressed hotels that require specialized work-out experience (i.e., experience with improving poor operating performance) not typically available from most property-level general managers. Unique properties facing unusual markets and/or competition can also benefit from smaller management companies that are capable of providing intensive expertise.

Second-tier hotel management companies are thus more likely to manage the more unique hotels: those that are, for example, small, distressed, in specialized markets, or in secondary locations. First-tier hotel companies do not generally become involved with such properties, because they do not fit their quality level or style of operation. As a result, they generally pass up opportunities involving distressed hotels or those properties for which the chance for success is either limited or in doubt. One change that has taken place recently with larger chains is that their minimum size requirements have begun to shrink as increased competition forces them to downscale their products and consider penetrating the secondary and tertiary lodging markets.

[4] Disadvantages of Second-Tier Companies

[a] Financing More Difficult to Obtain

Most second-tier management companies are not as attractive to lenders as first-tier operators. Lenders and institutional investors usually try to minimize their exposure to risk by always using the services of a "name brand." They believe that if a known hotel company is operating their property, they cannot be blamed for selecting an incompetent operator should the project encounter financial difficulties.

[b] Perceived Risk

The perceived risk of using a second-tier management company is higher for much the same reason as the lack of available financing. First-tier hotel companies have a name recognition benefit that gives them a low-risk image. Whether or not this is justified, it does create the perception that second-tier operators will make a project more risky. Higher perceived risks are more difficult to finance and generally increase the cost and decrease the availability of both debt and equity capital.

[c] Possible High Cost

As previously mentioned, the services of a second-tier hotel management company, combined with a national franchise, can sometimes cost more than a first-tier operator that provides both operational expertise and name recognition in one package. In addition, some second-tier management companies believe that they can structure a management fee formula on the same basis as a first-tier operator. Consequently, the resulting compensation is often not commensurate with the benefits provided.

[d] Lack of Financial Strength

Second-tier hotel companies do not always have the necessary financial strength to make meaningful investments in a property or to guarantee operating results. The current investment climate, in which tax benefits have been greatly reduced, has caused many property owners to require that hotel management companies make some form

of capital contribution in order to obtain a management contract. This investment can take many forms, including pre-opening services; initial inventories and operating supplies; working capital; furniture; fixtures; and equipment; operating losses during start-up; and debt service guarantees. The net worth of the smaller second-tier hotel companies often does not allow this type of investment and therefore they have a difficult time obtaining a financial interest in property. In addition, many owners believe that an operating company should have a monetary commitment in the property in order to have a sufficient incentive to do well.

¶ 19.08 **MANAGEMENT COMPANY OPERATING PHILOSOPHIES**

In order to properly evaluate hotel management companies, property owners should be familiar with the two basic operating philosophies found in the industry. Management companies generally have either a highly centralized management structure or use a decentralized organizational approach. Both philosophies can produce desirable results, but the manner in which the results are achieved will be markedly different. For this reason, property owners should select the type of company whose methods most easily lend themselves to the characteristics of their individual properties.

[1] **Centralized Management**

An example of a highly centralized hotel management company is the Marriott Corporation. Marriott employs thousands of people to supervise the management of its hotels and restaurants. All aspects of Marriott's hotel management system are contained in manuals that cover every conceivable eventuality. These reference guides provide on-site management with information regarding such topics as how to prepare a prime-rib dinner from a standardized recipe, what to do in the event of a bomb scare, where to purchase operating supplies, and how to update a marketing plan for the next accounting period. This sort of centralized operating philosophy leaves little to chance or human error, because virtually everything involving the operation of a hotel has already been thought through and the proper solution set forth in clear language. Employees on the property level, particularly those with minimum skills or experience, are given very little latitude in the interpretation of the policies set forth in the procedure manuals. The end result is a highly structured and standardized hotel operation in which individual creativity is minimized. This type of philosophy promotes tight operating controls, because anything outside of the norm, such as high food or labor costs, is readily apparent from financial statements or other control systems. The most significant drawback to a highly centralized hotel management philosophy is that it can be difficult to modify procedures in order to meet local conditions or customs.

Marriott Corporation has one of the most centralized hotel operating systems in the industry. The massive layer of operational control, which has been developed over the past thirty years, has enabled Marriott to expand rapidly while maintaining a consistent product and an extremely profitable company.

[2] **Decentralized Management**

On the opposite end of the spectrum is another respected, highly successful hotel management company, the Hyatt Corporation, which runs its hotels in a very decen-

tralized manner. In the Hyatt system, on-site managers are given a broad latitude in forming property-level operating systems and procedures. Hyatt does provide general guidelines from its home office, but managers are allowed wide discretion regarding the manner in which they operate their property. The primary advantage of a decentralized operating philosophy is that it encourages individual creativity, which can be beneficial in the hospitality industry. Hyatt employees are encouraged to constantly modify and update their methods in order to meet the changing needs and expectations of the market.

Most hotel management companies tend toward decentralized management. Hotel owners should be aware, however, that some operators employ this type of structure out of necessity, if they do not have the personnel and resources to develop and implement even a partially centralized format. These companies often operate without any set system, even on the property level, so general managers must establish and implement all operating policies. Hotel companies that fall into this category cannot provide the services normally expected from a professional hotel management company and should be compensated accordingly.

¶ 19.09 **SERVICES PROVIDED BY MANAGEMENT COMPANIES**

When selecting a management company and negotiating the management fee to be paid to it, the owner should be aware of the services that are normally provided by most hotel companies and should be able to tell when the services that a particular company offers are unique. The following list contains the various services that are usually offered by most companies.

- Management supervision
- Implementation and maintenance of systems, procedures, and controls for:
 - Accounting and bookkeeping
 - Audit and control procedures
 - Budgeting
 - Marketing
 - Purchasing
 - Advertising and promotion
 - Maintenance
 - Personnel
- Selection, training, and supervision of all employees
- Establishment of all prices and charges
- Preparation of monthly and annual financial statements
- Applications for and maintenance of all licenses and permits
- Negotiation for and granting of all concessions and leases
- Negotiation of service contracts
- Purchase of inventories, supplies, and equipment
- Establishment of bank accounts
- Maintenance of insurance policies
- Institution of any necessary legal action

- Supervision of building repair and maintenance and replacement of furniture, fixtures, and equipment
- Preparation of budgets and operating plans
- Planning and implementation of advertising, promotion, and marketing

First-tier hotel management companies generally provide significant additional services that generally include:

- Regional or national trade names and identification
- Trademarks, logos, trade phrases, and service marks
- Centralized reservation systems
- Chain and group advertising programs
- Frequent guest programs

There are a number of unique services that are offered by some management companies—for example:

- Centralized purchasing with group discounts
- Centralized personnel and recruiting
- Centralized reservations
- Centralized marketing and promotion
- Property tax representation
- Insurance assistance and package rates
- Energy management systems
- Preventive maintenance systems
- Centralized accounting
- Centralized employee education and training
- Labor relations assistance
- Site and building engineering assistance
- Architectural design
- Interior design
- Convention and group sales
- Frequent guest programs
- National and regional sales offices
- Pre-opening services
- Technical services
- Auditing
- Market demand studies

¶ 19.10 **MANAGEMENT COMPANY SELECTION PROCESS**

Selecting a hotel management company with the specific capabilities necessary for running a particular property is one of the key steps in a hotel investment. While

location, product, and image of the facility are important ingredients, the ability of the on-site and supervisory management is what holds the operation together and makes it work. The following section describes the selection process for finding, negotiating, and retaining the hotel management company best suited for a particular project.

[1] Analysis of Market Study

The first step in selecting a hotel management company is to analyze the findings of the market study for the project in order to determine the type, class, and market position of the subject property. The findings of the market study that bear most closely on the selection of a management company are the following:

- Current and future demand for transient accommodations, including probable demand growth rates
- Characteristics of demand, including market segmentation, rate categories, average length of stay, seasonality, special requirements, and facility needs
- Current and future supply of transient accommodations (competition)
- Characteristics of supply, including market segments, rate categories, facilities, location, image, and reputation

Several basic characteristics of the subject property can be determined from these areas of the market study. In turn, these characteristics are used to determine the sort of management company best suited to the property. The following characteristics are analyzed in this regard.

Market segment. The primary and secondary market segments (i.e., commercial, meeting and convention, and leisure) that are expected to be captured by the facility must be identified, with an estimate as to what percentage each segment will represent as part of the whole. Information pertaining to the potential future growth of each segment and the expected competition is also useful. The data serves as a basis for determining the facilities and amenities needed to attract the intended market segment.

Class of facilities and level of service. Competitive lodging facilities operating within the market should be investigated to determine the level of services offered (i.e., economy, standard, first class, luxury). The market position best suited for the subject property's particular location and the correct class for the subject property can be established on the basis of this information. In addition, the level of services and types of amenities must also be defined in order to create a complete and competitive project.

Extent of facilities. The facilities (e.g., food, beverage, meeting and banquet, recreational, amenities, and shops) within a hotel project must be as carefully evaluated as the number of guest rooms. Building more facilities than are actually needed will reduce profit potential. Too few facilities will not satisfy the market and could reduce the competitive standing of the property.

Room count or size of hotel. Many factors go into establishing optimum size. For example, site and zoning restrictions can place limits on the permitted number of buildable units. Market-related supply and demand considerations will also either push the size upward or will hold it down depending on future expectations. Finally, economic influences such as land values, construction costs, a property's critical mass, and economies of scale will affect the final room count.

The purpose of this stage of analysis is to define broad project parameters, rather than specific guidelines. The actual layout and design of the subject property should be done in conjunction with the hotel management company ultimately retained to manage the project. The management company will be responsible for generating profits, so the hotel should be specifically planned to fit its mode and style of operation.

[2] Selection of First- or Second-Tier Company

To narrow the search for a management company, the owner should decide as early in the selection process as possible whether a first-tier or second-tier operator would be the most appropriate choice to manage the subject property. In some instances, the owner may choose a first-tier company, but find that a suitable candidate is not available. If this happens, the owner must be prepared to quickly turn to a review of possible second-tier operators.

[3] When a First-Tier Company is Chosen

If the owner decides to use a first-tier management company or franchise affiliation, the first step that should be taken in order to choose a particular operator or franchise is to determine what operators and franchises are already in the market. Generally, companies not currently represented are the most likely candidates, but a particular company should not be ruled out if it is active in the market; occasionally, a company will make a move in favor of a better project.

The owner should look for operators or franchises that have a high level of recognition and market identification in the segments and class determined to be best suited for the subject property by the market study. A commercially oriented chain, for example, would not be likely to have the marketing infrastructure to succeed with a convention hotel. Owners should look for operators and franchisors with similar properties situated in feeder cities that have established reputations and identifications to the local residents who are likely to travel to the area of the subject property.

[4] When a Second-Tier Company is Chosen

If a second-tier company is the best choice to manage a property, the owner should look for an operator with a proven ability to manage hotels with a market orientation and class similar to the subject property. Another feature that is desirable for a second-tier company (though not as important as it is for first-tier companies) is representation in feeder cities.

Owners should bear in mind that some franchises are available only to certain operators. Marriott, for example, will grant franchises only to a select group of approved operators. In any event, owners should give preference to second-tier operators that have actual experience operating under the specific franchise selected for the property. An operator who is familiar to the franchisor can sometimes expedite the franchise application process.

The key to the entire selection process is to match the various proposed elements of the subject property (i.e., size, class, image, location, market segments served and facilities offered) with the operator that has the most experience and best track record in handling these elements in a profitable manner.

[5] Consultation With Project Team

Before narrowing down the field of candidates, the owner should consult with members of the subject property project team and ask for their suggestions. This step is particularly important if the project investors can be identified at this stage. Experienced hotel investors can have definite opinions as to which operator would be best suited for a project, and as a result, considerable time can be saved if their input is solicited early in the selection process. However, owners should not select a hotel operator purely on an investor's recommendation and without performing the necessary review and due diligence process.

[6] Issues During Management Company Selection

[a] Company Profile

The profile should contain a description of the present status of the company and its management's plans for the future. The profile should also contain information regarding the number of properties currently under contract, their locations, chain affiliations, facilities, amenities, ages, market orientations, number of years under contract, the identities of the owners, and, finally, whether the operator has an equity interest. The same information should be given for properties not currently under contract that the hotel company has managed over the past five years. The operator should describe the circumstances of the management agreement terminations.

[b] Operating Performance

One of the most important issues in the hotel management company selection process is whether a particular management company can make money for the owner. The most efficient method of evaluating the operational expertise of a hotel management company is to examine the actual financial performance of properties they operate.

[c] Qualifications of Key Personnel

A hotel management company is, of course, no better than the actual staff that provides management services. Problems such as high turnover and difficulty in recruiting qualified individuals are cause for concern. Any individuals whose employment is critical to the continued success of the management company should be identified.

[d] Central Services

The various off-property services provided by the hotel management company are called central services. These include accounting, reservations, engineering, architectural design, labor relations, insurance, purchasing, and the like. The owner should identify and compare the services offered by each operator and determine whether they are included in the management fee or are charged back separately to the property. The costs of some central services, such as reservation systems, are charged back to the individual properties within the chain on a pro-rata formula basis.

[e] Reimbursable Expenses

Reimbursable operator expenses are the various expenses that are incurred in the operation of the property but are not included in the management fee and that are therefore reimbursable to the management company. For example, the travel expense incurred by the management company's home office personnel when visiting a property is often a reimbursable expense chargeable to that property. This data is necessary in order to accurately compare the relative costs of the management companies under consideration.

[f] Sales and Marketing

One of the most important considerations in the selection of a hotel management company is the ability of a company to generate business through various sales and marketing programs. Some of the components of a sales and marketing structure include central and regional sales offices, a reservation system, frequent guest programs, a convention and group sales data base, marketing organization, and various public relations and publicity functions.

[g] Operating Projections

The preparation of a ten-year projection of income and expense (including management fee) for the subject property should be considered. The purpose of this is twofold. First, the projection establishes a basis for judging the hotel company's future management performance. A performance standard can be established from these projections and incorporated into the management contract, with termination provisions keyed directly to projected operating levels. Second, it pinpoints the operator's anticipated earnings from the management contract. This information is useful when negotiating the fee structure portions of the agreement.

Most operators faced with a request for a ten-year projection of income and expense will probably comply reluctantly. It is important for the hotel owner that a hotel management company commit to a set of operating projections; consequently, a refusal to agree to this request should be considered a "deal breaker." For the operator, the projections clearly have a catch-22 quality. If the operator is optimistic in projecting profit, that operator might appear to be a favorable choice compared with other management companies. If the owner ties the performance cancellation clause to this set of optimistic projections, however, the operator could quickly lose the contract. On the other hand, if the operator is overly conservative in the projection of income and expense, the owner could use the dollar amount of the projected management fee (which would probably be low) as the basis for estimating what the hotel company would be looking for as overall compensation. The projection of income and expense prepared by the management company should be checked against the actual operating performance shown in the financial statements of the comparable hotels to verify that the results are achievable. The quality of these projections is often a good indication of the skills and expertise of the management company.

[h] Miscellaneous Information

The following miscellaneous information should be considered:

- List of references from the management company
- Audited financial statements and projected budgets

- Description of any existing or pending litigation against the management company
- Description of the company's operating manuals
- Outline of the company's supervisory infrastructure
- Description of the company's personnel, training, and recruiting practices
- The availability of group or blanket insurance through the company

[7] Selection Rating System

Exhibit 19-12 contains a system made up of a series of questions whose answers consist of responses supplemented by some investigation into the background, structure, and integrity of the management company. Each question has several possible responses, which are assigned a value that ranges from -4 to +4. The total of all of the values for the responses chosen represents the overall rating of the management company.

Exhibit 19-12 Hotel Management Company Initial Selection Rating System

Characteristic	Score
Comparing the size of the hotels managed by the operator to the subject, most are:	
Larger	-1
The same size	0
Smaller	-1
Comparing the chain affiliations of the hotels managed by the operator, most are:	
Same affiliation	1
Similar affiliation	0
Dissimilar or no affiliation	-1
If the operator manages other hotels in the same market area, are these considered to be:	
Directly competitive	-4
Somewhat competitive	-2
Non-competitive	-1
Experience of the management company:	
New company—limited experience	-1
Moderate experience	0
Established—extensive experience	2
Management company's financial resources (ability to invest funds in the property):	
Limited—no investment potential	-1
Moderate—token investments	0
Strong—meaningful investments	2

Exhibit 19-12 (cont.)

Characteristic	Score
Operator shows willingness to invest funds in the property as a loan (double amounts if funds are contributed as equity):	
Initial inventories	1
Working capital	1
Pre-opening expenses	2
FF&E	3
Debt service guarantees	3
Management company has extensive experience in one of the following specialized areas that would directly benefit the operation of the subject property:	
Destination resort operation	2
Major convention operation	2
Unique market	1
Major food and/or beverage operation	2
Development assistance	2
Opening new hotel	2
Distressed property (turnaround)	2
Bankruptcy	2
Unions	1
Operating in secondary cities	1
Property ownership	2
Management company appears to be flexible in accommodating the following specialized needs of the owner:	
Short-term contract	2
Termination buy-out provision	2
Management company's ability to generate profits (based on actual performance):	
Normal—competent management	0
Better than average	5
Exceptional operating ability	10
Management company offers:	
Ability to obtain specialized identification	2
Ability to obtain financing	4
Feeder city representation	2
Track record of success	2
Management company has exceptional expertise or offers specialized services in the following areas:	
Centralized reservation system	2
Centralized sales and marketing	1
Regional sales offices	1
Convention and group sales	1

Exhibit 19-12 (cont.)

Characteristic	Score
Frequent traveler program	1
National advertising program	1
Top-level personnel	1
Financial systems and controls	1
Other specialized services	1
Personnel relations	1
Development capability	1
If management company is a first-tier operator, its identity is:	
Wide-spread	2
Positive	1
Management company has the following deficiencies:	
Poor references	-3
Lost contracts (deduct for each loss)	-1
Limited home office structure	-1
High management turnover	-2
No growth plans	-1
Excessive growth plans	-1
Will not subordinate incentive fee	-3
Unwilling to provide restrictive covenant	-3
Fee based entirely on percentage of total revenue	-3
Showed professional effort in:	
Preparing operating budget	1
Preparing sample marketing plan	1
Gut feeling:	
You can get along with this company	3

[8] Bargaining Positions

Once the number of management companies has been reduced to a manageable two or three, the bargaining positions of each party should be assessed in order to determine their basic negotiation strategies. The key to this exercise is to determine which party has the strongest position. Generally, the party with the strongest position will be able to negotiate an agreement that is favorable to itself. If the relative bargaining positions are understood, however, the final outcome can sometimes be altered in favor of the weaker position. The following sections outline the various elements that can produce a strong operator bargaining position or a strong owner bargaining position. (The listing of bargaining power factors is based on material presented in *The Negotiation and Administration of Hotel and Restaurant Management Contracts*, by James J. Eyster (School of Hotel Administration, Cornell University, 1988), p. 21,730.)

Strong Operator Position:

1. The property serves a specialized market that requires unique expertise possessed by operator.
2. The market is served by few national names not already in use. Many market areas have representation from most of the major hotel chains. Those operators offering an identification not already in use have a competitive advantage.
3. The operator is willing to take over distressed properties (e.g., those involved in bankruptcies, foreclosures, union problems, or that have poor reputations).
4. The operator is willing to accept contracts containing special requirements—for example, short operating terms or unique franchise and lender requirements (subordination, special approvals, and notices), cancellation or buy-out provisions.
5. Few other operators are interested in the hotel.
6. A limited opportunity exists for the operator to obtain additional management contracts from the owner.
7. The operator has other hotels in feeder cities.
8. The operator has a strong track record of success.
9. The operator is willing to engage in a joint venture, invest capital, or make performance guarantees.
10. The operator is able to secure financing for owner.
11. The operator has specialized expertise or services—for example, centralized reservations, national and regional sales offices, successful frequent traveler programs, national advertising, strong home office support staff with complete management supervision system in place, ability to provide a wide range of in-house support services (e.g., property tax consulting, interior design, engineering, and development counseling).

Strong Owner Position:

1. The hotel has a highly visible location that would provide the operator with extensive local exposure. This is a form of free advertising and promotion for the management company, particularly if it is a first-tier operation.
2. The subject market has strong barriers to entry against new development. Therefore, the operator may not have another opportunity to enter the market. New York City is currently an example of a very strong hotel market in which it is difficult to develop new lodging facilities because of high construction costs. Almost every national or international hotel chain would like to have representation in New York City, but few are able to enter this market.
3. The property is a famous existing hotel. Some hotels are landmarks to the traveling public. Properties such as the Ritz-Carlton in Boston; the Plaza in New York City; the Madison in Washington, DC; the Drake in Chicago; the Royale Orleans in New Orleans; the Arizona Biltmore in Phoenix; the Bel Air in Los Angeles; and the Stanford Court in San Francisco are examples of hotels that would be most attractive to any hotel management company.
4. The owner has a strong track record of other successful hotels. Hotel management companies like to team up with owners and developers that are

likely to create many hotel projects. If the operator can anticipate the possibility of obtaining several contracts from the same owner over a period of time, a favorable package deal can often be negotiated.

5. The owner has a strong financial statement. The owner's ability to finance new projects as well as maintain existing properties is important to hotel management companies.
6. The owner does not require capital from the management company. If the owner has a strong financial position and does not require capital from the management company, the pool of potential operators is greatly enlarged. Many excellent hotel chains are either unable or unwilling to make capital investments in projects they manage for third parties, so an owner's need for capital would eliminate these operators from consideration.
7. Many other management companies are interested in the subject property. Some highly desirable hotels are often sought after by several hotel chains.
8. Opportunity exists to obtain other management contracts. One management contract often leads to others. If the operator can see the potential for more business, the owner often picks up some bargaining power.
9. The management company is new and has limited experience and resources. Any time an operator has less to offer than competing hotel companies, the owner gains leverage in contract negotiations. New hotel companies or those with limited resources or home office infrastructure are more likely to offer an owner a more favorable contract.

[9] Issues During Negotiation

Prior to actually presenting an opening offer, both the owner and the operator should determine their basic negotiation strategy for the major terms of the contract. Although hotel management contracts contain numerous clauses and provisions, there are usually fourteen major terms that form the basis of the agreement and are primary issues in the negotiations. The following list describes these fourteen major terms and the basic objective of the owner and operator in negotiations concerning them. These management contract provisions were identified in James Eyster's *Negotiation and Administration of Hotel and Restaurant Management Contracts* (p. 35,736) as the provisions most likely to generate concerns for owners and operators and to be the focus of contract negotiations.

1. Contract term:

- Owner—Obtain a contract term for as short a period as possible with renewals at the option of the owner.
- Operator—Obtain a contract term for as long a period as possible with renewals at the option of the operator.

2. Management fee:

- Owner—Base the fee solely on a percentage of net income after debt service and a minimum return on equity. Attempt to minimize the amount of this percentage.
- Operator—Base the fee solely on a percentage of total revenue. Attempt to maximize the amount of this percentage.

3. Reporting requirements:
 - Owner—Require extensive written financial reporting and frequent budget updates and meetings with owner.
 - Operator—Minimize as much as possible the reporting of operating results and budgets to owner.
4. Approvals:
 - Owner—Structure contract so owner has the right to approve all aspects of hotel operation.
 - Operator—Structure contract so operator has total discretion with no approvals of any sort required from owner.
5. Termination:
 - Owner—Ensure owner's right to terminate management contract immediately upon written notice.
 - Operator—Under no circumstances allow the operator to be terminated before the expiration of the contract.
6. Operator's investment in the property:
 - Owner—Stipulate that operator buy right to manage hotel (i.e., invests capital or services) or make performance guarantees to obtain the management contract.
 - Operator—Stipulate that operator have no investment in the property.
7. Operator's home office expenses:
 - Owner—Make all home office expenses of operator reimbursable from management fee, with no expenses to be charged to property.
 - Operator—Stipulate that the pro rata share of all of operator's home office expenses plus all direct expenses be chargeable to the property.
8. Transfer of ownership:
 - Owner—Ensure that owner may transfer ownership of hotel to anyone at any time.
 - Operator—Ensure that owner cannot transfer ownership of property without operator's approval and that operator is allowed right of first refusal.
9. Exclusivity:
 - Owner—Establish owner's right to develop or own any hotel managed by operator.
 - Operator—Establish operator's right to manage any hotels developed or owned by owner.
10. Insurance and condemnation proceeds:
 - Owner—Exclude operator from participation in any insurance or condemnation proceeds.
 - Operator—Stipulate that operator be entitled to a pro rata share of all insurance and condemnation proceeds.
11. Hotel personnel:
 - Owner—Ensure that all hotel personnel will be employees of operator.
 - Operator—Ensure that all hotel personnel will be employees of owner.

12. Reserve for replacement:

- Owner—Agree to fund capital replacements (furniture, fixtures, and equipment) on an as-needed basis.
- Operator—Establish the right to establish a reserve for replacement funded by the owner that is as large as possible.

13. Restrictions:

- Owner—Stipulate that operator cannot own, manage, or franchise another hotel within the same market as the subject.
- Operator—Refuse restrictions on ownership, management, or franchising by the operator in the same market as the subject.

14. Indemnity:

- Owner—Ensure that operator will indemnify owner for all actions against operator.
- Operator—Ensure that owner will indemnify operator for all actions against operator.

CHAPTER 20

Hotel Management Contracts and Related Documents

¶ 20.01 Introduction	20-2	[7] Operator Misconduct or Fraud	20-18
¶ 20.02 Contract Term	20-2	[8] Cessation of Operator Activity in the Hotel Business	20-18
¶ 20.03 Management Fee	20-3	[9] Owner's Failure to Provide Adequate Funds	20-19
[1] Basic Fee	20-3	[10] Mortgage or Lease Default Including Foreclosure	20-19
[2] Incentive Fee	20-4	¶ 20.09 Operator Investment in Property	20-19
[3] Owner and Operator Requirements	20-4	EXHIBIT 20-4 Costs for Pre-Opening Services	20-20
EXHIBIT 20-1 Hotel Income Statement	20-5	EXHIBIT 20-5 Working Capital Costs	20-20
EXHIBIT 20-2 Percentages Required to Yield Management Fee	20-6	EXHIBIT 20-6 Furniture, Fixtures, and Equipment (FF&E) Costs	20-20
¶ 20.04 Financial Reporting	20-6	¶ 20.10 Operator Expenses	20-21
EXHIBIT 20-3 Comparing Operating Statistics of Two Properties	20-7	[1] Home Office Expenses	20-21
¶ 20.05 Annual Plans	20-8	[2] System Reimbursable Charges	20-22
[1] Forecast of Income and Expense	20-8	[3] Payment of Expenses and Charges	20-22
[2] Budgets for Capital Expenditure and Repair and Maintenance	20-9	¶ 20.11 Transfer of Ownership	20-23
[3] Marketing Plan	20-9	¶ 20.12 Insurance or Condemnation Proceeds	20-24
[4] Other Reports	20-10	¶ 20.13 Employees	20-25
¶ 20.06 Budget Approval Process	20-10	¶ 20.14 Reserve for Replacement	20-25
[1] Arbitration Procedures	20-11	EXHIBIT 20-7 Useful Lives of FF&E Components	20-27
[2] Ownership Control	20-11	¶ 20.15 Area Restrictions for Operator	20-27
¶ 20.07 Owner Approvals	20-12	¶ 20.16 Indemnification	20-28
¶ 20.08 Termination of Agreement	20-13	¶ 20.17 Pre-Opening Management Services	20-29
[1] Bankruptcy	20-14	¶ 20.18 Technical Service Assistance	20-30
[2] Material Breach of Contract	20-14		
[3] Revocation of License or Franchise	20-14		
[4] Condemnation or Casualty	20-15		
[5] Operator's Failure to Achieve Performance Levels	20-15		
[6] Operator Buy-Out	20-18		

¶ 20.01 **INTRODUCTION**

The proper execution of a management contract between the hotel owner and the management company is a vital step in the development of a successful hotel venture. The management contract spells out the basic relationship between the owner and the operator. For example, it might specify who is responsible for the provision of operating capital, the payment of property taxes, or the employment of the general manager and other key executives. Great care should be taken in putting together the management contract, since an agreement that is overly favorable to one party can result in a contentious relationship between the owner and the operator, with potentially disastrous results for the hotel.

This chapter discusses the basic provisions that are found in management contracts, as well as some of the more common variations. Included in this discussion are such topics as fee structures, contract termination, operator expenses, owner approvals, and other significant areas relating to management contracts. The chapter also includes a discussion of the annual plan and the budget approval process, two areas that are usually set forth in great detail in the management contract. The author wishes to acknowledge the research and findings of management contracts contained in James Eyster's *Negotiation and Administration of Hotel and Restaurant Management Contracts*, p. 41,779.

¶ 20.02 **CONTRACT TERM**

The term of a management contract is the length of time for which the agreement is to remain in effect. Both a commencement date and a termination date are usually specified in this provision. The commencement date may be either a specific date or it may be as of a certain occurrence, such as the date the hotel officially opens for business. Whatever the certain occurrence may be, the parties to the contract must be careful to define it clearly (e.g., what does "officially open for business" really mean?).

The contract term may comprise an initial term and one or more additional renewal terms that extend the total length of the agreement.

Ideally, owners want an initial term that is as brief as possible, and the option of numerous short renewal terms. This arrangement permits the owner to tie the operator to the contract for an extended period of time while allowing the owner to terminate the contract upon relatively short notice should the management company prove ineffective or the owner want to sell the property unencumbered by a management contract.

The contract term provision affects the hotel operator by limiting the period during which the property can be operated and a management fee collected. A hotel company generally incurs start-up costs when taking over new contracts, so the company needs a term long enough to recoup the initial one-time expenses. In addition, most management fees are structured so that they reward profitable operating results, and as a result, it may take an operator several years to achieve the level of profits needed to earn a reasonable amount of compensation. For first-tier hotel management companies, the length of the contract term has additional importance because of their public name recognition. Such companies are interested in demonstrating a stable, long-term commitment to a market area in general and a property in particular, so they will usually negotiate for the longest initial term possible.

The contract term, from an owner's point of view, is directly related to two other important provisions: termination for nonperformance and contract buy-out. If the owner is able to negotiate a satisfactory provision for quickly terminating an incom-

petent operator along with buying out the contract for a reasonable price, then the length of the contract term becomes less important.

First-tier hotel companies generally insist on long initial contract terms because of the high start-up costs associated with such agreements. Therefore, contracts with first-tier operators usually run for an initial term of between ten and fifteen years. On the other hand, second-tier operators are typically more willing to accept shorter agreements. Contracts with these operators commonly specify an initial term of between three and ten years.

It should be noted that second-tier operators encompass a broad variety of management companies, ranging from small firms with several executive employees to large, highly structured organizations similar to many first-tier chains. The length of term that these operators agree to often varies considerably from one contract to another. When economic downturns occur and there is an increase in lender workouts handled by second-tier management companies, it is not unusual to see, on average, six-month to two-year contract terms, which enable the lender-owner to quickly sell the property, unencumbered by a management contract, in the event a buyer is found.

Renewal terms extend the contract for a stated period beyond the initial term. The renewal term is typically structured as a contract extension option that may be exercised by either the operator or the owner acting alone or in agreement. The renewal term need not contain the same provisions (e.g., the management fee) as the initial term.

Most management contracts include some form of renewal provision. In most cases, the agreement allows for a specified number of renewal terms. The permitted number of renewals is usually between one and three, while the length of the terms is commonly from five to ten years. Some agreements allow for an unlimited number of renewals on a more frequent basis, usually yearly.

The primary difference in the renewal terms for first- and second-tier hotel operators is that first-tier companies are generally less likely to offer such terms, and if they do, they run for longer periods of time in terms of the individual renewals as well as the total of all renewals. First-tier operators are more likely to control the option to renew than are owners, but renewals generally are a matter of agreement between the two parties.

¶ 20.03 **MANAGEMENT FEE**

A management fee is the compensation a hotel company receives for providing the various services called for in a management contract. For first-tier hotel companies, the management fee covers both their management services and the value of their chain identity; second-tier operators are compensated for their management services alone. The calculation of the management fee is usually tied to one or more financial indicators, such as revenue or profit.

From an owner's point of view, the management fee represents an operating expense, something that should be controlled and minimized. However, management fees can be treated as an incentive and thus become an ownership tool for fostering profitable operations. One of the primary goals of hotel owners is to receive maximum net income from the hotel operations. The ability and efforts of the management company have a direct impact on whether the hotel is able to realize this goal.

[1] **Basic Fee**

Under the arrangement known as the basic fee, the management fee is determined solely by a percentage of gross revenue, creating an incentive for the operator to in-

crease marketing efforts and other activities that increase sales volume. The drawback to this arrangement is that the basic fee provides no incentive to minimize operating expenses. If the entire management fee is in the form of a basic fee, the operator can theoretically increase marketing and sales efforts to the point at which the highest possible revenues are reached, but any margin of profit is eliminated.

[2] Incentive Fee

In another type of management fee, known as the incentive fee, the fee paid to the management company is based on a specified percentage of a defined net income, usually determined by sales volume and expense control. Therefore, incentive fee rewards the operator for efficient, profitable management.

Hotel owners generally want to have all or at least most of the management fee calculated as an incentive fee. In addition, owners want this compensation based on a defined net income that appears as low in the hotel's income statement as possible. This is why it is referred to as a low-level line item.

For example, consider a 300-room hotel that is currently operating at a 73 percent stabilized occupancy with an average rate of \$113.14, as shown in Exhibit 20-1. The format shown here is standard for such income statements.

Assume that the hotel will be operated by a first-tier management company and the owner believes that 5 percent of total annual revenue, or \$781,000, is fair compensation for the services and chain identity of the management company. The owner is willing to pay 3 percent of total revenue (\$469,000) as a basic fee, but wants the remaining portion of the total fee (\$312,000) paid on an incentive basis and calculated as a percentage of a defined profit, such as one of the standard profit line items shown in Exhibit 20-1: Income Before Fixed Charges, Income Before Debt Service, or Income After Debt Service. (In addition to the use of these standard line item definitions, many other definitions can be developed, such as "Income Before Fixed Charges but After Reserve for Replacement" or "Income After Fixed Charges but Before Property Taxes.")

Exhibit 20-2 gives the percentages of standard line items that are needed to yield the required additional management fee of \$322,000.

If the incentive fee is calculated as a percentage of Income Before Fixed Charges, it would have to be 6.2 percent of the line item in order to yield the required \$312,000. If the calculation is made using Income After Debt Service, the necessary percentage would be 17.8 percent.

From an owner's viewpoint, the incentive fee should be calculated as far down the income statement as possible. For example, any payment from the Income After Debt Service line erodes only the return on equity rather than funds available for operating expenses, fixed charges, and debt service. A similar result can be achieved by calculating the incentive portion of the management fee using an item before debt service, but paying it only if there are sufficient funds to cover debt service, which is known as subordinating the incentive fee to debt service.

[3] Owner and Operator Requirements

From the operator's point of view, the management fee represents compensation for services rendered. The fee must be enough to both cover the management company's operating expenses and provide an adequate profit.

Operators understand the need of owners to receive the maximum net income possible from hotel operations, but they also realize that in some instances they have

little control over operating results. In overbuilt markets or depressed economies, even the best management companies find it difficult to generate suitable profits. In such situations a management company might be unfairly penalized if its entire fee is calculated as a percentage of a defined profit. The same is true for new hotels, for which a period of occupancy build-up and initial operating losses are expected.

Exhibit 20-1 Hotel income Statement

Number of Rooms: 300 Stabilized Occupancy: 73% Average Rate: \$113.14

	(\$000)	Percentage of Total Revenue
Revenues		
Rooms	\$9,044	57.6
Food	4,318	27.5
Beverage	1,727	11.0
Telephone	344	2.2
Other Income	260	1.7
Total	<u>15,693</u>	<u>100.0</u>
Departmental Expenses		
Rooms	1,908	21.1*
Food and Beverages	4,685	77.5*
Telephone	348	101.2*
Other Income	157	60.3*
Total	<u>7,098</u>	<u>45.2</u>
Departmental Income	<u>8,598</u>	<u>54.8</u>
Undistributed Operating Expenses		
Administrative and General	1,236	7.9
Management Fee	471	3.0
Marketing	741	4.7
Property Operations and Maintenance	770	4.9
Energy	713	4.5
Total	<u>3,931</u>	<u>25.0</u>
Income Before Fixed Charges	<u>4,664</u>	<u>29.8</u>
Fixed Charges		
Property Taxes	405	2.6
Insurance	135	0.9
Reserve for Replacement	392	2.5
Total	932	6.0
Income Before Debt Service	<u>3,732</u>	<u>23.8</u>
Debt Service	<u>2,415</u>	<u>15.4</u>
Income After Debt Service	<u>\$1,317</u>	<u>8.4</u>

*Percentage of departmental revenue

Exhibit 20-2 Percentages Required to Yield Management Fee

Line Item	Required Management Fee	Line Item amount	Required percentage
Income before fixed charges	\$312,000	\$5,064,000	6.2%
Income before debt service	\$312,000	\$3,910,000	8.0%
Income after debt service	\$312,000	\$1,752,000	17.8%

To protect themselves from these uncontrollable external factors, management companies seek to have the bulk of their fees calculated as a percentage of revenue (usually total revenue), which may decline somewhat when adverse conditions affect the property, but is never totally eliminated.

Most management companies are able to cover their actual operating (i.e., home office and supervision) expenses with the basic portion of the fee. Expressed as a percentage of total gross revenue, the operating expenses to the management company generally range from 1 percent to 2 percent. A basic fee of 3 percent of total revenue will cover all of the operator's costs and leave an adequate profit. The incentive portion is therefore largely profit for a second-tier operator and profit and identity compensation (e.g., for trademarks and public image) for a first-tier operator.

It must be recognized that a sizable portion of the total operating costs for a management company are incurred during the initial part of the contract term. During the start-up phase for a newly opened hotel or the takeover phase for an existing property, the operator must devote a significant amount of supervisory time to institute new systems, procedures, and controls. This phase also entails greater efforts in recruiting, training, marketing, purchasing, and accounting. Some management companies will even temporarily relocate skilled personnel from other properties to insure a smooth opening or takeover. In order for a contract to be attractive to an operator, there should be some reasonable expectation that these initial costs can be recovered over the contractual term.

¶ 20.04 **FINANCIAL REPORTING**

The complete, accurate, and timely reporting of financial operating results is one of the most important services provided by a hotel management company, because it is the only real measure available to a hotel owner to evaluate the performance and effectiveness of the management company. Management contracts should detail (1) the types of financial reports that the operator must prepare, (2) how they should be prepared, and (3) when they should be submitted. Financial reports must be organized in a uniform manner and in sufficient detail so that results can be quickly evaluated and any deficiencies immediately spotted; they must be accurately compiled by knowledgeable accountants and audited periodically; and they must be issued in a timely manner. Every day a report is delayed reduces the opportunity for correcting a problem. Owners and operators must communicate financial information quickly in order to manage effectively.

The first requirement of a financial reporting system is a uniform accounting procedure that allows for easy comparisons between financial reports within the same property, along with the operating results of other, similar hotels. To facilitate these comparisons, the hotel industry has adopted the Uniform System of Accounts for Hotels (Hotel Association of New York City, Inc., *Uniform System of Accounts for Hotels* (8th ed.) HANYC, Inc. (1986)) which is a standard chart of accounts detail-

ing exactly how each item of revenue and expense should be posted. This system allows the comparison of operating statistics among one or more properties.

For example, assume Hotels *A* and *B* are located in the same market area, serve similar customer segments, and both follow the Uniform System of Accounts for Hotels. The respective management companies for the hotels report the statistics pertaining to the operating expense account entitled "Administrative and General," as shown in Exhibit 20-3.

Exhibit 20-3 Comparing Operating Statistics of Two Properties

Unit of Comparison	Administrative & General	
	Hotel A	Hotel B
Dollars per available room	\$2,659	\$2,915
Dollars per occupied room	\$10.01	\$9.45
Percent of total revenue	9.2%	8.3%
Percent of rooms revenue	20.7%	14.1%

On the basis of the unit of comparison, dollars per available room, Hotel *A* appears to have Administrative and General expenses under better control. This conclusion, however, is not supported by the rest of the data, which show Hotel *B* performing better in dollars per occupied room, percentage of total revenue, and percentage of rooms revenue. The reason for this is that Hotel *B* probably has a somewhat higher level of occupancy and is managing the Administrative and General expense category more efficiently.

The types and formats of financial reports prepared by the hotel company should be investigated during the operator selection process to ensure that sufficient financial data will be generated and that it will be presented in a usable format. Some of the financial reports typically provided by the management company include daily, monthly, annual, and miscellaneous reports. These are described in the following paragraphs.

Daily reports. These reports should provide information regarding revenues and occupancy and should include details of all authorized complimentary rooms.

Monthly reports. These reports should include an income and expense statement with full supporting schedules calculated on the accrual method and statistical data that details revenues by outlet, occupied rooms by market segments, food and beverage covers by outlet, and labor utilization by department. These reports should provide data for the current month, current month's budget, current year-to-date, current year-to-date budget, last year's month, and last year's year-to-date budgets, and in addition should provide a balance sheet, identification of sources and uses of funds, details of capital expenditures, and a Manager's summary and overview of operations.

Annual reports. These reports must contain an income and expense statement, a balance sheet, and documentation of the sources and uses of funds, all of which should be audited.

Optional reports. These reports, to be issued at the request of the owner, include information regarding the aging of accounts receivable, schedules of payables, and schedules of supplies and inventory, as well as reports on occupancy, labor utilization, and insurance claims.

All financial reports should be prepared by the operator either locally on the property or centrally at the hotel company's central offices. The operator should maintain a strong control system in order to prevent theft and embezzlement and to ensure that all transactions are properly accounted for and reported. The entire system, along with all financial reports, should be audited at least annually, and more often if accounting problems are expected. Financial reports must be prepared on a timely basis to be of the greatest value to the owner and operator.

Financial reporting provisions are useful for both hotel owner and operator. Complete, accurate, and timely financial operating data is necessary for both parties because the information is critical for evaluating and improving operating efficiencies.

Hotel owners should be aware that significant costs are involved in preparing financial reports and should refrain from needlessly burdening an operator with unnecessary requests for information. The level of financial reporting detailed in this section should not, however, be a problem for any competent hotel management company, which should have accounting systems and procedures in place that can handle normal requirements. If, during the negotiation process, the operator has any difficulty in agreeing to provide this level of financial reporting, reason exists to question the overall competency of the company.

The bargaining power of either party should not play a part in determining the scope and quality of a financial reporting system. If, during the negotiation process, either the owner or the operator is not fully satisfied with the financial reporting requirements proposed by the other party, all attempts should be made to rectify the situation. If a satisfactory solution is unobtainable, it is probably best to look elsewhere for a deal.

¶ 20.05 **ANNUAL PLANS**

All well-run businesses prepare budgets, plans for future operations, and evaluations of past performance in order to facilitate financial planning and control costs. Such planning and analysis is especially important for lodging facilities operated by hotel management companies.

Given the terms of the management contract, the owner either has no input in the budgeting process or, at the other extreme, has the opportunity to exert a great deal of control over the operation through a strict review. Generally, the owner has some power to approve the budget.

Under normal circumstances, a management company submits an annual plan to the owner that comprises a number of budgets, reports, and plans detailing the expectations of the management company for the subject property over the following twelve months. Annual plans normally include a forecast of income and expenses, a capital expenditure budget, a repair and maintenance budget, a marketing plan, and reports on engineering systems, leasing plans for commercial space, staffing, and salaries.

[1] **Forecast of Income and Expenses**

Perhaps the most important element of an annual plan is a month-by-month forecast of income and expense. This forecast should include full supporting schedules of each revenue and expense category. All standard budget items, including reserves for replacement, property taxes, equipment leases, and debt service, should be projected.

[2] Budgets for Capital Expenditure and Repair and Maintenance

The capital expenditure budget should contain a detailed listing of all necessary expenditures. Each entry in the listing should provide a full description of the expenditure, a concise explanation of why it is necessary, and an identification of the aspect of the property it will improve. In addition, the listing should include the manner in which the cost will be funded and a time frame for its occurrence. The repair and maintenance budget should contain the same sort of information as the capital expenditure budget, except that the items listed in it will relate to expenses contained in the repair and maintenance category of the income and expense statement.

[3] Marketing Plan

The marketing plan should be a comprehensive description of the operating company's marketing efforts on behalf of the subject property. The plan should contain the following:

1. An analysis of the current status of the market position of the hotel, including:
 - Average rates and occupancies of all competitive hotels, including their market segmentations and the levels of food, beverage, and banquet competition that they generate.
 - Identification of new competition, either proposed or under construction.
 - An assessment of the economic health of the market area and its possible future effect on transient visitation and food and beverage demand.
 - Descriptions of any other factors that could affect the local hotel and restaurant markets and that would be important for developing a marketing strategy.
2. An analysis of the current status of any marketing efforts in progress, including:
 - A description of all marketing programs underway and an evaluation of their effectiveness.
 - The number of room-nights already on the books, broken down by month and market segment.
 - The reservation report from hotel chain or franchise system.
 - An analysis of food, beverage, and banquet marketing efforts.
3. An overview of long-term marketing strategy for the next three to five years.
4. A description of the marketing program for the next twelve months, detailing:
 - Plans for enabling the short-term marketing program to meet the goals of the long-term strategy.
 - Marketing efforts, by month, for advertising and promotion, and staffing requirements for these areas.
 - Budget requirements, divided by month and broken down to show the exact manner in which the funds will be spent.
 - Projections of room-nights captured, by month, broken down by market segment, along with expected average rate.

- Projections of food, beverage, and banquet covers, by month, by outlet, along with average checks.

[4] Other Reports

Among the other reports that the hotel management company must prepare and update annually for the owner are the following: (1) an engineering status report; (2) a leasing plan for commercial space; and (3) a staffing and salary report. The first of these, the engineering report, is issued by the engineering department and details the status of all engineering systems within the property and any expected maintenance or alterations that will be required over the next twelve months. The leasing report describes the status of any leased space on the property for which tenant leases will expire during the next twelve months. In addition to describing the current rent roll, the report should provide information regarding the market rent for similar leases in the local market area. The staffing and salary report should provide an analysis of current and contemplated staffing requirements along with recommendations for adjustments in pay scales and employee benefits. This report should also contain a review of the pay and benefit practices of other hotels in the market area.

¶ 20.06 BUDGET APPROVAL PROCESS

The budget approval process is the procedure by which hotel budgets are prepared, submitted to the owner, reviewed, modified, and put into effect. It is also the means by which the owner exerts influence over the expenditures of, and thus the operation of, the hotel. This process is generally clearly defined in the management agreement.

The budget approval process generally begins about four months before the start of a new operational year, and, much like an annual plan, is put together by the hotel department heads and is supervised by the general manager. Most operators have a multi-step approval process that takes the proposed plan up their corporate ladder. The property owner generally has no input in the process during this initial preparation phase.

Once the annual plan has made it through the internal approval process of the management company, it is submitted to the property owner, usually within sixty to ninety days of the start of a new operating year. The property owner should require ample time to review the plan, develop a critique, and resolve any differences before the time at which the budgets become effective. In practice, however, the owner approval process differs widely from one contract to another. In some cases, the owner is merely given a copy of the final annual plan, and it becomes effective immediately with no approval required. This extreme gives the owner no input in the operation of the hotel or control over the management company. A procedure more oriented to the owner's interest allows the owner an opportunity to review the annual plan, make comments, and approve either certain specific aspects of the plan or the entire plan. This method can, and often does, result in disagreements.

The manner in which budgetary disagreements are resolved ultimately determines the degree of influence that the property owner can wield. In most management contracts that provide for owner approval of the annual plan, if the owner and operator cannot agree on one or more specific terms, the terms that both parties do agree on go into effect on the date required to implement the new plan. In lieu of the provisions that cannot be agreed upon, the terms from the preceding annual plan are used after they are automatically adjusted by a factor such as the Consumer Price Index (CPI). This procedure allows for the continued operation of the property

under some form of budget while providing additional time for the parties to resolve their differences.

If, after a stated period of time (thirty to sixty days), the parties still cannot agree on the annual plan, some contracts will give the deciding vote to one of the parties involved. Obviously, the so-called approval process under these types of management contracts are meaningless for the party that does not have the veto power.

[1] Arbitration Procedures

A more equitable arrangement for resolving disputes involving annual plans is some form of arbitration. Arbitration procedures have several clear advantages over litigation. Such matters can be settled relatively quickly because there is no wait for time in a court calendar, and because all decisions are final, there can be no appeal. Arbitration proceedings are not public hearings, so confidential information can be discussed without risk of its release to the public. The arbitrator can be chosen on the basis of specific experience and expertise in the area of the dispute. Last, but not least in significance, is that because an arbitration hearing does not require legal representation or extensive preparation, it is much less expensive than litigation.

The only occasional disadvantage to an arbitration proceeding is that it can take fifteen to thirty days to organize and conclude. While not approaching the time involved in a court case, even this delay can sometimes create operational problems when important budget provisions are involved.

To make the arbitration process as efficient as possible, one or more of the following conditions should be incorporated into the clause that provides for such a procedure in the management contract:

- A definition of the specific qualification requirements of the arbitrator (e.g., a national hotel consultant with fifteen years of experience).
- Time limits on the process (e.g., five days to select an arbitrator, five days to hear the case, and three days to render a decision).
- The use of the “best offer” approach: both parties are required to put their best offer on the table during the arbitration, and the arbitrator then must accept one offer and reject the other. By eliminating the option of “splitting the difference,” the parties will come closer to an agreement.
- The use of a plan, provided by the American Arbitration Association (AAA), for conducting the entire arbitration process. This service is available for a nominal fee and is well worth using.

[2] Ownership Control

The extent of control by the owner of the final form of the annual plan has a bearing on the operation of the hotel. For example, if the owner has veto power over important expenditures, it can maintain a certain amount of financial control over the management company and ultimately gains a greater say in the overall operation.

The fact that the approval of the owner is necessary for implementing the annual plan does not by itself result in ownership control. To accomplish this, specific restrictions that prevent the management company from operating at variance with the budget must be established. For example, if the owner turns down a guest-room refurbishment program proposed in the annual plan, but the operator can circumvent the disapproval by merely increasing the property operations and

maintenance expenditures (even if doing so exceeds the approved budgeted amount), thereby accomplishing the same upgrade, the threat of a budget rejection carries little weight.

Control over the annual plan is one of the key provisions owners should attempt to secure when drafting a management agreement. Veto power over the use of funds can often swing operational control away from the operator and to the owner. First-tier management companies seldom, however, allow owners to have such power over annual plans. Occasionally, first-tier companies permit arbitration, but not for every item in the budget. For example, they might arbitrate a disagreement over how much should be spent on newspaper advertising, but would demand total control over funds derived from the reserve for replacement. Second-tier operators, who generally have much less bargaining power, are much more likely to allow greater ownership participation.

As stated previously, the budget process usually commences about four months prior to the start of a new operational year, when the operator prepares and delivers to the owner the proposed annual plan. The timing of this delivery is important. The owner must have sufficient opportunity to thoroughly review the findings and recommendations contained in the plan and must have enough additional time to negotiate any necessary changes. The lead time for submitting the annual plan to the owner can range from 30 to 120 days. In general, second-tier operators must submit their plans slightly earlier than first-tier operators.

Once the annual plan has been approved, the management company must operate within its budgetary limits. However, unforeseen events and emergencies may cause the operator to exceed such limits. Many management contracts have some form of restriction on spending over and above the amounts specified in the annual plan. In some instances, the agreement requires the owner's approval for any expenses in excess of the budgeted amount. Other agreements specify a percentage (usually between 5 and 25 percent) by which the operator may exceed a budgeted amount without owner approval. A specific dollar amount (e.g., \$20,000) can be used in place of a percentage, but such an amount must be regularly revised to account for inflation.

¶ 20.07 **OWNER APPROVALS**

Some hotel management contracts require virtually no approvals from hotel ownership; others contain numerous opportunities for owners to provide input into the decisions involved with managing a lodging facility. As with budgets, most operators prefer to restrict any provisions requiring any form of approval, and owners generally attempt to exert as much control over management in the form of approvals as possible. The following list contains some of the elements of a hotel operation that may be subject to approval by the owner.

- Expenditures for non-capital expenses (generally, those exceeding a specified level)
- Expenditures for capital items (generally, those exceeding a specified level)
- Plans to renovate the facility
- Expenditures not covered in the annual plan
- Use of the operator's central services, the cost of which is not included in the normal management fee
- Use of outside consultants

- Expenditures for service contracts
- Changes in room rates and food and beverage pricing
- Leases and concessions
- Plans to dispose of property
- Initial salaries, raises, benefits, and labor negotiations
- Changes in key operating personnel
- All initial operating policies and subsequent changes
- Selection of a depository bank
- Size of the working capital account
- Withdrawal of funds from operating accounts
- Credit policies
- Insurance coverage
- Use of insurance or condemnation proceeds
- Legal proceedings
- Assignment of the management contract by the operator

In most instances, the approval process is one-sided—that is, the owner is required to approve a request from the operator rather than the operator approving a request from the owner. As a result, any approvals contained in a management contract usually create an advantage for the owner.

Most first-tier hotel companies provide the owner with very few opportunities to review and approve their actions. Second-tier operators are generally more accommodating in allowing for owner approval of some of the operational elements previously outlined. As with the budget approval process, the more control an owner can exert over a management company, the greater say it has in the hotel's overall operation.

¶ 20.08 **TERMINATION OF AGREEMENT**

When two parties enter into an agreement such as a hotel management contract, the implicit belief is that the relationship will continue for the full term. Often it does, but occasionally one of the participants fails to meet its contractual obligations and the agreement must be terminated. To protect both parties from such situations, hotel management contracts often incorporate specific provisions that allow one or both of the parties to terminate the agreement. Circumstances that can trigger termination by the owner include:

- Bankruptcy of the operator
- Failure to achieve specific level of performance (usually a defined profit)
- Operator buy-out
- Operator's material breach of the contract
- Operator's misconduct or fraud (such as misappropriation or diversion of funds)
- Operator revocation of license
- Operator termination of the franchise

- Cessation of operator activity in the hotel business
- Condemnation or casualty

Events that can bring about termination proceedings by the operator include:

- Bankruptcy of the owner
- Owner's material breach of the contract
- Owner revocation of license
- Owner's failure to provide adequate funds (or nonpayment of the operator)
- Mortgage or lease default
- Condemnation or casualty
- Foreclosure

The key to any termination clause is that it should allow for the rapid and conclusive removal of the party at fault. A drawn-out termination by either the owner or the operator is to be avoided, because it can have a devastating effect on the current and future operating results of the property.

[1] Bankruptcy

Although most management contracts permit either party to terminate the agreement in the event the other enters into bankruptcy, it is usually the bankruptcy court that ultimately decides whether the operator will continue or be replaced, since the court can override the terms of the contract. Any time a hotel is involved in a bankruptcy, its reputation suffers, and the long-term negative effect can often be difficult to overcome.

[2] Material Breach of Contract

The material breach of one or more contract provisions by one party usually allows the other party to terminate the agreement. In most instances, notification of the breach must be sent to the party within ten to twenty days of the breach; the party then has thirty to forty-five days to cure the breach. If the breach is not cured, the other party may then terminate the contract immediately, or in some cases must again notify the party at fault that the termination is effective. This extensive notification procedure is necessary to protect the rights of the party at fault, but it does draw out the process, which can negatively affect the hotel's operation.

[3] Revocation of License or Franchise

Most management contracts contain provisions protecting licenses and franchise documents by holding either party to be in default for causing a license or franchise to be revoked. Both the owner and operator should monitor this provision carefully to ensure that a potential default caused by the other party is corrected before final action takes place. Notice of a default in any critical license or franchise should be sent to both parties so corrective action can be taken.

[4] Condemnation or Casualty

The taking of a hotel through eminent domain or by some form of destructive casualty generally permits either the owner or operator to terminate the agreement. A partial taking or casualty produces several issues that must be addressed when the management contract is drafted:

- At what point is a hotel rendered unusable by a partial taking or casualty?
- Does the owner or operator decide whether the facilities should continue to be operated?
- Is the operator entitled to a portion of the condemnation award or insurance proceeds?
- Is the operator entitled to collect a contract termination fee in the event the property is rendered unusable by a condemnation or casualty?

Some contracts allow either the owner or the operator to determine whether the hotel has been made unusable, while others set forth certain criteria for reaching this conclusion. Some contracts, for example, cite circumstances such as those in the following list, that would render a hotel inoperative and thereby allow either the owner or the operator to terminate the agreement.

- The cost of necessary repairs exceeds 85 percent of the hotel's replacement cost.
- The food and beverage facilities are rendered unusable during the last eighteen months of the contract term.
- Fifty-five percent of the guestrooms are destroyed within the last five years of the contract term.
- Forty percent of the guestrooms are destroyed within the last four years of the contract term.
- Thirty percent of the guestrooms are destroyed within the last three years of the contract term.
- Twenty percent of the guestrooms are destroyed within the last two years of the contract term.
- Ten percent of the guestrooms are destroyed within the last year of the contract term.
- More than 30 percent of the hotel is destroyed by an uninsured casualty.

In most instances, operators will attempt to reopen a lodging facility that has been partially condemned or destroyed by a casualty. When negotiating the contract, owners should be aware of this inclination and insist that the agreement be worded in such a way as to prevent the rebuilding of a facility when doing so does not represent the best use of the condemnation or insurance proceeds.

[5] Operator's Failure to Achieve Performance Levels

One of the most important provisions from an owner's point of view is a performance clause that sets specific operating standards that the management company must meet in order to remain as the operator of the property. Generally, the best measure of

operating performance is profitability. Owners invest in hotels in order to realize profits, and the ultimate test of the management company is whether profits are actually made. A well-written performance clause protects the hotel owner from an incompetent operator, while at the same time assuring the management company that it will not be terminated for circumstances beyond its control. Among the important issues that should be addressed in a performance clause are the following:

- Performance criteria should be clearly defined so that both the owner and operator understand the specific goals. Stating, for example, that the hotel must be operated in “a profitable manner” does not provide the operator with a specific level of performance.
- The failure to achieve the desired level of performance should be recognizable early enough to prevent the hotel from suffering undue financial hardship from an incompetent operator. The performance criteria should also, however, address the possibility that the operator is a competent manager but external circumstances, such as a declining economy or overbuilt market, make the performance level impossible to reach.
- The performance criteria should take into account unique circumstances, such as that a new hotel typically experiences a period of build-up, during which both occupancy and profits grow; that a seasonal hotel is often less profitable than one that operates year-round; and that unions, high energy costs, excessive property taxes, and difficult maintenance problems are unpredictable elements that will often reduce profits.
- The termination process should provide the operator with an opportunity to remedy the lack of performance by contributing or lending the necessary funds to the owner in order to correct the deficiency and bring the level of performance in line with the stated criteria.
- The performance criteria should reflect the fact that a management contract generally runs for an extended period of time and as the financial structure of the property (i.e., financing, equity and ownership) changes, the intended performance provisions should remain intact. For example, if the performance criteria establishes a level of profit after debt service, and at some time in the future the mortgage is restructured, thereby reducing the annual payments, the operator will directly benefit because the margin of profit will automatically rise through no effort on the part of the operator.

Setting specific performance criteria often becomes one of the key elements in the management contract negotiation process. The operator generally opens discussions by stating that any form of operator performance criteria are inappropriate and unnecessary. The owner generally counters with provisions that permit swift operator removal for any deficiency in performance. The final contract, which reflects the bargaining power of each party, will be the result of some compromise between these two opening positions.

From the owner's point of view, the easiest way to establish appropriate criteria for operating performance is to use the income and expense projections developed by the operator during the management company selection process. Owners assume that if the management company was attempting to sell its services on the basis of such projections, it should be willing to have them used as a performance standard. Management contracts that use this approach typically set forth a defined level of profit, such as income before debt service, and list by year the minimum dollar amount that the operator must generate in order to conform with the performance standard. Other performance criteria sometimes used in hotel management agreements include:

- *Revenue figures from a market study performed by a hotel appraisal firm.* These serve as a basis for negotiation.
- *The income after debt service realized by the subject property.* This performance standard requires the operator to generate a net income that covers, at a minimum, the debt service for the property. The specific amount of debt service should be set forth in the contract, because with floating loans, refinancing, and subordinate mortgages, the actual payments may vary over the life of the contract.
- *Specified return on equity funds.* This criterion is similar to the income after debt service standard except that the operator must generate a sufficient profit to not only cover debt service but also provide a minimum return on equity. In the event that additional equity funds must be invested in the property, such as monies to cover initial cash shortfalls, this type of clause allows the owner to impose a higher standard on the operator.
- *Percentage of gross operating profit.* This standard establishes the right of the owner to terminate the agreement if a certain percentage (e.g., 80 percent) of the gross operating profit does not equal a certain percentage (e.g., 15 percent) of the equity funds invested in the hotel.
- *Percentage of an approved budgeted amount.* This standard is based on an approved operating budget and holds that the operator must achieve a certain percentage of a stipulated profit line in the budget, such as 80 percent of the gross operating profit. The key to this criterion is the budget approval process and how much input the owner has in establishing a realistic level of performance. The advantage of this procedure is that the performance criteria can be adjusted on a yearly basis (through the annual budget approval process) to reflect local market and operating cost conditions.

Performance criteria generally do not become effective for two to four years after the opening of a hotel. This delay is particularly important for newly opened properties, whose operating performance is difficult to judge during the first few years as the business builds up. In addition to a delay for the start-up period, most performance clauses allow a new operator two to three years to achieve the necessary level of profit. A typical performance clause, for example, states that the owner may terminate the agreement if the operator fails to achieve a positive income after debt service after three consecutive years. Often, the management company must fall short of the performance standard for two or more consecutive years before the owner can terminate for poor performance. In general, performance standards start later and require more consecutive years of nonperformance for first-tier operators than for second-tier operators.

If an operator agrees to a performance termination clause, it usually insists on receiving the right to cure. A right-to-cure clause allows the management company to provide the capital necessary to make up any difference between the hotel's actual level of performance and the performance level set forth in the management contract. By advancing the needed capital, the operator is allowed to continue managing the property until another performance test is made (usually one year later). The monies funded by the operator may take one of two forms: they may be treated as merely cash advanced with no provision for repayment, or they may be loaned by the operator (with or without interest) to be repaid at some future date. Any repayment of funds advanced by the operator to meet a performance criteria is generally subordinated to debt service as well as a return on equity funds.

To protect the operator from external circumstances that could adversely affect a hotel's operating performance and thereby subject the management company to ter-

mination, some contracts contain an arbitration provision that allows the operator to prove that the failure to meet the performance standard was due to causes or conditions beyond the operator's control.

[6] Operator Buy-Out

A buy-out clause enables the hotel owner to terminate the management contract at any time for any reason by merely paying a specified dollar amount. This provision is important to owners for several reasons:

- It allows the hotel to be sold unencumbered by a management contract, generally permitting a quicker sale and usually producing a higher selling price.
- An incompetent operator can be removed in less time than that usually provided for in performance termination clauses.
- Occasionally, an owner may find it advantageous to buy out the operator and manage the property independently, thereby saving the management fee.

Although a buy-out clause can greatly benefit the owner, such provisions are rarely available from first-tier operators. Hotel chains with a recognized trade name are often reluctant to enter into agreements that could be easily terminated by the owners and possibly create adverse customer publicity.

The actual termination charge reflects the value of the management contract to the operator. Theoretically, the amount of the payment should approximate the discounted value of the anticipated management fee income over the contract's remaining term. Typical termination charges range from two to four times the total management fee paid to the operator over the previous twelve-month period. This calculation equates to a 25 percent to 50 percent discount rate, which is generally appropriate for gross rather than net income to the management company.

[7] Operator Misconduct or Fraud

Any operator misconduct, including fraud or the misappropriation of funds, constitutes a major breach of trust and warrants the operator's immediate termination. Care must be taken to determine that such an occurrence was attributed to the operator rather than to an employee acting without the management company's knowledge or approval. Individual breaches should be insured against by appropriate fidelity bonds.

[8] Cessation of Operator Activity in the Hotel Business

Because some management contracts extend for long periods of time, owners usually seek to protect themselves from operators who become significantly less active in managing hotels and, by doing so, reduce the benefits of being part of a lodging chain. Some contract clauses allow the owner to terminate if the operator ceases to manage a specified number of hotel properties. Other clauses stipulate a dollar volume amount that hotel operations must represent as a percentage of the company's total revenue.

[9] **Owner's Failure to Provide Adequate Funds**

Under a management agreement the operator generally has no responsibility to provide operating capital for the hotel. All funds either come from the property's cash flow or are contributed to the operation by the owner. To provide adequate management services, the hotel company must have access to sufficient financial resources to pay bills and other liabilities. Lack of necessary funds puts undue pressure on the operator, making it difficult to manage effectively. In addition to their concerns regarding access to sufficient capital to operate the property, management companies obviously want assurance that owners have the resources necessary to pay their management fees.

Adequate funds are typically defined in the management contract as a specific dollar balance that is to be maintained in the property's operating bank account. When cash drops below this pre-established level, the owner must deposit more funds or the agreement goes into default.

[10] **Mortgage or Lease Default Including Foreclosure**

Provision for termination because of a mortgage or lease default is often tied in with the operator's right of termination in case of the owner's failure to provide adequate funds. Operating under the threat of either a lender foreclosure or a landlord eviction is difficult for a hotel management company. Such situations not only result in adverse publicity, they also have a damaging effect on the staff, suppliers, and customers. As with a bankruptcy, the reputation of the management company, particularly first-tier chains, can be quickly tarnished, affecting the image of the entire company.

Most operators want the option to remove themselves from such circumstances. At the same time, lenders also want the option to either remove the operator or continue under the same management in the event of foreclosure on the owner's mortgage. Depending on the negotiating power of the respective parties, the clause providing for termination because of a mortgage default can be written to favor either the hotel operator or the lender.

¶ 20.09 **OPERATOR INVESTMENT IN PROPERTY**

Many hotel owners attempt to negotiate some form of financial commitment to the property on the part of the management company in the belief that having the operator financially tied to the success of the project will create additional incentive to manage in a profitable manner. This practice is more common with first-tier operators than with second-tier operators. Hotel management companies generally pursue one of the following options if an investment in the property is required:

- *Deferred incentive management fees.* The deferral or outright forgiveness of all or a portion of the incentive management fee is actually a form of capital investment on the part of the operator. Most management companies are willing to accrue the incentive portion of the fee in instances in which cash flow is insufficient to cover debt service. If this portion accrues at interest and is ultimately repaid some time in the future, the actual cost to the operator is minimal. If the deferred incentive fee accrues without interest, the operator loses the time value of money but generally receives full payment at some point in the future. Occa-

sionally, fee structures are negotiated that stipulate than any unpaid incentive fee will not accrue and that the operator forfeits all monies owed. This structure is the most likely one to induce a meaningful investment from the operator.

- *Pre-opening services.* Owners are often able to negotiate reduced charges for the pre-opening services of operators in the case of a new hotel. The typical range of these costs is shown in Exhibit 20-4.

Exhibit 20-4 Costs for Pre-Opening Services

Class of Hotel	Amount per Room
Luxury	\$4,100 to \$6,400
Standard	\$2,500 to \$4,800
Economy	\$1,600 to \$2,300

- *Working capital.* All hotels require working capital to purchase inventories and operating supplies and to fund other types of start-up costs. The typical range of these costs is shown in Exhibit 20-5.

Exhibit 20-5 Working Capital Costs

Class of Hotel	Amount per Room
Luxury	\$2,900 to \$4,000
Standard	\$1,900 to \$3,100
Economy	\$1,300 to \$1,800

- *Furniture, fixtures, and equipment (FF&E).* If required, this outlay can represent a significant investment on the part of the operator. FF&E costs typically range as shown in Exhibit 20-6.

Exhibit 20-6 Furniture, Fixtures, and Equipment (FF&E) Costs

Class of Hotel	Amount per Room
Luxury	\$14,800 to \$32,300
Standard	\$10,400 to \$18,300
Economy	\$5,400 to \$9,900

- *Outright payment of key money.* In some highly desirable hotel markets (e.g., New York City), hotel management companies sometimes pay what is known as key money to obtain the right to put their name on and manage a hotel. In effect, the company purchases the management contract for the hotel.
- *Other operator investments.* Management companies sometimes provide funds in the following formats: reduced fees, group purchasing advantages, and profit guarantees.

The fact that a management company is willing to make a capital contribution is sometimes meaningless when the form of the contribution does not expose the operator to any monetary loss. For example, if the contribution of capital takes the form of a loan that is repaid over time with interest, the operator has not really made a significant investment. This may also be the case even if the loan does not accrue interest, in that the operator has lost nothing other than the time value of money. Only when the operator actually contributes capital (in the forms described previously), with the expectation of receiving a return *pari passu* to the other equity funds, can the investment be considered meaningful. The usual forms of operator capital contributions are as follows:

- *Loan of capital.* The operator contributes capital in the form of a note that is repaid with interest, generally out of cash flow. The note is usually unsecured and subordinated to mortgage debt service.
- *First take-out of equity.* The operator receives all of the property's cash flow after debt service until the equity contribution is recovered. The owner then receives the cash flow until the remainder of the equity investment is recovered. Any subsequent cash flow is divided according to an agreed-upon percentage.
- *Outright equity contribution.* The operator and owner enter into a joint venture partnership and split all cash flow after debt service in accordance with an agreed-on percentage.

While a capital contribution on the part of the operator may sound appealing to an owner, it can represent very expensive money. From the owner's standpoint, if capital is urgently required for the operation of a property, the most reasonable form of capital contribution by a management company is first, the subordination of management fees and second, the loan of capital. The primary advantage for an owner in obtaining funds from the operator in the form of a loan is that the overall cost is relatively low. Interest on the funds loaned is usually tied to the prime rate or a specified percentage in excess of that rate, but amortization based on cash flow can be very rapid. An operator's capital contribution in the form of equity, which carries no stated rate of return, can also be costly. Since many operators have limited resources to invest in hotel properties they generally seek cash-on-cash returns on their equity of 12 to 20 percent.

¶ 20.10 **OPERATOR EXPENSES**

Hotel management companies generally incur two types of expenses during the process of operating hotels either for their own account or for third parties. These expenses are known as home office expense and system reimbursable charges.

[1] **Home Office Expenses**

Home office expense includes all the costs of operating the home and regional offices of the management company. These consist of salaries and benefits for executive personnel and support staff; office operating expenses such as rent, office equipment, telephone and supplies; and administrative expenses including insurance, bookkeeping, and legal, which are limited to the administration of the management company rather than the hotel properties themselves. Depending on the size of the management

company and the types of management services provided, the extent of the home office expense may range from modest to extensive.

[2] System Reimbursable Charges

System reimbursable charges are expenses paid by the hotel owner for centralized services provided by the management company. Centralized services include system-wide advertising, national and regional sales offices, reservation accounting, management information and purchasing systems, and education and training programs. Most first-tier management companies offer extensive centralized services, while second-tier operators generally have limited capabilities.

[3] Payment of Expenses and Charges

Home office expenses are typically included in the management fee and are not charged or allocated to any of the properties under contract. These costs represent the normal overhead expense of operating a hotel management company. While home office costs are not usually allocated among the chain's hotels, some operators charge individual properties the travel expense when home office personnel make periodic visits. Occasionally, the salaries of these individuals may also be charged to a hotel when specialized services are being performed.

When negotiating a management contract, the hotel owner should request a detailed description of the home office expenses that will be included in the management fee and those that will be charged to the property. Some operators attempt to allocate a portion of the normal home office overhead to individual properties through excessive charges for home office services. This procedure allows hotel companies to offer fee structures that appear extremely competitive but, when the total costs are calculated, are often economically unattractive.

System reimbursable charges are generally allocated to all the properties within the system according to a specified formula. Some of the methods currently in use include:

- *Percentage of revenue.* The cost of a centralized reservation system is often allocated on the basis of a percentage of revenue—usually rooms revenue—which reflects three important operational variables: the property's room count, occupancy, and average room rate. This method can be somewhat unfair to hotels that do not receive an adequate share of reservations from the centralized system but nevertheless must pay the formulated portion of this expense.
- *Per available room.* Allocating centralized services on the basis of the room count in the subject property divided by the total room count in the chain is a common procedure that is simple to administrate and does not involve communicating confidential information such as occupancies and average room rates. It can, however, produce an allocation that is more unfair than the percentage of revenue method because it does not account for the actual operating performance of a property. For example, using the per available room basis of allocating centralized advertising, a 300-room hotel operating at 75 percent occupancy with a \$100 average rate would pay the same amount as a 300-room hotel with a 60 percent occupancy and a \$85 average rate. Furthermore, this method also does not take into account the actual usage and bene-

fit an individual hotel might or might not receive from the centralized advertising program.

- *Per service received.* This method of allocation tends to produce the fairest results because it divides the centralized costs based on actual usage and benefit derived. For example, the cost of centralized reservations may be allocated on the basis of \$4.50 per reservation received. Properties that obtain a greater number of reservations from the system pay a larger share of the centralized costs. Care must be taken when using this allocation method to make some provision for no-shows, that is, reservations made and thus charged to the property that represent customers who either subsequently cancel or do not show at the property. Administration of this method of centralized expense allocation is obviously more difficult.

The methods used by a hotel management company to allocate system reimbursable charges are generally preestablished by the management company and are subject to negotiation for individual management contracts. The property owner should request documentation as to the management company's historical allocation procedures and costs for these charges so that projections can be made for the subject property.

¶ 20.11 **TRANSFER OF OWNERSHIP**

The ability of both the hotel owner and the hotel operator to easily transfer ownership (i.e., by the owner selling the hotel or the operator selling the management company) is desirable because it allows the selling party to actually realize the value of the enterprise. Any prohibitions that make a sale more difficult can reduce the obtainable value. There is good reason for establishing conditions to a transfer, however, because the party remaining after a sale is dependent on the abilities and resources of the new owner for future success. To protect the hotel owner and operator, many management agreements incorporate specific restrictions on the transfer of ownership. There are basically two types of such restrictions: approval requirements and the right of first refusal.

The remaining party can receive protection through a variety of approval requirements to which both the parties buying and selling must adhere in order for the transaction to take place. Generally, the more protection the remaining party receives, the more restrictive the transfer process becomes. Transfer approval requirements can generally be divided into three levels, depending on the degree of restrictiveness imposed by the remaining party: those that give the remaining party total veto power; those that establish specific approval criteria; and those that stipulate that approval cannot be unreasonably withheld.

A total veto provision gives absolute power to the remaining party to either accept or reject the buyer proposed by the seller. This level obviously provides the greatest protection to the remaining party, but it can seriously inhibit the marketability of the enterprise should the veto be used in an unreasonable manner.

Some management agreements incorporate specific approval criteria that must be met before a transfer is approved. Depending on whether the transfer is made by the owner or the operator, the criteria can relate to items such as net worth, integrity, experience, references, or possible conflicts of interest. By establishing specific approval criteria, both the seller and a qualified buyer are able to move toward a transaction knowing that they will be approved by the remaining party.

A common provision in management agreements is that a specific approval cannot be unreasonably withheld. While this stipulation might provide some comfort to

the prospective buyer and seller, the interpretation of “unreasonably” can subject the entire transaction to ruinous litigation.

In addition to specific approval requirements on the transfer of ownership, most hotel management contracts contain a right of first refusal. Under a right of first refusal, the party to remain with the hotel has the right to match the offer made by the buyer and accepted by the seller. This provision not only allows the remaining party to acquire a full interest in the property, but alleviates the need to invoke one of the approval requirements in the event the remaining party does not want to become a partner with the potential buyer. While the right of first refusal should not take the place of specific transfer approval requirements, it provides another form of protection.

A right of first refusal can by itself inhibit the sale of a hotel. Potential buyers, knowing that they may not ultimately succeed in purchasing a property because of the rights vested in the remaining party, may not spend the time and effort necessary to pursue the transaction. This may limit the number of potential buyers, which can in turn adversely affect the marketability of a property.

An important component of a right of first refusal provision is the length of time the remaining party has to consider matching the offer of the buyer. Naturally, the seller wants this time period to be kept to a minimum while the remaining party wants as much time as possible to review the offer and secure necessary financing. The length of time allowed to consider such offers generally ranges from forty-five to ninety days, but in most instances, the remaining party is permitted sixty days to consider an offer.

While the transfer of ownership is generally not an immediate concern when a hotel management agreement is drafted, the structure of these provisions can have a significant impact on both the residual value of the property and the ongoing relationship of the parties to the agreement. Care must be taken to view a transfer from the standpoint of all parties involved in order to achieve an equitable contractual structure.

¶ 20.12 **INSURANCE AND CONDEMNATION PROCEEDS**

After a casualty or condemnation, the property owner is generally compensated for the loss by either the insurance company or the condemning authority. In the event of casualty, depending on the type of insurance coverage, the owner usually receives the replacement cost of the property destroyed, so that the damaged hotel can be reconstructed. In a condemnation, the compensation is typically based on the market value of the property taken. Business value is rarely considered by either the insurance company or the condemning authority, with the exception of insurance that covers a business interruption.

Most hotel operators want management contract provisions that require insurance and condemnation proceeds to be used to reconstruct the hotel. Some management companies, however, want to receive a portion of any insurance or condemnation proceeds as compensation for the loss of management fee income along with the other benefits of operating the hotel. For example, an agreement may stipulate that the operator receive a portion of the residual compensation left after the property is rebuilt, calculated by taking 20 percent of the fraction of which the numerator is the number of years remaining in the management contract and the denominator is the number of years in the hotel's remaining useful life, and multiplying this percentage by the residual compensation. Although management companies with strong bargaining positions are sometimes able to obtain these provisions, the sharing of insurance or condemnation proceeds is usually not justified unless the insur-

ance company or condemning authority makes an unusual special award for a business-related loss.

Hotel owners generally insist on retaining all the proceeds from an insurance or condemnation award. If this right is unacceptable to the operator, a compromise provision is sometimes agreed to that allows the management company to make its own claim for compensation, but only if the owner can be satisfied that such a claim may be made separately and any award would not adversely affect the timing or amount of the proceeds to which the owner is entitled.

Although a destructive casualty or condemnation is an unlikely occurrence during the life of a management contract, any clauses relating to these events become extremely important if in fact the property is destroyed or taken. Both parties must be aware of how insurance or condemnation compensation is calculated so an agreement can be properly structured.

¶ 20.13 **EMPLOYEES**

One of the major issues in management contract negotiations relates to whether the personnel employed in the hotel are to be employees of the owner or of the management company. Owners generally want the workers to be employees of the operator and operators want the owner to be the employer. The basis of this issue is primarily liability; the employer is directly responsible for withholding taxes and social security and, ultimately, making timely payments to the IRS. Sometimes, when cash flow is tight, the money for these federal taxes is diverted to other, more pressing uses. If the cash flow does not recover in time to allow the fulfillment of the government obligations, the employer becomes subject to penalties, interest, and even criminal prosecution. In addition to this employee tax liability, an employer faces various types of personnel liabilities, such as employee theft, assault, discrimination, and negligence.

Under most hotel management contracts the hotel owner is usually responsible for providing any funds needed to cover cash flow shortfalls, so most operators contend that they should not be the employer when they do not have total control over the availability of capital. On the other hand, since the operator usually has direct responsibility over employee hiring practices and should be in a position to monitor the quality and integrity of the personnel, many owners feel that the operator should be the employer.

From the perspective of the management company, another cause for concern regarding the employee issue arises when a company finds itself in a hotel ownership position on a short-term basis. For example, when a lending institution forecloses on a hotel and becomes the employer of the property's personnel, it may be forced to provide pay and benefits equal those received by other employees of the bank. These benefits can be very expensive and are not a desirable option for a short-term owner.

Occasionally, the management company will request that top-level personnel be employed by the operator while all others work for the owner. This agreement allows top management to participate in the chain's benefit programs while restricting the inclusion of all other employees. It also provides the operator additional control over the key executives.

¶ 20.14 **RESERVE FOR REPLACEMENT**

A reserve for replacement is a fund set up to accumulate capital for the periodic replacement of FF&E. Hotel FF&E should generally be replaced on an average of once

every eight to ten years, so the reserve for replacement must be of adequate size to meet these requirements. Hotel owners that are also operators usually do not actually establish a fund for this purpose, but rather contribute capital at the time that FF&E replacements are required. Depending on the owner's financial situation at the time FF&E funds are needed, they may come from the hotel's cash flow, additional borrowings, or new equity contributions. Occasionally, these sources of funds are not available and the FF&E replacements must be postponed.

A hotel management company has a vested interest in maintaining the hotel in top physical condition, so it does not want to be in a position where adequate funds are not available to make necessary replacements. A worn-out facility negatively affects profitability as well as the image and reputation of the operator. To provide protection against such an occurrence, hotel management companies generally require that an actual reserve for replacement fund be established, coupled with contractual obligations for regularly depositing capital. The management company typically opens a separate reserve for replacement bank account and administers its activity. Deposits are made by the operator directly from cash flow (or from ownership shortfall capital if cash flow is insufficient). Withdrawals from the fund are to be used only for replacement of FF&E and generally only with the approval of the operator. Depending on how the budgeting process is structured, FF&E replacement may require ownership approval or it may be at the operator's sole discretion.

Many different formulas are used to establish the amount of money that must be contributed each year to the reserve for replacement fund. The primary objective of any of them is to create a fund that adequately covers future replacement needs without needlessly putting aside too much money. The following list describes some of the formulas used for this purpose by hotel management companies.

- *Percentage of revenue.* Most hotel management contracts base the annual reserve for replacement contribution on a specified percentage of total revenue. This advantage of this formula is that it automatically adjusts for different factors, such as varying occupancy levels, changes in average room rates, increases or decreases in food and beverage volume, and external inflationary factors. For example, if a hotel experiences higher levels of occupancy, the total revenue increases and the reserve for replacement based on a percentage of revenue follows suit. The reserve fund grows more rapidly and replacements can be made sooner to offset the effects of the greater use. The actual percentages used in this formula generally range from 1 to 6 percent of total revenue (rooms, food, beverage, telephone, and other income). Some contracts call for a fixed percentage that stays constant over the life of the agreement, while others use differing percentages that increase periodically. The fixed percentage formula works well for both new and existing hotels. The step percentage is generally used for new properties.
- *Annual fixed dollar amount.* Some management contracts specify that a fixed dollar amount be contributed to the reserve for replacement fund on an annual basis. The size of the annual contribution is calculated by estimating the total future replacement cost in today's dollars and dividing this amount by the number of years remaining until the replacement is required. In order to adjust for inflation, a factor based on the Consumer Price Index (CPI) is usually incorporated into the calculation. The difficulty with this approach is estimating the number of years between replacements. A particularly successful hotel with a high occupancy may require an FF&E replacement long before the originally scheduled date. If this occurs, the fund would not be sufficient to complete the necessary replacements. This method is rarely used alone. Instead, it is commonly used in conjunction with the percentage of revenue method.

- *Negotiated yearly amount.* Some management contracts structure the reserve for replacement contribution on the basis of an annual amount negotiated between the hotel owner and operator. However, most operators want a more definite formula that provides assurance that an adequate reserve fund will be available to make necessary replacements.

Because items of FF&E have a relatively short life, contributions to the reserve for replacement fund must be made annually starting with the first year of operation. Some owners of new hotels attempt to negotiate a formula that incorporates a waiting period, thinking that early contributions are unnecessary because the FF&E is in new condition. If this approach is used, it is likely that there will not be sufficient capital in the fund when shortlife replacements must be made. What must be realized is that even though FF&E has an average useful life of eight to ten years, many of the components have lives that are much shorter. Exhibit 20-7 shows the typical useful lives of various FF&E components.

Exhibit 20-7 Useful Lives of FF&E Components

Item	Years of Useful Life
Furnishings	
Lobby	5–12
Restaurant	5–12
Guestrooms	
Casepieces	8–15
Mattresses	5–18
Carpet	
Lobby	3–6
Corridor	2–4
Guestrooms	4–8
Drapes	4–8
Bedspreads	3–6
Kitchen Equipment	8–25

As the exhibit shows, FF&E replacement could start as early as the second year for a new hotel. Additional replacements are then necessary almost every year thereafter. Replacement is an ongoing process, so the accumulated dollar amount in the reserve fund is generally minimal; this means that a sinking fund arrangement (i.e., the use of segregated assets and their proceeds to fund the replacement) is inappropriate because the yearly fund balance is probably insignificant and the compounding interest benefit does not generate any appreciable growth.

¶ 20.15 AREA RESTRICTIONS FOR OPERATOR

Competition among different hotel chains within the same market area can adversely affect the operating results of a particular property. Competition from hotels with the same chain affiliation or management can be even more devastating. Hotels with

identical names operating in the same market area and going after the same market segments can produce a competitive environment that is not only confusing to the market but counterproductive in capturing room-night demand.

To prevent a situation in which a hotel chain establishes too many hotels within a market area, some hotel management contracts provide for area restrictions. Basically, area restrictions limit a hotel company from owning, leasing, operating, or franchising other lodging facilities within a defined geographic area surrounding the subject property. This owner-oriented provision is most important when the operator is a first-tier management company whose corporate name has a public identity. The act of placing the chain's name and trademarks on other hotels within the same market area can dilute potential room-night demand and reduce operating levels for existing properties. Second-tier hotel operators, without a recognizable brand name identity, have much less of an effect on their existing properties when they take over additional hotels in the same market area. However, even if the public is not aware that two hotels of differing chain names are under identical management, the potential for a conflict of interest and favoritism is always present. This is particularly true if the management company has an ownership interest in the competitive hotel. For these reasons, hotel owners generally attempt to negotiate some form of area restriction.

Restrictions on a management company to own, lease, operate, or franchise other lodging facilities within a defined market area should be structured so that they protect an existing property from adverse competition but, at the same time, give the operator the opportunity to expand when demand allows. An area restriction clause must provide two important pieces of information. First, the primary market area must be clearly defined so there is no spillover into other nearby areas that are not directly competitive. Several formats are available to achieve this objective. Some contracts utilize a specific radius to outline the perimeter of the market area. Other contracts provide street names to outline the protected territory or use the boundaries of a city or other established area. Second, the clause must specify the duration of the restriction. Restricted market areas are sometimes redefined over time. A circle with a radius of ten miles might be used for the first five years, shrinking in size to a five-mile radius for the next five years and then eliminated for the remaining term of the agreement.

Operators who consent to an area restriction generally look for ways either to have the protected territory reduced in size over time or to incorporate a provision that will allow the restriction to be lifted if sufficient local area demand can be proven. The best way to demonstrate that the impact of another hotel carrying the operator's trade name or management will be minimal is to establish a minimum level of occupancy requirement before the operator is allowed to enter the market with another property. For example, a clause might give the operator permission to add another hotel any time after the existing property has achieved an occupancy level of at least 75 percent for two consecutive years. Whatever the occupancy level selected, it should be high enough to demonstrate that there is sufficient area lodging demand to support another property carrying the same trade name.

Some hotel companies use the services of hotel consulting firms to perform impact studies that assess the negative effect on the subject property if the operator adds another lodging facility to the market area. As with any study of this type, the quality of results are directly related to the skills of the consultant performing the work and the ultimate determination is still largely subjective and prone to dispute.

¶ 20.16 **INDEMNIFICATION**

Most hotel management contracts contain clauses that indemnify each party from various liabilities and losses. Owners and operators face different risks in their respec-

tive capacities, so indemnification provisions are variously structured in order to meet each party's need to reduce their exposure. The major types of indemnification clauses are as follows:

Indemnification provided by the owner. Generally, the operator wants indemnity from all liability, loss, damage, cost, or expense relating to or arising from the operation of the hotel. This coverage usually also includes any act or omission, negligence, tortious or otherwise, of any agent or employee of the operator. It typically requires the owner to assume the cost and expense of the defense of any legal proceeding arising out of the allegation of any such act or omission. In most instances, the indemnification provisions protecting the operator are not totally absolute; they usually contain exceptions for circumstances such as: willful operator misconduct, gross negligence, fraud, theft, malicious conduct, and breach of trust. During the negotiation process hotel operators try to limit these exceptions by using modifying terms such as "gross" negligence, while owners try to broaden the exceptions so that no indemnification would be required if the operator was merely negligent. Most management contracts include some sort of indemnification for the operator.

Indemnification provided by the operator. Most management contracts contain provisions that require the operator to indemnify the owner from liability, loss, damage, cost, or expense caused by the operator's breach of the management agreement. In addition, the hotel company is sometimes required to also indemnify actions outside the scope of the agreement, including gross negligence, willful misconduct, fraud, or breach of trust. Operators attempt to modify the impact of these clauses by adding modifying terms, such as "material" breach of the management contract and "willful" misconduct.

The use of indemnification provisions in hotel management contracts requires extensive local legal knowledge. The parties to the agreement should consult with their attorneys before approving any indemnification clause.

¶ 20.17 **PRE-OPENING MANAGEMENT SERVICES**

Since most hotel management agreements are structured primarily for operating lodging facilities, hotel companies that are taking over a newly-constructed hotel generally draw up an additional contract to cover pre-opening management services. The period known as the pre-opening phase of a hotel's development generally begins with the employment of a sales staff or the general manager and extends to the actual opening day. Depending on the type of hotel and the need for pre-opening sales activity, the pre-opening service can start between three months to three years prior to the opening. Convention hotels, which attract groups that book several years in advance, usually require long lead times in their sales efforts. Some of the services the hotel operator typically provides during the pre-opening period include:

- *Pre-opening budget:* Preparation of comprehensive, detailed estimates as to what capital is required to fund all the pre-opening services.
- *Personnel services:* Recruiting, training, directing, and employing the initial staff.
- *Advertising and promotion:* Initiating and conducting such advertising and promotion necessary to attract guests to the hotel.
- *Leases and agreements:* Entering into agreement for leases, licenses, and concessions for stores and other rental space in the hotel.

- *Licenses and permits:* Application for and procurement of all licenses and permits required for the operation of the hotel and its related facilities, including liquor and restaurant licenses.
- *Purchasing:* Purchase of all initial inventories and operating supplies.
- *Installation:* Supervision of the delivery, installation, and acceptance of operating equipment, furnishings, equipment, and consumable supplies.
- *Sales and marketing:* Hiring and supervision of the hotel's sales staff and conducting the sales and marketing efforts, including developing a marketing plan.
- *Financial systems and controls:* Setting up all financial accounting systems and controls, including developing initial budgets and operating projections.
- *Coordination:* Assistance in coordinating the efforts and activities of the architect, interior designer, and all other consultants retained by the owner in connection with the planning and development of the hotel. If the operator is required, in addition to coordinating the various consultants, to review and critique their output, a separate contract, known as a technical services agreement, is generally used.

Compensation for pre-opening services can be structured in various ways. It is difficult to define a typical pre-opening fee, because many operators are willing to provide these services at or near their cost in order to obtain a long-term management contract; consequently, provisions for them are generally negotiated concurrently with the management contract. The following is a list of several formats commonly used for establishing the compensation for pre-opening services.

- *Amount per room:* A schedule of pre-opening fees based on a certain amount per room that provides increased compensation as the hotel gets larger. It also sets a standard fixed rate for the fee, which need not be negotiated with each transaction thereafter.
- *Flat amount:* A lump sum for all pre-opening services determined through negotiations, generally paid in several installments. The primary advantage of the amount per room or the flat amount relates to the fact that the compensation is established and fixed at a specific level that provides a firm budgeted amount and forces the operator to absorb any pre-opening cost overruns.
- *Actual costs:* A provision that the operator will be reimbursed for all expenses incurred during the pre-opening phase of the hotel development. These costs generally include the payroll of the management company personnel assigned to the specific hotel.
- *Actual cost plus.* Same as actual cost, but with the addition by the operator of a profit factor, such as 2.5 times the payroll expense.
- *Percent of cost.* A percentage of the total project cost.
- *Per month or per diem.* Compensation based on a specific amount per month, per day, or per hour.

¶ 20.18 **TECHNICAL SERVICE ASSISTANCE**

One of the additional services provided by some hotel management companies prior to and during the pre-opening phase of a hotel development is called technical ser-

vice assistance. These activities encompass the technical aspects of hotel layout, design, construction and furnishing. Some of the technical assistance offered by hotel management companies who have this specialized in-house capability are as follows:

- *Initial design:* Providing the property owner with guidelines and specifications relating to the hotel's concept, layout, design, and decor, and recommendation and sizing of facilities.
- *Architecture and facilities design.* Working with the project architect, engineer, designer, and other development consultants to create working plans and specifications. Specific areas to be covered include:
 - Architecture
 - Mechanical work
 - Electrical and plumbing systems
 - Interior design
 - Operational design
 - Communications
 - Fire safety
 - Computer systems
 - Telephone systems
 - Food facilities design
 - Laundry design and equipment
 - Lighting
 - FF&E specifications
- *Final design:* Review by the operator of all plans and specifications prepared by the various development consultants. Based on the critique and recommendations made by the operator, the plans and specifications are revised and approved when acceptable.
- *Project supervision:* Provision by the management company of some level of project supervision to see that the plans and specifications are followed during the actual construction of the hotel. This supervision also includes the installation of furniture, fixtures, and equipment. The project supervision offered by a hotel management company rarely suffice to replace a full-time project manager, general contractor, or developer.
- *Other services.* Other technical services sometimes offered by the operator, including:
 - Project feasibility (either preparing or reviewing market studies and appraisals)
 - Franchise affiliation (assistance to the owner by second-tier management companies in obtaining a franchise affiliation)
 - Project financing (assistance in securing debt and equity financing)

Not every hotel management company has the in-house capability and expertise to provide technical assistance. It should also be pointed out that operators offering such assistance are not attempting to take over the development responsibilities of creating a hotel; they are merely another consultant providing overall project review, critique, recommendations, and approval. Compensation for technical service assistance is generally a negotiated flat fee paid in stages over the development phase.

These services are usually considered separate and distinct from the pre-opening services because they require a specialized level of expertise.

The hotel owner should exercise particular care when entering into a technical service agreement with a hotel management company. The in-house capabilities of the operator must be carefully evaluated in order to be sure that the technical services will be performed by knowledgeable experts. The operator must also have a sufficient number of personnel providing these services so that critiques, recommendations, inspections, and approvals can be made on a timely basis. Some hotel companies overextend themselves in the development area, thereby causing costly delays. Owners should also realize that hotel management companies are primarily interested in obtaining long-term management agreements and will at times consider pre-opening and technical services a loss leader or giveaway in order to secure the contract.

CHAPTER 21

Hotel Development

¶ 21.01 Introduction	21-1	EXHIBIT 21-8 First-Year Occupancy and Average Rate Analysis	21-11
EXHIBIT 21-1 Developing a Time-Line for a 200-Room Commercial Hotel	21-2	¶ 21.04 The Development Team	21-12
¶ 21.02 Location Strategies	21-2	¶ 21.05 The Contracting Process	21-12
[1] Where to Develop	21-2	¶ 21.06 Evaluating Project Feasibility	21-13
[2] Segment and Brand	21-3	[1] Design Phase	21-13
[3] The Financial Factors	21-3	[2] The Construction Phase	21-14
¶ 21.03 Timing Strategies	21-4	¶ 21.07 Pre-Opening/Opening	21-15
[1] When Is the Market Strongest?	21-5	¶ 21.08 Project Finance	21-15
EXHIBIT 21-2 Scenario 1—Subject Property Occupancy Assuming January 1998 Opening	21-6	¶ 21.09 Factors Supporting the Urban Core Hotel Development Boom	21-17
EXHIBIT 21-3 Scenario 2—Subject Property Occupancy Assuming January 1999 Opening	21-6	[1] The Developers and the Risks	21-17
EXHIBIT 21-4 Scenario 3—Subject Property Occupancy Assuming January 2000 Opening	21-6	[2] Understanding the Risks	21-18
[2] When to Build?	21-7	[3] History of Downtown Hotels	21-19
EXHIBIT 21-5 Scenario 1—Immediate Development	21-8	[4] Hotel Segmentation	21-19
EXHIBIT 21-6 Scenario 2—Open in 1999	21-9	EXHIBIT 21-9 Urban vs. Suburban Performance	21-20
EXHIBIT 21-7 Scenario 3—Open in 2000	21-10	EXHIBIT 21-10 Urban (Chicago) vs. Suburban Performance	21-22
[3] Is the Future Really That Clear?	21-11	[5] Development vs. Renovation Costs in the Urban Core	21-23
[4] Waiting for the Economy to Change	21-11	[6] Mixed-Use Solution	21-23

¶ 21.01 INTRODUCTION

The hotel development process is multi-dimensional and is driven by market dynamics (demand characteristics and potential performance), land and development costs, and selection of the appropriate type of facility and brand under which the hotel will operate. No one aspect of development can be considered without regard to the others.

Each phase of the process will be identified and discussed in this chapter. Exhibit 21-1 delineates the process in sequential stages.

Exhibit 21-1 Developing a Time-Line for a 200-Room Commercial Hotel

Months From Opening Event

17	Perform a market analysis and select a market suited for hotel development
16	Narrow focus to a particular site
16	Determine best type of hotel product for specific site
15	Prepare preliminary economic market study and appraisal
15	Negotiate the price and terms for acquiring site. Tie up site with as many contingencies as possible
14	Start zoning approval process and verify availability of all necessary licenses and permits
14	Line up architect and work on preliminary layout and concepts
14	Line up franchise affiliation
14	Line up hotel management company
13	Start preparing working architectural plans and specifications
13	Start lining up debt and equity financing
11	Start pre-selling efforts
11	Line up development team and request construction bids
10	Start construction
5	Start pre-opening functions
0	Open hotel

¶ 21.02 LOCATION STRATEGIES

[1] Where To Develop

Fundamental to hotel development is a complete and comprehensive understanding of the site location process. Like retail siting, lodging is a location-driven business. Hotel siting consists of (1) identifying appropriate market(s) for property development, analyzing demand generators within each market to select trade areas that will optimize occupancy potential; and (2) selecting a specific location affording the greatest possible visibility and accessibility for potential guests. Brand selection and positioning of product relative to industry segmentation have a direct bearing on location strategies.

The location paradigm for proper lodging site selection is directly dependent on "lodging demand generators" located within a one- to three-mile radius of a proposed facility. Excepting those who stop mid-trip for a break in a journey, commercial and leisure travelers typically have a reason for traveling to, and the need for lodging accommodations in, a given area. Major commercial centers, universities, retail complexes, hospitals, airports, and resort/tourist destinations are some but not all of the room right generators.

In siting it is important to look not only to an existing room base, but also, particularly in emerging growth markets, for those businesses, facilities, or other factors that will draw travelers into the market and result in demand for hotel rooms. Industry feasibility experts possess the analytical tools and data bases to assess potential demand based upon product type within a given trade area. An assessment of market potential will test site suitability for demand level, estimated change in demand and the resultant impact of that change on rate and occupancy, and special project location characteristics.

With the site identified and the demand generators validated and quantified into achievable property performance, the developer must not forget visibility and acceptability. Will the facility and its signage be clearly visible from a major traffic arterial? How accessible will the property be from the road on which it is located? Many hotel siting authorities believe that if the hotel can be seen, the traveler will "find the way."

[2] Segment and Brand

Segment and brand are important factors for the developer for at least three reasons. First, segment differentiates on price. As land prices increase, economic justification of a project may require higher achievable room rates. Second, the higher the brand penetration in a given geographical area, the greater the probability that that brand will maximize operating revenues. Third, consumer acceptance of the brand and segment selection must be viewed in light of the targeted guest base. While certain mid-priced or economy brands are generally well accepted, the target customer for a specified location may require a full-service facility to meet guest expectations and amenity requirements.

[3] The Financial Factors

With full deference to the maxim that hotel development is a location-driven endeavor, the ability of a proposed project to meet economic feasibility requirements is fundamental to its viability. When assessing room demand, the developer must consider the following:

- The realistically achievable rate and occupancy possible for the type of lodging facility proposed
- The relative competition
- Trends within the trade area selected
- Future changes in conditions within the market that can positively or negatively affect projected performance

Consider the early-to-mid 1980s, when conditions favored hotel development. Advantageous tax laws, aggressive lending practices and a prevailing view that performance measures would stay favorable forever led to a massive building boom in all tiers of the industry. Excess profits led to ruinous competition. No matter how many rooms at a given intersection, there was always room for 100 more. The building frenzy stopped only after the collapse of the real estate markets, chaos within the savings and loan industry, and a severe recession. Developers paid no heed to demand factors associated with supply.

As the lodging industry has matured, developers have been forced to confront the realities of price competitiveness, branding, existing supply and its condition, and trend factors.

An integral part of the equation is the proposed total project capital cost. The site may satisfy all of the visibility and accessibility factors but be priced in excess of permissible levels to support the project. Alternatively, site preparation expenses or building design modifications for site adaptation may be cost-prohibitive given achievable performance levels.

In assessing the economic feasibility of a project, the developer must acknowledge the interrelationship of a multitude of variables, including the following.

- Project cost estimate, which includes:
 - Land
 - Site preparation
 - Construction
 - Furniture and equipment
 - Professional fees
 - Development fee
 - Transaction and loan fees
- Projected performance, including:
 - Achievable rate
 - Achievable occupancy
 - Expense factors

No simple means of assessment exists to allow for the proper analysis of both the cost components and performance expectations. However, if the highest and best use of a site is lodging, then the factors to support that decision will be a function of capital expenses to achievable revenue.

Developers evaluate hotel performance in a number of ways. Some of the more common approaches include evaluating cash on cash returns after ramp-up and stabilization or internal rates of return assuming a sale at the end of the tenth full year of operations. Discounted cash flow analyses are also used, but more to rank the viability of and prioritize multiple projects.

For the entrepreneur or hotel franchisee company, the ability to assess market demand and demographics and match those factors to an appropriate product type and brand is important. Land and site preparation costs are the most important variable to control.

¶ 21.03 **TIME STRATEGIES**

In the world of sports, it is a disciplined rule that being first also means being best; in the competitive world of business, this rule often rings true as well. So, when it comes to hotel development, should we not also strive to be first? Not when being first may mean losing the game. In the game of hotels and hotel development, sometimes the winner is second, third or even fourth.

As the financing spigot for hotel construction remains wide open, the industry is witnessing development levels unmatched since the 1980s. With the threat of overbuilding in certain markets, no developer wants his hotel to be the last to open its doors for fear of missing out on demand capture to other new hotels. However, is it better to be the first to open, only to have supply continually increase and erode all of the demand? Timing can play an essential role in the feasibility of a project.

The question of when to build is often determined by the developer, who typically has timetables set forth for the project. Very rarely does this timetable incorporate a holding period to allow for market demand increases or to await the absorption of other new supply. Rather, the developer typically specifies the earliest possible opening date, hoping to be the early bird who gets the most of the worm before there's no worm left. Many developers feel that by publicly marketing their proposed development immediately, other potential projects may be dissuaded from entering

the market. However, a new project announcement may well induce other developers to take interest in the market. It is the responsibility of the appraiser to determine the highest and best use of the subject parcel, and that consideration includes the timing of the use. If the determination of the highest and best use is hotel development, it is possible that a calculated delay in the construction of the property could return a higher present value to the land than would immediate development.

[1] When Is the Market Strongest?

The basic premise on which delayed timing becomes viable holds that the net present value of the future returns of the proposed hotel, built immediately, is less than that of the returns based on a predetermined future construction of the hotel, less discounted holding period costs. A determination of the proper holding period of vacant land can be accomplished through an iterative calculation using variable opening dates. The Appraisal Institute's "Highest & Best Use and Market Analysis" stresses the importance of timing in determining a parcel's optimal use.

To better illustrate the impact of timing considerations, we will use the example of a 3-acre parcel of vacant land proposed for the development of 150-room all-suite hotel. A market analysis conducted in January 1997 indicated that 12 hotels existed in the market that would be competitive with the subject property, each weighted based on their assumed competitive degree to the subject. It was further determined that aside from the subject property, two other competitive hotels were anticipated to enter the market within the next year, one in February 1997 and one in April 1997. The developer indicated that the subject property could be open and operational by January 1998. Other determinations from the market analysis concluded that the market was stable, with occupancies approximately 75 percent and average rates in the low \$100s, and that some unaccommodated demand existed in the commercial segment because of the substantial weight that this market segment represented. Average rate growth was currently 10 percent, but is expected to assume inflationary levels as new supply enters the market.

After assigning degrees of competitiveness to the proposed subject property based on its facilities, franchise affiliation, and market segmentation, the subject property's occupancy levels were forecasted for Scenario 1 (Exhibit 21-2), which assumes the original project timing (i.e., to be open by January 1998). The process of occupancy projection accounts for projected market changes, the entrance of other competitors to the area, and the absorption of unaccommodated demand. The results of the occupancy forecast are shown in Exhibit 21-2.

The subject property is affected in 1998 as it enters the market, primarily because of the recent opening of two other competitors in the market. Its occupancy then ramps up as increased market demand accommodates the new hotel rooms. The subject property then stabilizes at a "normalized" level in the fifth year, which reflects the anticipated results of the property during its remaining economic life, given any and all changes in the life cycle of the hotel.

A second scenario can then be envisioned whereby the developer of the subject property allows the market more time to absorb the other new supply before developing its own product (the cost of holding the land will be considered in a financial analysis presented later in this article). Assuming an opening date of January 1999, and assuming the subject property to contain the same degree of competitiveness used in Scenario 1, a new forecast of occupancy may be calculated, the results of which are shown in Exhibit 21-3.

Exhibit 21-2 Scenario 1—Subject Property Occupancy Assuming January 1998 Opening

Source: HVS International

Year	Occupancy
1998	66%
1999	71
2000	76
2001	78
Stabilized	76

Exhibit 21-3 Scenario 2—Subject Property Occupancy Assuming January 1999 Opening

Source: HVS International

Year	Occupancy
1998	Holding period
1999	67%
2000	73
2001	78
2002	80
Stabilized	76

Exhibit 21-4 Scenario 3—Subject Property Occupancy Assuming January 2000 Opening

Source: HVS International

Year	Occupancy
1998	Holding period
1999	Holding period
2000	69%
2001	75
2002	80
2003	82
Stabilized	76

Using the same variables as in Scenario 1, Scenario 2 shows greater occupancy potential for the subject property based on its later opening date. At the time of its opening, the two other market entrants have had more time to stabilize in the market, allowing demand levels to increase slightly before the subject property opens. The subject property is then stabilized at the same occupancy as in Scenario 1, which again serves to incorporate future upward and downward fluctuations in the market. Having the subject property wait yet one more year produces predictable results for a third scenario, as shown in Exhibit 21-4.

It should be noted that the subject property is considered equally competitive relative to the market in each of the three scenarios; however, the hotel achieves greatest occupancy levels in its initial years of operation in Scenario 3 by waiting for the impact of other new competition to subside.

[2] When to Build?

After a first glance at all three scenarios, one may infer that waiting a few years before development may be the highest and best use of the land. However, as the highest and best use is concerned with the present return of future earnings to the land, the cost of holding the land and the cost of discounting income back from later years may be greater than the additional benefits achieved by higher initial occupancy levels. To test its correctness, each scenario's occupancy forecast may be input to a forecast of income and expense. Discounting the net income and construction costs to the present allows the appraiser to calculate which scenario results in the greatest net present residual land value.

In a forecast of income and expense for the subject property, we have analyzed operating statements from similar, all-suite properties in order to determine proposed income and expense levels. The average rate for the subject property was positioned in current dollars, and then inflated according to marketwide growth projections. (Hence, each scenario will have different first-year average rate levels, but different only by inflationary factors.)

Income and expense statements can then be formed using the comparable operating statements and a fixed-and-variable model. The fixed-and-variable model was developed by HVS International and is based on the premise that hotel revenues and expenses have one component that is fixed and another that varies directly with occupancy and facility use. A projection can be made by taking a known level of revenue or expense and calculating its fixed and variable components.

This model has been used to develop a five-year forecast of income and expense based on each of the three scenarios, with the development of the property (cost outlay) occurring in Year One.

Year One represents the period subsequent to any holding period used by the scenario, and a sixth year net operating income, incorporating the same stabilized occupancy level for each scenario, is then calculated for reversionary purposes. The construction costs and cash flows are then discounted back to the present to determine the current residual land value, thus determining the highest and best use timing for the project development. The following assumptions were set forth for these models:

- Inflation for revenues, expenses, land holding costs, and construction costs is set at 3.5 percent.
- The discount rate is determined to be 13.0 percent in each scenario.
- Rooms revenue was calculated through the previous derivation of occupancy and average rate in each scenario. Income and expense levels were calculated through the fixed-and-variable process described earlier, with inflationary gains noted subsequent to the stabilized year.
- A terminal capitalization of 11.0 percent was used for reversionary calculations in Scenario 1; 25 basis points were added to this in each subsequent scenario to adjust for the inherent risk of a more distant reversionary period.

Exhibits 21-5, 21-6, and 21-7 detail each scenario's calculation of residual land value.

The residual land calculations show that the present return to the land is greatest in Scenario 2. Thus, the conclusion in this analysis is that the development of the subject property should be delayed one year, allowing the market to absorb new supply anticipated in the immediate future; however, the delay is not so long as to be affected by the increased risk inherent in long-term delays. An iteration may be done to more precisely determine appropriate development timing.

Exhibit 21-5 Scenario 1—Immediate Development

Source: HVS International

Year Ending:	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Total Rooms:	0	150	150	150	150	150
Occupied Rooms:	0	36,135	38,872	41,610	42,705	41,610
Days Open:	0	365	365	365	365	365
Occupancy:	0.0%	66.0%	71.0%	76.0%	78.0%	76.0%
Average Rate:	\$0.00	\$122.61	\$126.90	\$131.34	\$135.94	\$140.69
	Total \$	Total \$	Total \$	Total \$	Total \$	Total \$
Revenue*						
Rooms	\$0	\$4,431	\$4,933	\$5,465	\$5,805	\$5,854
Food	0	201	219	239	252	256
Beverage	0	40	44	48	50	51
Telephone	0	122	135	148	157	159
Other Income	0	32	34	36	37	38
Total	0	4,826	5,365	5,936	6,301	6,358
Departmental Expenses						
Rooms	0	1,221	1,299	1,381	1,444	1,479
Food and Beverage	0	230	244	258	269	276
Telephone	0	72	77	81	85	87
Total	0	1,523	1,620	1,720	1,798	1,842
Departmental Income	0	3,303	3,745	4,216	4,503	4,516
Operating Expenses						
Administrative and General	0	399	421	444	463	475
Management Fee	0	217	241	267	284	286
Marketing	0	192	202	213	223	229
Franchise Fees	0	310	345	383	406	410
Property Operation and Maintenance	0	214	251	265	276	283
Energy	0	233	243	253	263	271
Total	0	1,565	1,703	1,825	1,915	1,954
House Profit	0	1,738	2,042	2,391	2,588	2,562
Fixed Expenses						
Property Taxes	0	139	144	149	154	160
Insurance	0	48	50	52	53	55
Reserve for Replacement	0	145	161	178	189	191
Land Holding Costs (Taxes and Insurance)	15	0	0	0	0	0
Total	15	332	355	379	396	406
Net Income	\$(15)	\$1,406	\$1,687	\$2,012	\$2,192	\$2,156
Less: Development Costs						
(excluding land)		\$(13,000)				
Plus: Reversion (11.0% terminal cap)						
Property Sale					\$19,601	
Less: Fees and Commissions (3.0%)					588	
Net Reversion:					\$19,013	
Total Property Cash Flow:	\$(13,015)	\$1,406	\$1,687	\$2,024	\$20,373	
Present Value of Cash Flows						
@ 13.0%:	\$(11,518)	\$1,101	\$1,169	\$1,241	\$11,057	
Residual Land Value:	\$3,051					

*All income, expense, cash flow, and value figures are expressed in 1,000s.

Exhibit 21-6 Scenario 2—Open in 1999

Source: HVS International

Year Ending:	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Total Rooms:	0	0	150	150	150	150	150
Occupied Rooms:	0	0	36,682	39,968	42,705	43,800	41,610
Days Open:	0	0	365	365	365	365	365
Occupancy:	0.0%	0.0%	67.0%	73.0%	78.0%	80.0%	76.0%
Average Rate:	\$0.00	\$0.00	\$126.90	\$131.34	\$135.94	\$140.69	\$145.62
	Total \$	Total \$	Total \$	Total \$	Total \$	Total \$	Total \$
Revenue*							
Rooms	\$0	\$0	\$4,655	\$5,249	\$5,805	\$6,162	\$6,059
Food	0	0	209	231	251	265	263
Beverage	0	0	42	46	50	53	53
Telephone	0	0	127	142	156	165	163
Other Income	0	0	33	35	37	39	40
Total	0	0	5,066	5,703	6,299	6,684	6,578
Departmental Expenses							
Rooms	0	0	1,265	1,352	1,437	1,503	1,523
Food and Beverage	0	0	238	253	268	280	284
Telephone	0	0	75	80	85	88	90
Total	0	0	1,578	1,685	1,790	1,187	1,897
Departmental Income	0	0	3,488	4,018	4,509	4,813	4,681
Operating Expenses							
Administrative and General	0	0	413	437	461	481	490
Management Fee	0	0	228	257	283	301	296
Marketing	0	0	198	210	222	231	236
Franchise Fees	0	0	326	367	406	431	424
Property Operation and Maintenance	0	0	246	261	275	287	292
Energy	0	0	241	251	262	271	280
Total	0	0	1,652	1,783	1,909	2,002	2,018
House Profit	0	0	1,836	2,235	2,600	2,811	2,663
Fixed Expenses							
Property Taxes	0	0	143	148	154	159	165
Insurance	0	0	50	51	53	55	57
Reserve for Replacement	0	0	152	171	189	201	197
Land Holding Costs (Taxes and Insurance)	15	16	0	0	0	0	0
Total	15	16	345	370	396	415	419
Net Income	\$(15)	\$(16)	\$1,491	\$1,865	\$2,204	\$2,396	\$2,244
Less: Development Costs (excluding land)			\$(13,455)				
Plus: Reversion (11.25% terminal cap)							
Property Sale						\$19,949	
Less: Fees and Commissions (3.0%)						598	
Net Reversion:						\$19,350	
Total Property Cash Flow:	\$(15)	\$(13,471)	\$1,491	\$1,865	\$2,204	\$21,746	
Present Value of Cash Flows @ 13.0%:	\$(13)	\$(10,549)	\$1,033	\$1,144	\$1,196	\$10,445	
Residual Land Value:	\$3,256						

*All income, expense, cash flow, and value figures are expressed in 1,000s.

Exhibit 21-7 Scenario 3—Open in 2000

Source: HVS International

Year Ending:	1997	1998	1999	2000	2001	2002	2003	2004
Total Rooms:	0	0	0	150	150	150	150	150
Occupied Rooms:	0	0	0	37,778	41,062	43,800	44,895	41,610
Days Open:	0	0	0	365	365	365	365	365
Occupancy:	0.0%	0.0%	0.0%	69.0%	75.0%	80.0%	82.0%	76.0%
Average Rate:	\$0.00	\$0.00	\$0.00	\$131.34	\$135.94	\$140.69	\$145.62	\$150.72
	Total \$	Total \$	Total \$	Total \$	Total \$	Total \$	Total \$	Total \$
Revenue*								
Rooms	\$0	\$0	\$0	\$4,962	\$5,582	\$6,162	\$6,537	\$6,271
Food	0	0	0	221	244	265	279	273
Beverage	0	0	0	44	49	53	56	55
Telephone	0	0	0	135	151	165	175	169
Other Income	0	0	0	35	37	39	40	41
Total	0	0	0	5,397	6,063	6,684	7,087	6,809
Departmental Expenses								
Rooms	0	0	0	1,323	1,414	1,503	1,571	1,577
Food and Beverage	0	0	0	248	265	280	292	295
Telephone	0	0	0	78	84	88	92	93
Total	0	0	0	1,649	1,763	1,871	1,955	1,965
Departmental Income	0	0	0	3,748	4,300	4,813	5,132	4,844
Operating Expenses								
Administrative and								
General	0	0	0	430	456	481	502	508
Management Fee	0	0	0	243	273	301	319	306
Marketing	0	0	0	207	219	231	241	244
Franchise Fees	0	0	0	347	391	431	458	439
Property Operation and								
Maintenance	0	0	0	257	272	287	299	303
Energy	0	0	0	250	261	271	282	289
Total	0	0	0	1,734	1,872	2,002	2,101	2,089
House Profit	0	0	0	2,014	2,428	2,811	3,031	2,755
Fixed Expenses								
Property Taxes	0	0	0	148	154	159	165	170
Insurance	0	0	0	51	53	55	57	59
Reserve for Replacement	0	0	0	162	182	201	213	204
Land Holding Costs								
(Taxes and Insurance)	15	16	16	0	0	0	0	0
Total	15	16	16	361	389	415	435	433
Net Income	\$(15)	\$(16)	\$(16)	\$1,653	\$2,039	\$2,396	\$2,596	\$2,322
Less: Development Costs								
(excluding land)								\$(13,926)
Plus: Reversion (11.5% terminal cap)								
Property Sale							\$20,194	
Less: Fees and Commissions (3.0%)								606
New Reversion:							\$19,588	
Total Property Cash Flow:	\$(15)	\$(16)	\$(13,942)	\$1,653	\$2,039	\$2,396	\$22,184	
Present Value of Cash								
Flows @ 13.0%:	\$(13)	\$(12)	\$(9,663)	\$1,014	\$1,107	\$1,151	\$9,430	
Residual Land Value:	\$3,013							

*All income, expense, cash flow, and value figures are expressed in 1,000s.

[3] Is the Future Really That Clear?

Obviously, this analysis is subject to come limitations. Some of these limitations include the following:

- The uncertainty of other possible hotel developments in future years.
- The subjectivity inherent in determining appropriate terminal capitalization rate increases. Does a 0.25 percent increase for each delayed year of opening appropriately reflect increased risk in the project?
- The degree to which other factors may be held constant in each scenario. For example, an adjustment to the subject property's average rate of growth may be warranted in one scenario and not another.
- The determination of whether or not the same discount rate is appropriate in each scenario. While some developers may feel that immediate development lowers risk because their project may dissuade other development, other developers believe that one new project actually induces others to build.

Each of these considerations in market specific and must be adequately judged by the appraiser on a case-by-case basis.

[4] Waiting for the Economy to Change

Finally, the speed at which the subject property reaches a stabilized occupancy also affects the feasibility of the project. In this sense, general economic conditions can also dictate optimal development timing for hotels. Hotels that may have been marginally feasible for development in 1994 may have been more viable if they were developed in 1996, based solely on economic conditions prevailing in the market area. To illustrate this point, we have analyzed the first year occupancy and average rate performance for 24 Residence Inns by Marriott that have opened during the past 3 years. These figures are presented in Exhibit 21-8.

Exhibit 21-8 First-Year Occupancy and Average Analysis

Source: HVS International

	1994	1995	1996
Occupancy	68%	77%	82%
Average Rate	\$63	\$82	\$86

The revenue per available room (RevPAR) performance of the hotels that opened in 1996 was approximately 65 percent greater than the same hotel types that opened in 1994, indicating, perhaps, that more favorable economic conditions may have warranted delayed construction for projects proposed for 1994. Although this is a simplified comparison between hotel starts, it does serve to illustrate the potential benefits inherent in delayed development.

The consideration of development timing in the hotel industry is critical in this current era of available financing. With the proliferation of new construction (particularly in the limited-service segment and in markets containing limited barriers to entry), the analysis of when to build plays an important role in the valuation process. As may have been proved in certain markets, sometimes it's better just to wait.

¶ 21.04 **THE DEVELOPMENT TEAM**

Having carefully selected a market and a trade area within the market, and having identified a site that on a preliminary basis is determined to support the proposed project, the developer contractually commits to a site, subject to favorable due diligence. The process after site selection is divided into the Design Phase and the Construction Phase. The developer works with a number of different people in these phases, including the following.

Architect/engineer. Working as a team both the project architect and engineer undertake a myriad of responsibilities to determine (i) whether the site as selected will accommodate the proposed facility, (ii) the extent of governmental requirements for project approval, (iii) easements, set-back requirements and other burdens on the land affecting project lay-out and efficient utilization of the site, and (iv) any cost implication of the foregoing on the overall project. The "Design Phase" team is charged in all respects with determining land use requirements with respect to the specific project and how those requirements affect the project.

Real estate counsel. Working with the engineer, the attorney assists in negotiating and preparing contracts, locating easements that affect the site, and vacating or relocating those easements. Should the zoning classification affecting the proposed site not accommodate lodging, counsel can be of assistance in an initiative to rezone the property. Variances to building and zoning codes may be required, for example to reduce the requisite number of parking spaces or landscape buffers. Counsel can play an active role in those endeavors.

Project manager. For the inexperienced developer, a project management firm can provide valued, cost-saving advice through both the Design and Construction Phases of the project. Project management services are more prevalent in the development of larger full service hotels.

Interior design specialist. Depending on the size and type of project, the services of an interior design firm may be required to achieve a well coordinated "look" and "feel" for the proposed facility.

Food service equipment consultants. If a full-service facility or a mid-priced hotel with food service is proposed, proper planning of food service layout and equipment is vital to efficiency of operations.

In some instances, particularly when governmental restrictions require specific studies, environmental engineers or special project facilitators may be hired to assist in obtaining the necessary entitlements from governmental agencies. This is particularly true in Florida, California, and other coastal regions or other environmentally-sensitive areas of the country. Also, certain areas of the country may require impact studies relating to traffic, hospitals, schools, or other social or public improvements. Specific project management firms can be of assistance to the developer in expediting the review process.

¶ 21.05 **THE CONTRACTING PROCESS**

After preliminary investigation has been performed on a specific site, and early indications are that the project will meet both financial and development feasibility tests, it is imperative that the site be properly secured by a contract. The developer's counsel should prepare a form of land purchase agreement that allows the developer a sufficient period of time in which to perform additional studies to ensure that the site and the market dynamics will in fact support the project. Typically, land sellers will allow the purchaser up to 180 days within which it can conclude the necessary development, market, and economic feasibility studies and also to complete design of the facility.

The experienced legal artisan will prepare on behalf of the developer a contract that allows a “Preliminary Requirements Period” during which the developer can complete the necessary studies and make the necessary investigations to determine his ability to develop the site. This preliminary requirements period usually lasts from 60 to 120 days. While the contract document may require the posting of an earnest money deposit upon its full execution, typically the earnest money is not at risk (i.e., subject to forfeiture) if the developer elects to abort the project at any time during the Preliminary Requirements Period.

Thereafter, the final phase of diligence would subject the developer to placing his earnest money at risk. It is during that period that the developer has sufficient information to warrant going forward with the project. Also during that period the plans are finalized and submitted to the local governmental authorities for review, approval, and the issuance of permits.

The sophisticated developer together with his lawyer and architect should be in a position to complete diligence, complete design of the facility, obtain the necessary plan review by governmental authorities, and obtain permits prior to land closing. It is smart to minimize the holding period on the land and thereby avoid associated carrying costs.

¶ 21.06 **EVALUATING PROJECT FEASIBILITY**

[1] **Design Phase**

Necessary steps during the design phase include:

- Preparing a preliminary site plan.
- Obtaining both a boundary and topographic survey of the property.
- Obtaining a soils report of the property from a certified soils engineer.
- Conducting necessary environmental tests on the property to ensure that no soils contamination is present.
- Reviewing and updating the site plan so that it reflects information provided by the preceding tests and reports.

The following factors could have a significant cost impact on the project if not carefully reviewed and analyzed.

Utilities availability. During the design phase the project engineer should determine that all utilities required to support the project be at one or more of the boundaries of the property. The failure of any utility to be at the boundary of the property typically means that an extension of that utility must be made by the seller at the seller’s expense.

Easements and setbacks. The project engineer, in conjunction with the title examining attorney, should review all easements and setback requirements imposed either by legal document or by applicable zoning law or other governmental regulations. In many instances, setback requirements preclude the construction of the facility as contemplated or severely cut into required parking spaces. Additionally, landscape or other buffers required by governmental authority may have an impact on the land use planning of the specific site. Finally, easements that impact the property will have a bearing on the ability to develop, construct and operate the proposed improvements. Hence, both engineer and lawyer need to carefully review all easements which burden the property being reviewed for purchase.

Topographic condition. The project engineer, in conjunction with the architect, needs to determine whether the topographic conditions of the property will accommodate the proposed improvements, or if changes to the property need to be made and, if so, at what expense. In many instances properties with a severe slope require retaining walls, or the slope will need to be cut by major excavation of the site—all resulting in increased cost to the facility.

Soil and the conditions of soil. In many places in the country, soils conditions are unacceptable to support certain types of construction. A licensed, competent soils engineer must evaluate the conditions of soils based upon the intended location of the improvements as shown by the preliminary site plan. If the soils condition will not support the improvements, a determination must be made if the soils can be corrected and at what cost to the project.

The site plan needs to be reviewed to ensure that any of the problems revealed during the design feasibility period do not adversely affect the proposed location of the facility.

Assuming no major problems, the architect and engineer prepare working drawings and plans and specifications for the improvements for submission to the local governmental agencies for review, comment, revision, and approval. Once this has been accomplished, the project will be ready for bidding. The developer will select a list of competent contractors to whom to submit the plans and specifications for bidding. At this point, the project moves to the construction phase.

[2] The Construction Phase

Upon review and acceptance of the appropriate bid from a licensed general contractor, the developer is ready to proceed with the construction of the improvements. Again the architect and attorney should carefully assist the developer in protecting the developer's interest in the contracting phase. Hotel development can last as little as seven months or as long as 18 months, depending on the type of facility. During that period, presumably, financing will come from interim sources. It is in the developer's best financial interest to ensure timely completion of the project, thereby minimizing construction-related interest.

Many developers in the industry today are using risk reward contracts, which reward contractors for early completion of a facility and penalize those who are unable to complete on a timely basis absent delays associated with acts of God, force majeure or governmental impositions. The industry commonly sees three types of contracting arrangements between the developer and general contractor.

1. Competitively bid situation for qualified general contractors who are asked to bid the job employing their own subs.
2. Negotiated contract with a general contractor who may have been utilized in the past by the developer.
3. Developer acts as general contractor and bids out various aspects of the construction project to appropriate sub-contractors.

In certain instances, when the facility's construction time is critical to certain performance attributes, developers will enter into a design build arrangement with a general contractor. Typically, this arrangement is not favorable unless the developer has extensive experience with the contractor. The developer should carefully review with his attorney and architect the merits of requiring the contractor to bond the project. Typically the benefits outweigh the costs.

¶ 21.07 **PRE-OPENING/OPENING**

The final months of construction are generally hectic, often not allowing the developer enough time to devote attention to the myriad tasks associated with opening of the facility to the public. It is imperative for the developer to have his pre-opening team on site as much as eight weeks but certainly not later than six weeks prior to the scheduled opening. The pre-opening team will assist in the hiring and training of the support staff, oversee the final furnishing and punch out of the guest rooms and other guest-sensitive areas and begin an aggressive marketing program in anticipation of the scheduled opening of the property.

All too often the pre-opening and opening activities associated with the proposed lodging facility take a back seat to the development process. This is a mistake. Pre-opening and opening activities can play a major role in enhancing the revenue stream from the day the property opens its doors to accept guests; marketing dollars spent on pre-opening usually prove to be a good investment in revenue production.

¶ 21.08 **PROJECT FINANCE**

The project has been analyzed, its market feasibility attributes discussed, the developability of the project has been assured, and now the ultimate questions are regarding project finance. What type of financing will be available to the developer to allow him to conclude the project on economically feasible terms? As we noted earlier, there is a relationship between project cost and achievable rates and occupancies to determine project performance. Similarly, in the area of project finance, the amount of money that will be available (i.e., what percentage of the project cost can be financed) and the applicable rate of interest (i.e., what is the debt service on the project going to be) have a bearing on the feasibility of a proposed lodging facility.

Prior to the debacle in the industry of the late 1980s and early 1990s, real estate financing remained an orderly, standardized practice that matched developers with investors and lenders. As the lodging industry matured in the late 70s and early 1980s, the financing process, stimulated by favorable tax incentives and high inflation rates, increasingly involved financial institutions becoming equity or quasi-equity partners.

When the impact of overbuilding in all areas of real estate, including hotels, made itself felt in the late 1980s and early 1990s, financial institutions and lenders of all kinds found themselves reluctant owners of properties for which there was no market, except at drastically reduced prices. This situation gave rise to the fall of the savings and loan industry and the collapse of many long-recognized commercial banking institutions. Many hotel properties found themselves in the hands of regulators with the FDIC, FSLIC, or the Resolution Trust Corporation (RTC). It was not until the mid 1990s that much of the distressed hotel inventory was sold off and prices began to stabilize in stronger markets. With the revival in the industry, new construction has once again begun and lenders, albeit slowly, are returning to the marketplace. In addition to the traditional sources of funding, mortgage conduits and other forms of debt are being provided to the lodging industry through Wall Street sources.

Financing of lodging properties does not resemble that of office, industrial or residential projects. Lodging properties rely on the success of a business. They are often viewed as high-risk investments with potentially tremendous up-side potential. Lenders, therefore, tend to concentrate on those projects that are well-conceived, well-located and that involve experienced developers and operating companies. The cash flow from a lodging property available for debt service depends on local and national economic conditions, quality of management and unpredictable travel patterns.

The type of project financing depends upon the specific project and the needs of the developers. Typically, developers will secure 100% of their project cost through construction or interim financing, assuming that there is a take-out or some form of permanent financing with a loan-to-value ratio of 75% or less. The most common short-to-intermediate-term debt instruments available for financing hotel projects today include the following: construction loans, combined construction and term loans, and term and bullet loans.

The six major long term debt instruments include convertible mortgages, land sale lease backs and leasehold loans, permanent loans, mortgages with a kicker, wrap around mortgages and other long term debt instruments. Briefly, the type of financing provided by each of the aforementioned instruments is as follows:

- *Convertible mortgages.* One hundred percent of the project's development cost is provided to the developer, as is control of the property for a definitive term of years. The loan, while either at or below market rate, provides for the lender to receive a fixed interest return with a participation (usually 10 to 50%) of the cash flow after debt service. Additionally, the lender would receive the right to convert the mortgage into 50% of the equity at an agreed upon conversion date. This type of instrument is used more by insurance companies, pension funds and foreign trusts as opposed to more conventional and commercial lending institutions.
- *Land sale leasebacks and leasehold loans.* Under this scenario, the lender acquires from the developer the land at market value and then leases it back at a low rate (10 percent to 13 percent of the land value; 3 percent to 4 percent of gross room sales) for forty to fifty years. The lender participates in loan term capital appreciation through payments by the developer of future cash flows and a share of the property's appreciation.
- *Permanent loans.* Permanent financing takes all forms in today's environment, ranging in term length from as few as three years to as many as thirty. In some cases, the longer the term, the greater the requirement on the part of the lender to participate in cash flows. Loan principle amounts depend on a debt coverage ratio usually of 1.10 to 1.35 times the projected cash flow before debt service. In some cases shorter term loans have bullet provisions with interest only payments for five to seven years with the principle balance being due and payable at the end of the term.
- *Mortgages with a kicker.* This financing method provides the developer with a loan at market or below market rate but with a long or extra long term. The amount of the loan depends on the coverage. The lender will participate not only in future cash flows (10 to 50%), but also in part of the residuals or, in some cases both.
- *Wrap-around mortgages.* Typically, this type of financing is provided by sellers or credit companies and entail a fixed rate on the underlying wrap mortgage plus a share of the residuals, a kicker, or both.
- *Other long-term debt instruments.* These types of financing include seller financings, exchanges, second mortgages and standby mortgages. In most cases, these forms of financing are primarily used when other, more favorable, financing methods will not cover all development costs, operating deficits, cost overruns or land acquisition costs.

Sound feasibility attributes, realistic performance projections evidencing supportable coverage ratios combined with sound credentials for the hotel operator are all essential to obtaining project financing in today's environment. Lenders want as-

surances that debt service payments are achievable not only during good economic times, but also during adverse times. While project finance is not the topic of this chapter, the components of financing must be part of the overall equation in the final analysis of project feasibility.

¶ 21.09 **FACTORS SUPPORTING THE URBAN CORE HOTEL DEVELOPMENT BOOM**

Moderately priced downtown hotel development and redevelopment is, suddenly, quite the rage. Due in equal part to strong real estate economics and wishful thinking, urban core hotel development has become a central theme in the downtown rescue remedies of many urban planners, downtown development agencies, and, not least, developers. This section reviews some of the factors that have spawned this urban core mid-market hotel boom and reviews current statistics that seem to corroborate the downtown development play.

In broad review, the stars that have aligned themselves for the current hotel development syzygy are, briefly, as follows:

- A lack of mid-priced hotel rooms in most North American downtowns and hoteliers' realization of the premium that a mid-market hotel can achieve vis á vis the same suburban properties;
- The closing window of opportunity to acquire underutilized, convertible historic, and class "B" and "C" buildings;
- The returning appeal and rediscovery of many North American downtowns;
- The pressure that cities have applied to utilize and reinvigorate "blighted" areas of downtowns;
- The return of fundamental strength in the demand for hotel rooms;
- Developers' decreasing fear of development in urban core locations;
- The force of equity and debt looking for larger-sized deals, propelled in part by agents like Starwood Lodging, Patriot American, and other REITs;
- The attempts of hotel franchisers to keep up with competitors by securing distribution channels through developing hotel rooms under their "flag";
- A competitive investment market for Historic Tax Credits that, spun off by some developments, are often the IRR-push that make deals conceivable, and;
- A suburban-based lodging boom of epic, pre-RTC proportions, the enormity of which may cause even the most imperious of developers to turn introspective.

[1] **The Developers and the Risks**

If this partial list seems monumental, consider the legion of developers pursuing development in downtowns. Developers—from ex-Studio 54 impresario Ian Shrager, ex-investment banker Robert Kimpton, and night club operator House of Blues, to more pedestrian developers of Marriott, Hampton Inns, and Embassy Suites—are acquiring existing, non-lodging assets to redevelop as hotels.

Is this spate of development misguided? Certainly not. The majority of these developments are well conceived and will perform on an income-before-debt-service-basis. The question of their financial success (income *after* debt service) will hang in

the balance, awaiting the jury's return from the next real estate cycle. Is this to say that the current tide of optimism on which downtowns are riding is ephemeral? Again, certainly not. Many observers feel that the decline that downtowns suffered in the past 40 years is an aberration, simply a temporary adjustment to factors such as suburban development precipitated by the post-war development of the federal Interstate system. If risks exist in the development, ownership, and operation of an urban core hotel, then what compelling reasons are there to pursue a downtown hotel deal? In short, because there are potentially fewer risks and greater returns than investing in suburban hotel development. "Potentially" because the money in an urban core hotel development is made in the pre-development and construction phases, not in operation. If care, restraint and circumspection are not deployed in pre-development, the hotel could fail no matter how well the hotel penetrates demand.

[2] Understanding the Risks

The keys to the successful urban-core hotel project are completing thorough market due diligence, lowering of costs, and reduction of development and construction risks. The steps include:

- *Market selection.* Selecting and studying a market that has long-term durability of demand based on residential activity, tourism, general strength of the downtown, office space absorption, job creation, and other tangible and intangible measures;
- *Supply and demand.* A clear understanding of both urban and suburban, room night demand and the market position, rate, occupancy, and market segmentation of primary and secondary competitor hotels; understanding of all planned supply in the suburbs and urban core;
- *Property inventory.* A thorough review of the convertible building and developable land inventory in the urban core;
- *Failed deals.* An understanding of who has tried to put deals together at what locations for hotels and apartments and why they failed, if not completed;
- *Successful deals.* For those completed projects, a thorough understanding of development costs, how and to whom they sold rooms after opening, how rate structure changed over time;
- *Development team.* Selection of a development team of architect and general contractor, both of whom should have broad ground-up hotel and renovation experience;
- *Target property.* Identification of suitable convertible buildings and/or developable land;
- *Building program.* Based on the above due diligence, making studied decisions as to building program, types of rooms, levels of service and, if opted, franchise;
- *Budget pricing.* Program sketches and general contractor's budget pricing of identified properties;
- *Development challenges.* Discussions with lenders, franchisers, and city officials to understand development challenges;
- *Purchase and sale.* Negotiating a purchase and sale agreement that provides ample time for continued building and market due diligence and, most importantly, time to receive a building permit;

- *Thorough property analysis.* Conducting thorough property analysis, prior to risking any hard funds, that includes: legal, zoning, structural, state/local historic, asbestos, lead paint, Phase One and Two, parking, traffic and retail market review.

Urban core hotel development is dramatically more dynamic than suburban development. Sponsors whose deals get done have one common attribute; flexibility. Complete understanding of the above issues enhances this flexibility.

[3] History of Downtown Hotels

But what are the underlying reasons for the sudden interest in urban hotel development? The answer lies in the review of twentieth century urban real estate. Downtowns have been the centers of commerce, entertainment and education for millennia. For the first half of this century downtowns were primarily the place to stay at a full-service hotel; namely one that provides food and beverage and extensive meeting areas and public space. Turn-of-the-century high-rise downtown hotels, whose development was made possible by the elevator, created critical density to justify high downtown land prices and the costly level of services that the full-service or convention hotel provides. With mass transportation spokes feeding the downtown hub, hotels provided a convenient meeting place and temporary residence for business travelers and tourists, and full-time residences to the well-heeled. The cost to develop these large hotels was great. The competition was limited, prior to the 1960s, to other downtown hotels since suburban hotel development was not then significant. Choice in the type of hotels was limited to luxury, convention, first class, or, farther from the core, economy properties.

[4] Hotel Segmentation

Market segmentation occurred later after the advent of chain affiliation. The 1970s ushered in a period of large-scale franchising of hotels. Prior to the 1970s chain affiliation was limited. Yet to be created were lodging options such as mid-market, extended-stay, or limited-service properties.

Several events occurred that had an impact on the lodging landscape:

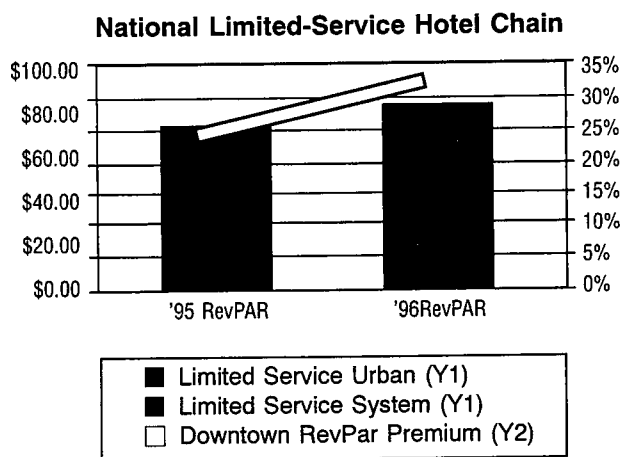
- America became more mobile, spawning increased room night demand from business and family travel;
- In response, chain affiliations offered the traveling public recognized names and relatively consistent guest experiences at anticipated levels of service. With this came the proverbial two-story, rambling, “down and out” Holiday Inn, where the car-driving business traveler could back their car to the room and be assured, generally, of a consistent, predictable hotel stay;
- The post-war suburban development boom of the fifties and sixties led to development of suburban hotels, which, due to lower land costs, could build horizontally less expensively than building vertically in the downtown, thus providing a price advantage;
- Cities entered a period of urban flight, losing population and industrial employment, promulgated by suburban development of less expensive residential units and modern, less costly industrial and office space;
- Perceptions of cities’ safety and vitality turned pejorative;

- The development of urban-core hotels declined by the late 1960s as hotel development focused on the suburbs.

If one views the hotel industry as evolutionary, periodically rolling out new concepts and products, these factors left downtowns with outdated products and properties. The trend of hotel “roll-outs,” like smaller, limited-service hotels, started in the late 1970s, accelerated into the eighties and was perfected solely in the suburbs. Downtowns were largely, if not virtually, ignored in this boom.

What started in the late 1970s as a means by hotel franchisers to attract more room nights became “segmentation,” the still-prevailing trend of differentiation among hotels. Twenty-five years ago the hotel traveler had four options in his choice of hotels: luxury, convention, first-class, and economy. Hotels at that time tried to be all things to all people. With the concept of segmentation came the attempt to appeal to a certain group of guests with certain specific needs.

Exhibit 21-9 Urban vs. Suburban Performance



One of the clearest shifts in this new segmentation was the removal of restaurants and meeting space. Costly to construct and expensive to staff and operate, these elements were eliminated by the full-service hotel companies that began to develop “limited-service” hotels. Major hotel companies like Holiday Inn and Marriott began to tinker with their full-service concepts and found that people who didn’t use restaurants, concierges, meeting spaces, and retail spaces didn’t want to pay a room rate as if they had.

Hoteliers found an untapped market: guests that don’t want to pay for services they won’t use. Developers found there to be a less resistance from banks to borrow funds to develop these limited-service and mid-market hotels since the construction cost was substantially less without restaurants, bars, retail, and meeting spaces. These hotels most often had fewer rooms and employees and generally ran at higher occupancies and lower break-even points than full-service hotels.

Because of higher land and construction costs in the downtown, these newly segmented hotels were built in the suburbs, which in the seventies and eighties were often the economic engines of a market. Brands like Hampton Inn, Courtyard, Wyndham, Embassy Suites, Residence Inn, Fairfield Inn, and a multitude of others, got their start in the 1980s. (It is interesting to note that the personal computer and Courtyard by Marriott both received their introduction in 1984; both the limited-service hotel and the computer have become a ubiquitous part of American life in 14 years.)

Since the inception of the limited-service hotel in 1984 there now exist well over 10,000 such properties with well in excess of 1.2 million rooms; according to Coopers and Lybrand, an additional 105,000 to 125,000 hotel rooms will be built in each of the next four years. The vast majority of these are limited-service and limited-service extended-stay properties; 95 percent will be built in the suburbs. As a comparison, approximately 152,000 rooms were added in 1986.

This was the first limited-service boom, and it was abbreviated by the savings and loan crisis. Development of all hotels nearly ceased from the late 1980s through the early-1990s as the post-savings-and-loan glut of overbuilt hotels was sold off, often priced at 30 to 50 percent of replacement cost. Rarely were hotels built in urban cores during this post-RTC period. The exceptions were those that were the centerpieces to civic redevelopments and received substantial subsidies.

On the coattails of the early 1990s' economic expansion came a real estate recovery in which hotel occupancies and rates rebounded from the dismal levels of the late 1980s. A subsequent limited service development boom, the second development boom for limited-service hotels, ensued as lenders, comforted by the simpler operations, brand strength, and lower per-room development cost of limited-service hotels, made construction and take-out debt available, though with considerably more strings attached than were attached to loans in the last development cycle. With equity plentiful (and fully invested in deals) lenders embraced certain limited-service chains. Limited-service hotel development has proliferated from the early-1990s. The epicenter of this development was again the suburbs, where cheap land, continued strengthening room-night demand, and unabated suburban development made a compelling story to lenders and equity, alike.

The supply of lower-priced rooms in the suburbs created a rate imbalance between suburb and city. Though both suburban and urban occupancies improved during the recovery, the *average daily rate* of downtowns rocketed. As cities like San Antonio, Seattle, Chicago, New York, and Denver recast themselves and regained their attractiveness to residents, businesses, tourists, and conventioners, hotel occupancy and rates soared. Because of this more even mix of demand, downtowns often had less seasonality and more consistency in weekday versus weekend demand than the suburbs, due in large part to elements like:

- New downtown sports stadiums and arenas that boost weekend occupancy and mid-week rates;
- Tourist attractions, museums, parks, and waterfronts that attract individuals and families and, more importantly, groups that eat up hotel rooms and create scarcity, propelling rates quickly;
- A return and strengthening of downtown residential development that often is the unsung cornerstone of a city's rebirth;
- Convention and special events that, once again, are held in downtowns, creating longer guest stays as conventioners lingered in the city's core to enjoy a more unique shopping and entertainment experience than that of the suburbs.

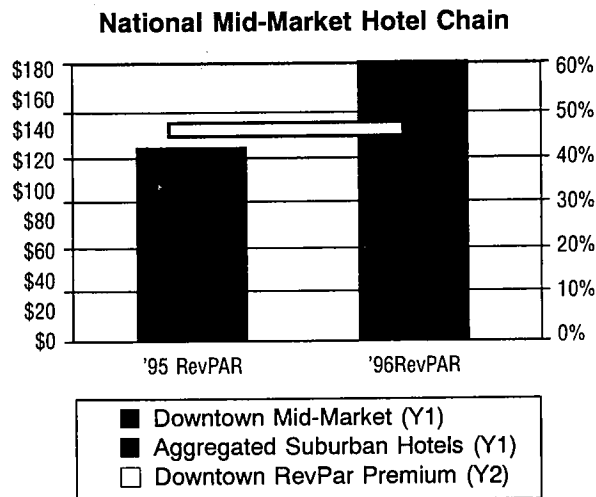
Building limited-service or mid-market hotels in certain downtowns seemed to make "rate" sense. A higher average daily rate should be achieved in the downtown limited-service hotel than in the comparable suburban property since the average daily rate of downtowns is generally higher than in the suburbs, and the competitors in the downtown are generally higher-priced full-service properties. Downtown's existing older, poorer, and less competitive properties were able to ride the coattails of the higher-rated downtown properties and achieve rates often unimaginable for a comparable facility in the suburbs. With no new development, the downtowns had become bifurcated markets based on quality of the hotel asset.

Therefore, following the limited-service precepts, wouldn't there be room night demand in the downtown that *didn't* want to pay for concierge services, meeting, and restaurant space? If so, this room night demand would expect to pay less than at a full-service property. But how much less was the key since, though the rate for a downtown limited-service property would be more than for its suburban counterpart, the rate may not have been enough to justify ground-up development. This was the question that we asked as we studied what we thought was a market opportunity to develop a limited-service hotel in downtown Denver in 1995. Statistics collected and models created, clear trends emerged suggesting that we could determine:

- The premium that a downtown limited-service hotel would achieve over the same suburban brand;
- The discount that the downtown limited-service hotel would surrender to its full-service competitors.

Generally, the limited-service or mid-market hotel flags could achieve a 30 to 50 percent RevPAR premium (Average Daily Rate times occupancy) over their suburban counterparts. (See Exhibit 21-10.) These same limited-service and mid-market hotels would operate at a 25 to 40 percent discount when compared to Average Daily Rate of the "first-class" downtown hotels. The basis for this high level of performance relative to the suburban property goes to the heart of the issue of this article. While new, lower price-point hotel concepts were routinely and efficiently unveiled and built in the suburbs, downtowns were nearly entirely neglected in the last two hotel development cycles. This dynamic created a gap in the downtown hotel brand continuum relative to the suburbs that continues to this day. The premiums that limited-service and mid-market hotels receive in downtowns are illustrative of the lack of less-expensive hotels in the downtown.

Exhibit 21-10 Urban (Chicago) vs. Suburban Performance



It became clear that nearly any commercially acceptable suburban franchise would receive a hefty premium if operated in the downtown. This was the case with a moderately priced limited-service brand that, in the handful of markets where a downtown property was built, received a 30 to 40 percent premium over the nearest suburban hotels of the same brand. This was also the case with urban core extended-

stay properties in comparison to that chain's predominantly suburban properties. Although not as great a premium as the limited-service and mid-market properties, this chain of extended-stay properties still achieved approximately a 20 percent premium to the rest of the suburban system.

In short, this analysis corroborated the fact that a large premium existed for operating a suburban-based property in the downtown. Because of the greater barriers to entry and higher entry costs associated with downtown hotel development, this premium may remain fairly certain.

This being said, the downtown lower-priced hotel will not be entirely immune from the effects of over-supply in the suburbs, should this occur again as it did in the late 1980s. Until this time and perhaps beyond, these franchised properties will continue to outperform their suburban kin.

[5] Development vs. Renovation Costs in the Urban Core

The question of market rate feasibility now established, the question of development cost and financial feasibility needed determining. The first step is to determine the site for development. This question needs to be refined to buying land for development or buying an existing building for redevelopment. Somewhat surprisingly, the spread between new construction and renovation aren't as great as one might expect.

Land prices in downtowns clearly are greater than in the suburbs. But consider the land economy of building up rather than out. Land for a suburban limited-service property ranges from \$7,000 to \$15,000 per room based on land prices of \$6 to \$15 per square foot for three and a half acres. Even with land costs in downtowns rebounding to a range between \$50 to \$200 per square foot, the downtown hotel needs only a \$15,000 square foot building foot print (excluding parking). This yields a per-room land cost of \$5,000 to \$20,000 per room, not that terribly different from the suburban range. Since the downtown guest will expect a higher level of finish, the furniture, fixtures, and equipment will be 10 to 30 percent more expensive than the suburban property.

The greatest difference in cost is the premium for high-rise construction; stick-built or steel stud horizontal construction in the suburbs is far less expensive than building with concrete in the downtown. Fire refuge areas, sprinkler systems, fire command stations, back-up generators, and other conditions imposed by mid- or high-rise construction add approximately 20 percent to the cost of a downtown project.

The ultimate development cost for the suburban limited-service mid-market property is in the range of \$50,000 to \$85,000 per room. The corresponding cost of a ground-up downtown mid-market property is approximately \$150,000 to \$200,000.

To be feasible, the average daily rate at a hotel built for \$150,000 per room must exceed \$160. This high an average daily rate for a mid-market property would be unattainable in most downtowns. Generally, therefore, the concept of ground-up development in the urban core is not feasible. The feasible average daily rate for the limited-service property is approximately \$90 to \$140. Backing into a feasible development cost, the project can support a total development cost of up to \$130,000 per room.

This new-construction per-room cost cannot often be achieved in the downtown. The way to achieve this development cost is to acquire an existing building and convert it. In short, though not as great as one might imagine, the discount on development costs in renovation versus new construction is approximately 20 to 25 percent. Considering the benefits of historic tax credits, the discount may exceed 30 percent. In the broadest measure, the tax credit of 20 percent of all approved development costs, in practice, pays for the cost of the building.

[6] Mixed-Use Solution

In order for the downtown hotel project to get built, given all of its complexities and greater costs, it often takes creativity and an ability to layer on income streams from uses other than the hotel. In effect, the project that started purely as a downtown hotel metamorphoses, along the path of pre-development, to embrace other components. Uses like retail, parking, and office add revenue strength to the project and make use of less-utilized space within the building. Symbiotic uses to the business traveler range from the obvious, like restaurants, business centers, and coffee shops, to the merely convenient, like office uses.

The 450,000-square-foot Macmillan Building on Third Avenue in Manhattan typifies the creativity of the hotel developer. The building will be condominiumized into three units and converted retail, office, and hotel uses. The developer is left with the space for a 320-room Courtyard by Marriott. But a 320-room property would only require approximately 230,000 square feet of space, leaving the developer with nearly half of the space uncommitted in a building purchased for \$100 per foot. The developer needed to realize value in the uncommitted space. Therefore, the developer attempted to recapture some of the acquisition cost by condominiumizing and selling off two of the three condo units. The first two floors of the building are to be purchased as one condo and leased as retail space. The Marriott Courtyard will occupy the top half of the building in its condo unit. This condo unit will extend to the first floor, which affords it street access for an entry foyer. The middle condo unit will be purchased by Sloan-Kettering Cancer Center as a midtown office. Sloan-Kettering will convert the space in its own condo unit to a medical office.

Downtown hotel development, though seemingly all the rage, is based on solid fundamentals. Current fundamentals, like the premium that urban limited-service properties enjoy over their suburban kin, present a compelling case for urban core development. This fact has not been lost on developers who have seized it, capitalized on the returning luster of downtowns, and packaged it to lenders and investors hungry to invest cash. The unlikely set of concurrent circumstances that have fostered this development boom are based more on maximizing arbitrage in current economics of urban real estate than on hotel operations or branding.

The issue, in the end, may turn out to be a bad arbitrage play, but that unbridled suburban hotel development added too many rooms, and the whole market, urban and suburban, suffered. If suburban development creates disequilibrium in the suburban market, it will likely have a negative rate impact on urban hotels. This is one of nagging specters that will continue to lurk until the hotel industry begins the downslope of the current development cycle and the jury returns from its real estate deliberations.

CHAPTER 22

International Markets

¶ 22.01	Developed vs. Developing Countries	22-2	EXHIBIT 22-8	Regional Tourism Trends 1989–1998	22-14
¶ 22.02	Background for European Countries	22-2	EXHIBIT 22-9	Average Room Rate—% Change 1997–1998	22-15
	[1] Europe's Legal Framework	22-3	EXHIBIT 22-10	RevPAR—% Change 1997–1998	22-15
	[2] Cultural Differences	22-3	EXHIBIT 22-11	Current and Future Supply	22-16
	[a] Universalism vs. Particularism	22-3	¶ 22.05	Countries of the Middle East and North Africa	22-16
	[b] Affective vs. Neutral	22-4		[1] Bahrain	22-16
	[c] Sequential vs. Synchronic Time Orientation	22-4		[2] Egypt	22-17
¶ 22.03	The European Countries	22-5		[3] Israel	22-18
	[1] United Kingdom	22-5		[4] Jordan	22-18
EXHIBIT 22-1	Hotel Values Per Room in Euro 1993–1998	22-5		[5] Kuwait	22-19
	[2] Belgium	22-6		[6] Lebanon	22-19
	[3] France	22-6		[7] Morocco	22-20
	[4] Germany	22-6		[8] Oman	22-20
	[5] Italy	22-6		[9] Palestinian Areas	22-21
EXHIBIT 22-2	Average Annual Compounded Growth Rate 1993–1998 (Local Currencies)	22-7		[10] Qatar	22-21
	[6] The Netherlands	22-7		[11] Saudi Arabia	22-22
	[7] Portugal	22-7		[12] Syria	22-22
EXHIBIT 22-3	Foreign Tourist Arrivals to Italy and other Key European Countries (1994–98)	22-8		[13] Tunisia	22-22
EXHIBIT 22-4	Hotel Values—% Change in local currencies	22-9		[14] United Arab Emirates	22-23
	[8] Spain	22-9		[15] Yemen	22-23
	[9] Central and Eastern Europe	22-9	¶ 22.06	Asian Markets Values	22-24
	[a] The Czech Republic	22-10	EXHIBIT 22-12	Asian HVI in US\$ Ranked by index in 1997	22-24
	[b] Hungary	22-10	EXHIBIT 22-13	Hotel Values per Room in US\$ Ranked by Value in 1997	22-25
	[c] Poland	22-11		[2] Hotel Values 1998	22-25
	[d] Russia	22-11	EXHIBIT 22-14	Value per Room Comparison in US\$ (December 1997 and July 1998)	22-26
¶ 22.04	Middle East and North Africa	22-12	EXHIBIT 22-15	Percentage Change from Peak Value	22-26
	[1] Overview	22-12	¶ 22.07	The Asian Countries	22-27
	[2] Obstacles to Increased Tourism	22-12		[1] Jakarta and Bali, Indonesia	22-27
EXHIBIT 22-5	Regional Tourism Trends 1989–1998	22-13		[2] Hong Kong	22-27
EXHIBIT 22-6	Top Destinations World-Wide	22-13		[3] Beijing and Shanghai, PR of China	22-27
EXHIBIT 22-7	Occupancy %—Point Change 1997–1998	22-14		[4] Kuala Lumpur, Malaysia	22-28
	[3] Hotel Data	22-14		[5] Mumbai, India	22-28
				[6] Seoul, South Korea	22-28
				[7] Tokyo, Japan	22-28
				[8] Singapore	22-29
				[9] Manila, Philippines	22-29
				[10] Bangkok, Thailand	22-29

¶ 22.01 **DEVELOPED VS. DEVELOPING COUNTRIES**

Countries with rapid development offer more opportunities to the investor than those with slower growing economies. At the same time, there is a great deal more risk—political and financial—associated with a rapidly expanding economy. One way of overcoming this risk is to deal in assets that are easily salable, thus allowing the rapid conversion to currency that can be withdrawn from the market. Such investments also allow a level of hedging to be used as a fallback against risk in the marketplace.

Unfortunately, hotels are large static assets with high capital costs and poor conversion abilities. In addition, hotels are not easily transferred among investors, which means that the hotel owner is exposed to risk on an ongoing basis; every time the operation is exposed to market uncertainty, the capital value of the operation is affected. For these reasons, an investor should be very careful about entering a developing market.

Return, however, is a function of risk; while a hotel in a developed market is a more stable investment, it will not yield the return that is possible in a developing marketplace.

¶ 22.02 **BACKGROUND FOR EUROPEAN COUNTRIES**

If a firm is to control its development and grow in international markets, it is important that it pay attention to what are known as “environmental factors.” These are as follows:

- *The economy.* The overall strength of a country’s economy affects the availability of credit, the willingness of people to borrow, and, ultimately, the level of demand. Interest rates and currency fluctuations affect both the cost of and the demand for imports and exports.
- *Capital markets.* The state of capital markets in the country invested in has a direct bearing on the cost and availability of loan capital. It also reflects and influences the willingness of investors within the country to invest in internal markets rather than overseas. Capital markets have been shown to have a great effect on the economy as a whole.
- *Government.* The governments of many countries seek to encourage foreign investment through the allocation of grants and industry initiatives. Also crucial is the degree of government regulation of the economy. Political decisions made either internally or on an international scale can have devastating effects within the hotel industry.
- *Labor markets.* The availability of labor and skill bases is crucial and must be investigated.
- *Suppliers.* In third world and developing countries, maintaining the supply of raw materials for construction, refurbishment, and everyday running stock is an enormous challenge, one that is to a large extent nonexistent in a developed country.
- *Markets.* The influence of local and international tourism markets and the presence of competitors must be taken into account.

This chapter will begin with a discussion of the markets of Europe.

[1] Europe's Legal Framework

International legal practice in Europe is mostly carried out through branch offices, alliances, informal associations, referral relationships, and foreign lawyer employment. On the whole, lawyers are a vital part of European real property transactions as technical facilitators. In the United Kingdom, for example the solicitors' profession still has a statutory monopoly on conveyance work. This has been challenged in recent years and will change, albeit slowly. The legal framework in Europe has been complicated somewhat in recent years by the application of European Community (EC) laws and directives, which have challenged bodies of law in individual countries.

Because there is nothing in the EC treaty that creates any EC function or power relating to the ownership or transfer of land, the national laws of each member state govern those matters. However, certain aspects of real property transactions may be affected incidentally by provisions of the EC treaty.

The major common-law jurisdictions of Europe are England, Wales, Scotland, Northern Ireland and the republic of Ireland, while the remaining jurisdictions are essentially civil law systems. The systems vary principally in their approach to case law. In both groups legislation plays an increasing role in the regulation of real estate matters, both in the private aspects of ownership and transfer and in the public aspects of planning, building controls, and more general environmental concerns. However, the traditions of statutory interpretation also vary considerably between the two regimes.

The land tenure system originated in private law, according to the doctrine of binding precedent and with substantial contribution from professional practice. Legislation has introduced important measures such as registration of title and reform of old case law. It has also intervened to provide important rights (e.g., rent control for residential tenants and lease renewal rights for business tenants) and to impose planning and environmental controls of increasing complexity.

The status of court decisions in relation to civil law is quite different than under common law. Legislation has increasingly replaced or reformed original code provisions or enacted controls not included in the original codes. The planning, building, and development policies of individual European countries are discussed subsequently in this chapter.

The EC has an increasingly positive attitude towards foreign investment. Most countries make no distinction between foreign and domestic investors, though in certain sectors and in certain countries restrictions remain. For example, foreign investment in France is restricted in banking and insurance. In Spain it is restricted in the gas, water, electric, and railway industries. The state-controlled industries of Italy are restricted. For the most part, however, countries use attractive incentive packages to encourage investment.

[2] Cultural Differences

The following section offers generalizations about some of the cultural differences found in the international markets as an aid to understanding how to conduct business there. The categorizations outlined are the product of the research of Fons Treppears of the Centre for International Business Studies (CIBS).

[a] Universalism vs. Particularism

This is essentially the difference between rules and relationships. Universalist behavior or rule-based behavior focuses on the rules governing the conduct of areas of be-

havior. The belief of people in a universalist society is that all should be treated equally under the law and that people should adhere to the regulations and rules laid out by the society they live in. Particularists, in contrast, see rules as applying in certain circumstances and not in others. Particularists will choose whether to adhere to the rules or not depending on the situation they find themselves in. Universalist countries include the USA, Switzerland, Sweden, Norway, Germany, Britain, the Netherlands, Denmark, Finland, and Austria. Particularist societies include Russia, Hungary, Bulgaria, Romania, Greece, Spain, France, Portugal, Oman, and Egypt.

Particularist countries put more faith in personal relationships, and as a result, more time is often needed to conduct business; they also see the universalist need for contracts and high powered negotiations as suspect. Universalists, on the other hand, might see the time it takes to establish these relationships as a waste of time and a sign of a lack of commitment. For this reason, this cultural difference can lead to misunderstandings. The following lists summarize the differences between the two categories.

For universalists:

1. Focus is more on rules than on relationships;
2. Legal contracts are not subject to easy change;
3. Trust is based on the honoring of a contract; and
4. A deal is a deal.

For particularists:

1. Focus is more on relationships more than on rules;
2. Legal contracts can be readily modified;
3. Trust comes from establishing worthiness over time; and
4. Relationships evolve.

[b] Affective vs. Neutral

Affective cultures are those that show their emotions, whereas neutral societies are those that do not willingly show their emotions. This does not mean, of course, that those cultures that do not seek outlets for their emotions are devoid of emotion; in most cases, it is simply a matter of social convention. There are considerable differences in this regard among European countries, with Germany being the most neutral and Italy and France being the most affective. The differences have a great influence on the way relationships are formed and communication occurs within these different cultures.

Neutral and affective cultures often find each other immensely confusing in a business context. This confusion can lead to difficult problems in negotiations.

[c] Sequential vs. Synchronic Time Orientation

How different cultures view time is a very important aspect to doing business. In hotel development terms, it becomes all the more crucial, because the development process is a lengthy one that requires a great deal of coordination of resources. Sequential cultures such as the United Kingdom and the United States of America tend to run "on time" with attention paid to appointment times. In such cultures, people set specific goals and wish to complete one task before embarking on the next.

Synchronic cultures, such as the southern European countries, often prefer to do more than one thing at a time. They are less goal-specific and see time as an indicator of direction and not a controller of action.

¶ 22.03 THE EUROPEAN COUNTRIES

[1] United Kingdom

The United Kingdom hotel market remains strong with operating performances for both London and the provinces continuing to lead their European counterparts. Average occupancy levels declined slightly in the capital but the Provinces enjoyed a marginal increase, while average room rates for the United Kingdom increased by approximately 9% across the board. The branded budget sector continues to grow throughout the country, especially in city center locations, causing increasing concern from independent hotel owners. The strength of the market has continued to motivate sales activity and development from both domestic and foreign investors.

Some felt at the beginning of 1998 that London in particular was nearing the peak in the cycle, and yet transaction activity continued steadily throughout the year. Exhibit 22-1 shows that London hotels still lead Europe in Value per room.

Exhibit 22-1 Hotel Values Per Room in Euro 1993-1998

Source: HVS International

	1993	1994	1995	1996	1997	1998
London	245,617	276,810	293,330	358,743	496,007	504,990
Paris	360,262	352,336	340,709	316,953	389,947	433,515
Geneva	234,149	250,549	272,657	265,541	267,766	279,867
Zurich	204,242	220,064	221,492	211,042	236,044	267,574
Rome	155,319	170,562	160,459	205,974	238,614	264,487
Amsterdam	122,574	130,897	145,949	170,177	192,981	213,762
Madrid	149,874	142,183	142,416	161,663	188,540	209,076
Europe	145,812	147,066	149,256	162,042	190,528	204,202
Barcelona	85,399	78,074	84,504	110,015	141,299	172,308
Istanbul	100,258	100,896	96,454	123,435	165,709	165,276
Vienna	153,557	144,497	150,496	145,934	141,970	157,959
Brussels	121,886	115,376	120,223	127,017	143,492	155,594
Stockholm	87,589	94,355	103,986	136,182	150,744	153,216
Copenhagen	97,643	105,259	109,116	124,337	144,450	150,920
Budapest	86,012	91,683	82,204	97,733	143,425	147,349
Warsaw	121,855	108,790	108,499	124,157	144,352	147,349
Frankfurt	136,758	134,160	137,916	130,606	137,920	141,829
Prague	129,487	110,150	104,350	111,747	134,533	136,485
Lisbon	102,966	98,029	95,877	108,879	112,256	127,098
Athens	86,393	84,405	84,627	96,554	113,645	126,896
Berlin	134,394	132,243	129,863	114,150	126,866	126,796

[2] Belgium

The recovery of the Belgium hotel market, in terms of occupancy and average room rates, has led to increased interest from investors. Brussels still lags the European average for hotel valuation (Exhibit 22-1), despite improved hotel conditions.

[3] France

The market recovery enjoyed by the French hotel market in 1997 was sustained in 1998. Continued growth in occupancy levels was enjoyed, in particular, in provincial cities, such as Marseilles and Paris, which hosted some of the 1998 football World Cup games. The month of June saw occupancy levels soar to new heights in certain cities due to the estimated half a million visitors for the games. There were concerns that the World Cup events would deter traditional demand from the leisure and commercial sectors and that this would have a negative impact on occupancy levels. These concerns proved to be unfounded in cities situated in the north of France; however, particularly in the southern regions, others did report a decrease in domestic leisure and commercial demand. The strengthening of the French economy and the strong US dollar, British pound and Italian lira have also contributed to some of the growth in demand for hotel accommodation. Paris was the principal beneficiary of the strengthening of the French market, enjoying strong growth in both rooms occupancy and average room rate. Paris hotel values remain strong and are second only to London (see Exhibit 22-1).

[4] Germany

The German hotel market still seems to be suffering from the economic recession of the early 1990s. The hotel construction boom continues in Germany between May 1997 and April 1998, 80 new hotels with almost 14,000 rooms were constructed throughout the country. A further 140 hotels with over 37,000 rooms are planned over the next three years. New hotels are particularly prevalent in Berlin, with fewer than 64 hotels planned or under construction. Berlin is the only major European city to actually have its value decrease between the years 1993-1998 (See Exhibit 22-2, Average Annual Compounded Growth Rate 1993-1998). Although performance has been low in 1998, hopes are high for the future. For Berlin, in particular, an increase in demand is expected with the relocation of the German government from Bonn to Berlin and the arrival of 12,000 civil servants. Frankfurt is also one to watch as it capitalizes on being home to the Euro.

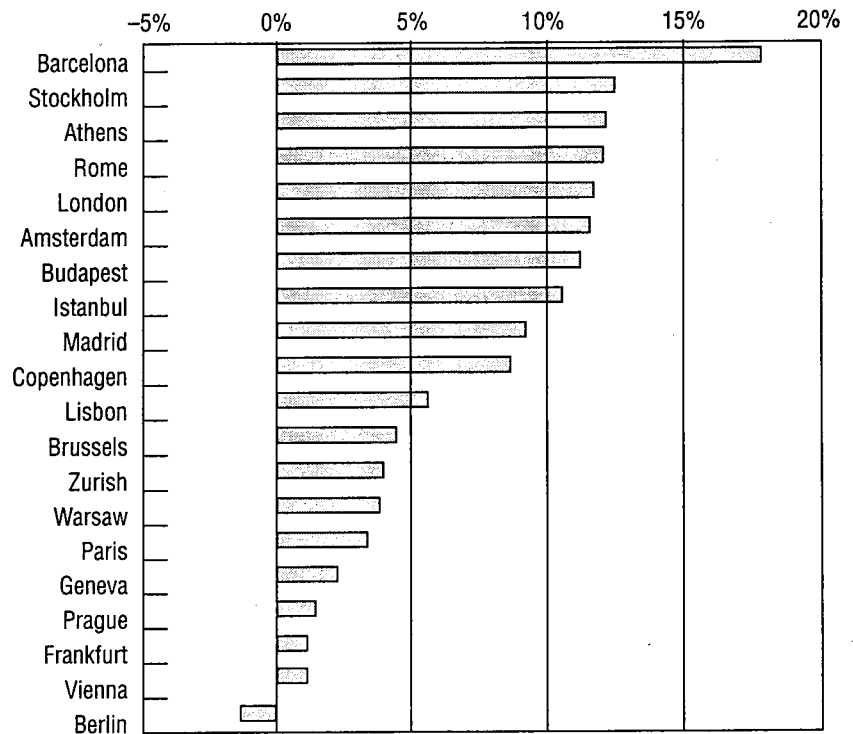
[5] Italy

The Italian hotel market is the largest in Europe in terms of the number of hotel rooms; Italian tourism is second in the world (behind the USA) in terms of receipts. It is also the fastest growing in terms of foreign tourist visits between the years 1994-1998 (see Exhibit 22-3).

In the last 24 months, the national government appears to have achieved notable success in stabilizing Italy's economy and developing a level of confidence among domestic and foreign investors. The current Ulivo coalition has continued to work off its most recent predecessors, to drive Italy into the European Market Union, although this has been at the cost of stern monetary and fiscal control of the economy.

Exhibit 22-2 Average Annual Compounded Growth Rate 1993–1998 (Local Currencies)

Source: HVS International

**[6] The Netherlands**

The Netherlands has suffered for years from an abundant supply of hotel rooms for several years. It has finally worked off this excess room supply and values have increased dramatically in the few years (See Exhibit 22-4). The average has increased from below the European average in 1993 to well above average by 1998.

[7] Portugal

After suffering from a prolonged recession in recent years, the Lisbon hotel market enjoyed buoyant performance during 1998, largely due to the hosting of Expo '98. RevPar in five-star hotels improved by up to 40% compared with the 1997 performance, which was mainly driven by average rate growth. Occupancy grew by approximately 10%, despite Lisbon's hotel market being subject to a huge increase in supply in all categories compared to 1997.

It is envisaged that the hotel supply in and around Lisbon will increase by 12% in 1999, which includes a 150-room Marriott golf resort hotel situated one hour's drive of the city. Demand for new hotels in other regions of Portugal such as the Algarve is also set to increase in 1999. This is partly as a result of improved infrastructure, a prime example being the recently modernized and enlarged Lisbon Portela Airport, but also as a result of key European source markets that are benefiting from favorable economic conditions.

Exhibit 22-3 Foreign Tourist Arrivals to Italy and Other Key European Countries (1994–98)
Source: WTO

Rank	Foreign Tourist Arrivals to:	1994	1995	1996	1997	1998	1998 as a % of Total	% Growth 1994–98
1	France	61,312,000	60,033,000	62,406,000	66,864,000	70,000,000	32%	14%
2	Spain	43,232,000	39,324,000	40,541,000	43,403,000	47,743,000	22	10
3	Italy	27,480,000	31,052,000	32,853,000	34,087,000	34,829,000	16	27
4	UK	20,794,000	23,537,000	25,163,000	25,515,000	25,475,000	12	23
5	Germany	14,494,000	14,847,000	15,205,000	15,837,000	16,504,000	8	14
6	Switzerland	12,200,000	11,500,000	10,600,000	10,600,000	11,025,000	5	-10
7	Netherlands	6,178,000	6,574,000	6,580,000	6,674,000	6,170,000	3	0
8	Belgium	5,309,000	5,560,000	5,829,000	6,037,000	6,152,000	3	16
	Total Foreign Tourist Arrivals	190,999,000	192,427,000	199,177,000	209,017,000	217,898,000	100%	9%

Exhibit 22-4 Hotel Values—% Change in local currency*Source: HVS International*

	1994	1995	1996	1997	1998	1994–1998
Barcelona	-1.8%	14.0%	25.7%	29.4%	22.6%	123.2%
Athens	5.6	8.3	13.6	17.7	16.6	78.3
Zurich	1.6	-1.5	-5.1	10.8	14.8	20.8
Lisbon	0.2	0.1	11.5	2.6	13.4	30.2
Stockholm	9.1	15.3	17.4	9.0	12.5	81.1
Vienna	-5.9	4.3	-3.0	-3.3	11.8	2.9
Rome	14.9	7.8	15.0	11.6	11.6	77.5
Madrid	1.9	5.5	9.6	17.5	11.5	54.3
Amsterdam	6.6	11.4	16.6	13.4	11.4	75.0
Paris	-2.2	-3.3	-8.6	22.3	11.3	17.7
Europe	1.5	6.2	7.7	12.0	9.1	41.8
Brussels	-6.7	4.1	5.6	13.3	8.4	26.0
Budapest	8.6	1.6	13.3	27.2	8.3	72.2
Warsaw	-9.1	13.0	9.1	0.8	6.4	20.2
Geneva	0.9	6.5	-3.2	0.1	5.9	10.2
Prague	-13.4	7.3	2.1	4.4	5.7	4.8
Copenhagen	7.8	3.4	12.2	15.0	4.8	50.7
Istanbul	2.5	8.3	22.0	16.4	3.9	63.9
Frankfurt	-1.9	2.8	-5.3	5.6	2.8	3.7
Berlin	-1.6	-1.8	-12.1	11.1	-0.1	-5.7
London	12.7	16.8	16.6	15.3	-1.0	75.2

[8] Spain

Spain has shown very little growth in recent years as hotel building has slowed dramatically. However, recently international hotel operators and entrepreneurial investors alike have been talking about Spain as a likely growth area, despite its slow hotel growth rate.

[9] Central and Eastern Europe

After the collapse of communism in the period 1989-1990, investors became very interested in Central and Eastern Europe. Still, because of the recession there was not much development. Interest rates were high, and there was a squeeze on the availability of development finance. Another reason for the lack of development in these nations is their considerable political uncertainty. However, the Czech Republic, Hungary and Poland have stabilized their political structures as well their economics. With the three above mentioned countries joining NATO, the outlook for the future development of hotel projects will be carried out in a stable environment. Russia is still experiencing great difficulty economically and is still considered an extremely risky hotel development opportunity.

However, with the advent of free market economies in the Czech Republic, Hungary and Poland there has been a rush to build properties and create a short term overbuilt market. In fact the hotel valuation for the major cities in these counties has performed below the European average in 1998 compared to 1997 (See Exhibit 22-4, Hotel Values – % Change).

[a] **The Czech Republic**

The Czech Republic has come a long way during the past three years, with GDP growth estimated at 4.2 percent for 1995. An important reason for this growth is the entrance of the Republic into the world trade market, as reflected by a 20 percent to 30 percent increase per year during the past three years in export growth. The willingness to trade, coupled with rising consumer demand, has resulted in increased imports and, ultimately, economic expansion. In contrast to many of its neighbors, unemployment in the Czech Republic is relatively low, at 3.2 percent for 1994 and an estimated 3.5 percent in 1995. Inflation has also been kept in check, quite a feat in light of the rapid expansion of the economy and the huge capital inflows to the country. Interest rates are still high compared with the rest of Europe, but they are in line with neighboring countries and could be said to be reasonably low considering the present economic status of the country. The next few years should bring no real slowdown to the economy, and if inflation can be kept in check, the future prospect looks favorable.

Prague probably will become one of the main centers for hotel development in Central Europe. There are numerous hotel projects under construction in the capital, and there is interest from other major international chains. The following hotels can now be found in the Republic: the Ramada Renaissance, the Grand Hotel Bohemia, and the Savoy, with Hilton taking over the management of the Atrium hotel in 1995. However, the current climate is one of rising costs and low average rates, which are not the best conditions for new hotels. Still, those hotels already in place will achieve good returns when this trend reverses in the near future. The country still has many interesting investment opportunities, which will no doubt be enhanced by the AAA rating given by Standard and Poor's. Investment in development projects has continued to be led by Austrian banks such as Raiffeisen and Girocredit, and Munich-based Hypobank has also become involved in the development of some prime real estate sites. The French institution Caisse des Depots has also been heavily involved in the market. ING has announced plans to become involved in the development of various large-scale projects in the area. On the whole, European investors have lower yield expectations than those of their U.S. counterparts; considering the state of the economy and the length of time it will take to mature, companies accepting lower yields in the interim will be in a better strategic position than the late entrants.

[b] **Hungary**

The Hungarian economy has slowed slightly, down from 2.9 percent GDP growth in 1994 to close to 2.0 percent growth in 1995. The reason for this was the government's austerity package, designed to implement needed economic reform. The reform dampened the still buoyant export performance as well as the country's relatively strong internal consumer demand. Meanwhile, privatization is making slow but steady progress, with small to medium-sized companies being established in all market sectors. Inflation remains high at 28.3 percent for 1995, despite the monetary controls imposed by the government. This figure appears ready to drop in 1996 and 1997, however, as the economy absorbs the impact of the economic reform. Employment is still high, at 10.3 percent, but it is forecast to stabilize at about 10 percent. The effects of the increase

have been offset in part by the high level of imports and inward capital flows required by the restructuring process.

Strong performance in the Budapest market between 1989 and 1992 was followed by poor market performance in 1993, as the initial “novelty travel” declined. In 1994, the market sector picked up again, as a result of increased political and economic stability and the implementation of the government’s privatization program. In 1995, occupancy levels were stable, and there was moderate growth in average rates. There has been little new development in the marketplace recently, and the cancellation of the 1996 World EXPO will dampen prospects in the market. The Austrian bank Girocredit has been heavily involved in the marketplace, with German, Dutch, and French banks also entering the market on a lesser scale. The problems facing prospective investors in the Hungarian market are many and mainly bureaucratic. Another major obstacle seems to be the lack of suitable investment property—many of the prime locations are already owned by investors who are seeing a good return and therefore are under no pressure to sell. Another problem is that the values of much of the real estate are based on an “initial yield attainable” basis, which does not help those who would choose to value on a revisionary basis. Yields in other industrial sectors are currently running from 12 percent to 14 percent, though this should increase in 1996 as the first round of rent reviews take place. In January 1996, the Hungarian Insurance law was revised, bringing the regulatory environment closer to EU thinking on issues such as minimum capital requirements. This should increase the stability of the financial markets.

[c] **Poland**

The Polish economy recorded yet another year of impressive economic expansion in 1995, with GDP growth of close to 5.7 percent, up from 5 percent the previous year. This was by far the best performing economy of the former Eastern bloc countries. There has been increased foreign direct investment in the country. The government is committed to a structural reform of the economy and is pursuing an almost egalitarian transition to free market economics. While unemployment is high, the economy on the whole is on sound footing.

Another reason for the lack of development in these nations is their considerable political uncertainty and lack of basic infrastructure. Warsaw hotels have declined markedly in performance since 1991, as the market has struggled to absorb the plethora of new hotel developments in the city. Occupancy rates, which stood at 70 percent in 1991, fell to 50 percent in 1993. In 1995, the occupancy rates improved, but average rates suffered. While there are a number of proposed new hotels, it is doubtful that they will be built until there is an increase in demand.

[d] **Russia**

Russia has had perhaps the hardest time of the previously communist countries in developing a free market economy. This can be explained to an extent by its sheer size, which has led to a much greater level of economic mobilization. It has suffered countless setbacks in the last few years from political instability and large-scale upheaval. Despite all this, Russia has moved steadily toward attaining a market economy; in 1995, it reduced the contraction of the economy to -4 percent GDP growth—a large improvement on the previous year’s -15 percent. Exports increased in 1995, helped in part by progress made with the government’s privatization program. There has been a large decrease in the rate of inflation in the country, from 843 percent in 1993 to 131 percent in 1995 to a projected 25 percent in 1996. Although this will undoubtedly help the economy, it is a long way from offering the security needed by investors, especially when the currency continues to devalue. The restructuring in the

economy has had the unfortunate effect of increasing unemployment, which has contributed to the general feeling of unrest in the country. In the key cities in Russia, areas in which the first major investments are being made, there is increasing concern about the rise in Mafia-style business tactics and profiteering, which is making the country a high-risk area for new business ventures.

Most of the major development taking place in Russia at present is taking place in Moscow or St Petersburg. In Moscow, the major hotel developments have occurred after 1990, with the notable exceptions of the Savoy, the Metropole, and the National. There is huge potential for development in these two markets, and this has been supported by the rapid absorption of all the new hotels to have opened in the last few years. Between 1991 and 1993, the number of rooms in Moscow increased by 150 percent, with little effect on either occupancy or average rate. In 1995, four- and five-star hotels sustained an average rate in excess of \$230 (U.S. dollars) and an occupancy rate of close to 68 percent. There are a large number of projects on the drawing board at the moment, and the marketplace looks set for a great deal of development during the next few years.

The investment market in Russia is still relatively underdeveloped. It is still very difficult to purchase property in Russia except through the vehicle of a Russian-owned company, and there is extensive and unclear legislation concerning the transfer of title over land. There is also the continuing risk of reappropriation of property, as the nation's commitment to capitalism is far from secure. The financial sector is still in disarray, suffering from both a lack of knowledge and high local financing costs. The number of banks being created is only just capable of keeping up with the number that are going into liquidation. It is almost impossible to ascertain the current yields being achieved by property investments in Moscow and St Petersburg—as there is little if no information available—some estimates put the range between 13 percent and 20 percent.

¶ 22.04 **MIDDLE EAST AND NORTH AFRICA**

[1] **Overview**

Prior to the 1970s, tourism demand in the Middle East was virtually nonexistent. The development of tourism facilities, primarily hotels, occurred in the late 1970s and the early 1980s, partly in response to demand from international travelers looking to capitalize on the wealth generated from oil production. Today, tourism in the region is a small but rapidly growing industry.

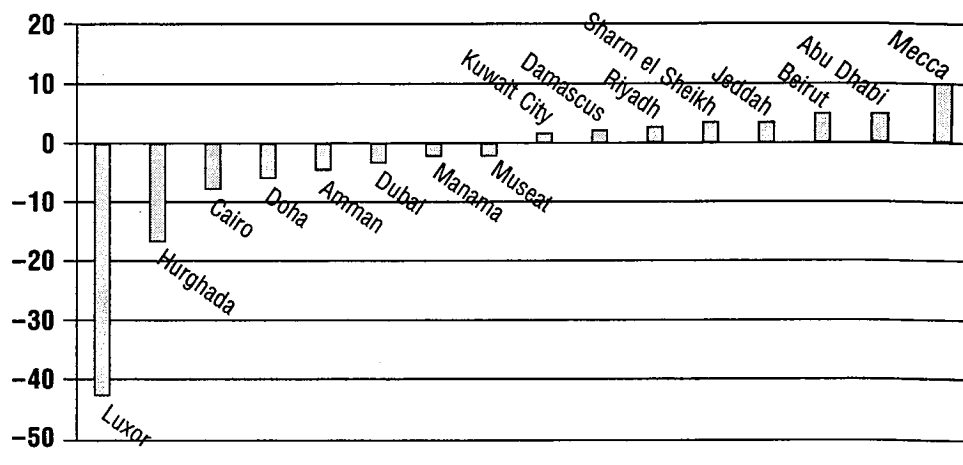
Regional tourism trends show that the Middle East and Africa have experienced above average growth rates compared to the rest of the world (see Exhibit 22-5, Regional Tourism Trends). However, the total increase in the number of visitors to the Middle East and Africa is only 18 million or 9 % of the total tourist increase in the years 1989-1998. In fact, of the top destinations in the world only Tunisia, Egypt, and Saudi Arabia rank in the top 35 (see Exhibit 22-6, Top Destinations World Wide).

[2] **Obstacles to Increased Tourism**

Political instability in the Middle East and North Africa is the major obstacle to increased tourism. Tensions between the State of Israel and its Arab neighbors alone have resulted in numerous conflicts since 1948. Difficulties have arisen between Arab countries—for

Exhibit 22-7 Occupancy %—Point Change 1997–1998

Source: HVS International



[3] Hotel Data

After significant growth after 1994, tourism receipts have leveled off until 1998 (see Exhibit 22-8, Regional Tourism Trends). However, as previously noted the increase has not been even across the board, with the Luxor and Cairo showing large decline in occupancy percent and Mecca showing the largest increase occupancy as a result of decreased tensions with its Arab neighbors.

Exhibit 22-8 Regional Tourism Trends 1989–1998

Source: WTO

Region	Increase in receipts		Average Annual Growth Rate	
	1989–1998 (US\$ bn)	1989–93	1994–98	1989–98
Africa	5.1	8.8%	8.5%	8.7%
Americas	61.1	10.9%	6.2%	8.1%
East Asia/Pacific	39.5	12.0%	3.8%	8.9%
Europe	110.2	9.2%	6.0%	7.7%
South Asia	2.4	7.9%	9.4%	9.3%
Middle East	5.2	6.1%	11.0%	8.9%
WORLD	223.5	10.0%	5.9%	8.1%

1998 has shown that most cities in the Middle East have had a significant drop in Average Room Rates due to overbuilding in Sharm el Sheikh and Hurghada. Cairo, despite a decline in occupancy, has been able to raise its average room rate between 1997 and 1998 (See Exhibit 22-9, Average Room Rate % Change). The better measure of hotel performance is RevPar and Mecca has seen the largest increase as pilgrims return to the holy city in large numbers. The Luxor area is still devastated from terrorist attacks and has seen its RevPar drop over 75% in 1998 from 1997 (see Exhibit 22-10).

Exhibit 22-9 Average Room Rate—% Change 1997–1998

Source: HVS International

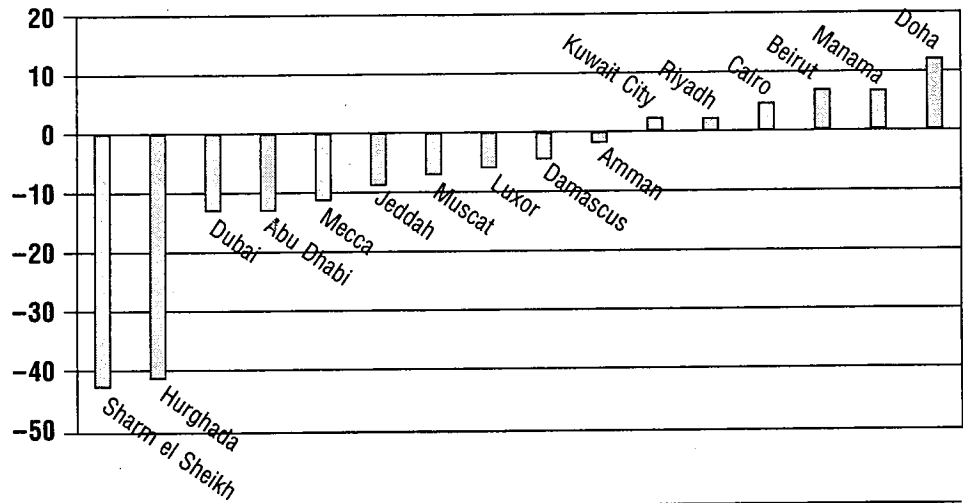
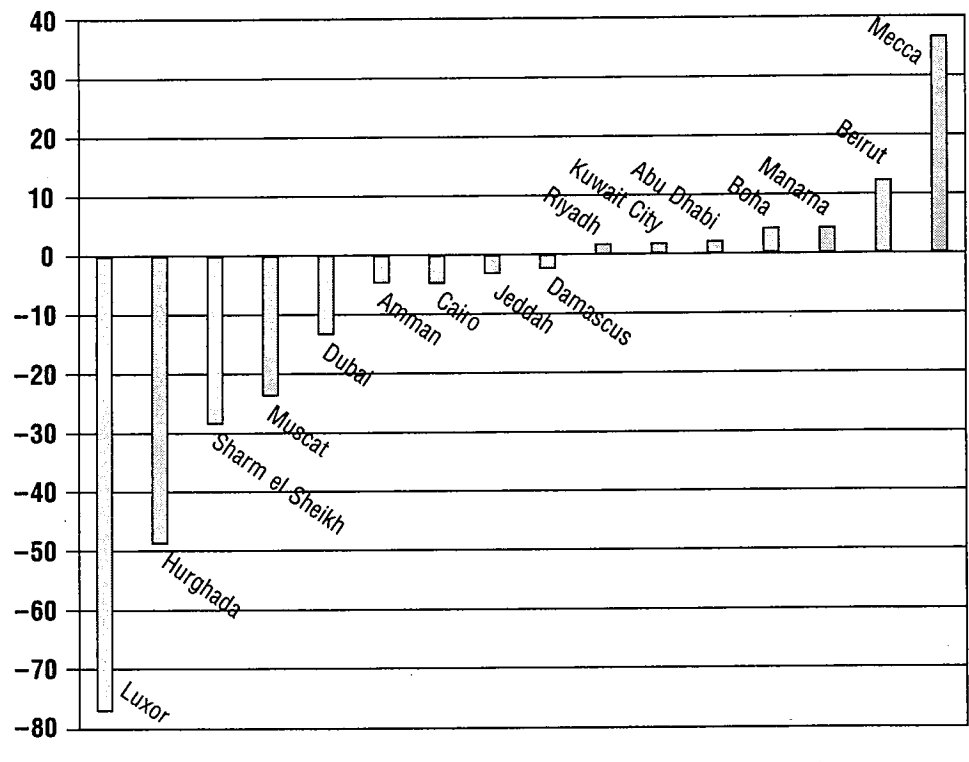


Exhibit 22-10 RevPAR—% Change 1997–1998

Source: HVS International

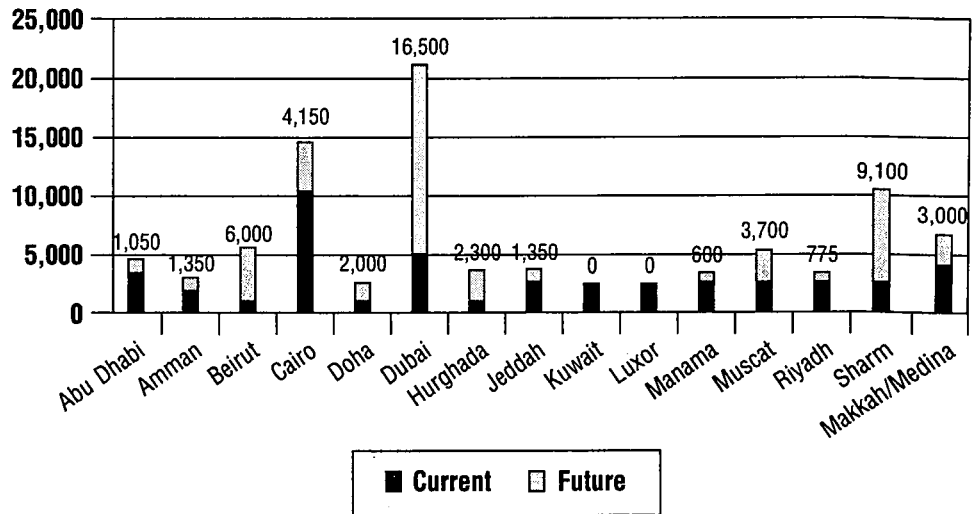


As the area tries to develop its tourist base, a large number of new hotel projects are planned for the future (see Exhibit 22-11, Current and Future Supply). Dubai plans to add over 16,500 rooms in the future in an attempt to become a major tourist destination. It currently has 5,000 rooms and so this would represent a three-fold in-

crease in rooms for an unproven market. Sharm and Makkah/Medina are also planning on an increase in tourist and business travel by planning for 9,100 and 3,000 room increases, respectfully. Beirut, after years of being devastated by civil war is counting on political stability to once again develop its tourism industry that was so important before the civil war by adding over 6,000 rooms in the future. Cairo is also planning to add over 4,000 rooms as it seeks peace with its fundamentalist minority.

Exhibit 22-11 Current and Future Supply

Source: HVS International



¶ 22.05 **COUNTRIES OF THE MIDDLE EAST AND NORTH AFRICA**

[1] **Bahrain**

Tourism continues to be seen as one of the sectors of the economy that will help the island become less dependent on oil revenues. Tourism revenues reached \$213 million in 1993, up 20 percent from 1992, while the number of tourist arrivals stabilized at around 1.5 million. Despite the lack of archaeological attractions and the small size of the island, Bahrain was the fifth most popular tourist destination in the Middle East and North Africa in terms of total number of tourists in 1993, capturing 8.4 percent of total arrivals. The popularity of Bahrain is the result of improved road communication with Saudi Arabia via the King Fahad Causeway. Arrivals from Saudi Arabia and other Middle Eastern countries accounted for more than 80 percent of total arrivals in 1993.

Currently, the government's effort to promote tourism-related projects relies essentially on private initiative, rather than public-sector finance. Such projects include the construction of two golf courses and two conference centers as well as the recent completion of the airport extension, which enables the airport to handle up to 10 million passengers per year.

The up-market hotels in Manama City are all operated by international hotel companies, such as Sheraton, Inter-Continental, Hilton International, Forte, Holiday Inn and, more recently, Meridien (1994). Marriott and Oberoi hotels are expected to enter the market in the future.

Commercial business accounts for 65 percent of the up-market room nights in Manama City, while 25 percent is generated by government-related travelers and meeting attendees. The remaining 10 percent consists of individual leisure tourists, primarily from Saudi Arabia.

The government is actively promoting tourism to attract a larger share of tourists from other Middle Eastern countries (particularly Saudi Arabia) as well as Europe and the Far East. Provided that public funding is available to finance the necessary tourist infrastructure, Bahrain should be well positioned to capture more international visitors in the future.

[2] Egypt

Future economic policy will be influenced by Egypt's commitments under the IMF Extended Fund Facility (EFF) accorded in September, 1993. A positive review by the Fund will allow a debt write-off of \$4 billion. The government wants to maintain a strong pound in order to prevent capital flight and preserve business confidence. The economic reforms implemented so far should pay off in the form of strong and sustainable growth and declines in consumer prices, which in turn should provide real benefit to Egypt's impoverished population. This should also help to reduce support among the population for the religious fundamentalists. Privatization of state-owned assets is continuing, through limited-share floatations of the 300 or so public enterprises. The government is attempting to tap small investors' savings rather than attract large private investors and thereby maintain control of the public companies while strengthening the sector with private capital.

Despite continuing terrorist activity, Egypt remains one of the leading tourist destinations in the Middle East and North Africa. Egypt captured 2.3 million, or 13 percent, of the total tourist arrivals in the region in 1994; only Morocco and Tunisia attracted more tourists in the same year. The annual compound growth rate of tourist arrivals to Egypt from 1984 to 1994 was 4.2 percent. Preliminary figures for 1995 indicate an increase in the number of tourists by some 21 percent over 1994 figures. Tourism revenue in 1993 was only \$1.3 billion (3.6 percent of GDP), down from the record level of \$2.7 billion (7.7 percent of GDP) in 1992. Europe (primarily the U.K., Germany, France, and Italy) continues to be the principal feeder market with 48 percent of total arrivals, followed by other Middle Eastern countries with 30 percent of total arrivals. The supply of hotels in Egypt has increased by 8.7 percent between 1989 and 1993, with the development activity concentrated in the new tourist destinations along the Red Sea.

The presence of international hotel companies in the up-market category of the four major markets in Egypt—Cairo, Hurghada, Luxor, and Sharm el Sheikh—is well established. Cairo continues to be one of the main financial and commercial centers in the Middle East and attracts an even mixture of business and leisure travelers. Luxor, with its numerous Pharaonic artifacts, has always been a primary destination for tourists. Egypt's popularity as a winter sun destination is increasing every year.

The most significant factor affecting the economic future of Egypt is the return of international tourism demand, once the threat posed by religious fundamentalists is perceived to have lessened. While prospects for growth in business travel to Egypt are good, the confidence of international investors in the country's economy is closely linked to the future development of tourism. The current development of hotels along the Red Sea is likely to attract a large and previously untapped tourist market to Egypt.

[3] Israel

The majority of tourists to Israel originate from Europe (approximately 60 percent) and North America (25 percent). Beside the negative impact of regional instability, Israel's penetration of source markets around the world has also been limited in the past by Israel's restricted global access and the relatively high cost of travel to and from the country. However, Israel's accessibility has improved significantly in the past two years, following El Al's inauguration of several Far Eastern routes—including Beijing, Bangkok (via Bombay) and Hong Kong—and the Israeli government's implementation of a new "open skies" policy in March 1994, which has brought about a widespread deregulation of the industry. Another important event was the June 1994 agreement between Israel and the Vatican to establish full diplomatic relations. This has resulted in a rapid increase in the number of Christian travelers visiting the numerous religious sites in Israel.

Jerusalem has always been the focal point of tourism in Israel. A recent Ministry of Tourism survey estimates that 91 percent of all tourists who come to Israel visit Jerusalem during the course of their stay. In order to meet the growing commercial and leisure demand, the local municipal and tourism authorities have plans to build an additional 10,000 hotel rooms in the city by the end of the decade.

Tel Aviv is the commercial and industrial heart of Israel. Today, the Tel Aviv "hotel strip" is a row of dated concrete high-rise properties that blight the scenic Mediterranean coastline. However, with several new international hotels in the planning and construction stages, existing hotels are preparing for the new competition. The new 550-room Inter-Continental Hotel, currently under construction and scheduled to open in 1997, represents the first new-build hotel in the city since 1981. Although there are several projects, including a Hyatt, in the planning stages, further additions to supply are likely to be constrained by the lack of available land and spiraling real estate values, which favor non-hotel development.

Eilat has been the site of most of the new hotel construction in Israel in recent years. Today, the resort has more than 5,500 hotel rooms, with a further 5,000 to 6,000 in the planning or construction stage. Eilat's real strengths as a resort are its short-haul proximity (a four- to five-hour flight) from the main tourism-generating countries in Europe and its guaranteed year-round sunshine.

Despite impressive growth in international visitors to Eilat in 1994, market occupancies have been hurt by the opening of several new hotels and an exodus of Israeli vacationers to Turkey, where prices are considerably cheaper. Although Eilat is presently the most developed resort on the Red Sea, it faces stiff competition from the rapidly growing and substantially cheaper Egyptian resorts of Sharm el Sheikh and Hurghada.

The increased interest in Israel as a tourist destination, coupled with the prospect of a lasting peace agreement, could significantly increase the number of leisure, religious, convention, and commercial visitors to the country.

[4] Jordan

The dramatic improvement in Jordanian-Israeli relations has already brought Amman economic dividends in the form of debt relief of approximately \$900 million. The mini-boom that Jordan experienced after the Gulf crisis continued in 1994. However, the economy has more recently been constrained by the embargo on Iraq, which is one of Jordan's largest trading partners. The government has announced 121 infrastructure projects aimed at developing the domestic economy and fostering economic cooperation in the region. Special attention has been given to the development of the

Jordan Rift Valley, the creation of a free trade zone in Aqaba and Eilat, and the joint promotion of tourism in the region.

Political instability in the Middle East has historically denied the Jordanian tourism industry the chance to develop to its full potential. Since 1992, however, the number of tourist arrivals has grown rapidly, recording an increase of 15.4 percent in 1993 and 11.6 percent in 1994. Much of this has come from cross-border tourism with Israel. Tourism receipts accounted for \$563 million in 1993, representing an 11 percent contribution to GDP. Visitors from Middle Eastern countries dominate the total number of international arrivals. However, when only leisure travelers are considered, tourists from Europe represent the largest market. For the past three years, Italy (28 percent) has been the largest feeder market, followed by the U.K. (17 percent) and Germany (16 percent).

Recently, plans for several hotels in Amman have been announced. Also, the city of Petra has drawn substantial interest from both local investors and international hotel companies and it is expected that, in the next two to three years, between 800 and 1,000 rooms will be added to the existing supply. Several other hotel projects at various planning stages are currently rumored along the Dead Sea and in Aqaba.

[5] Kuwait

Kuwait continues to attract a small number of commercial travelers and almost no leisure tourists. According to the WTO, there were only 73,000 arrivals in 1993. Kuwait has not actively encouraged tourism, although some hotels are attempting to promote weekend/short-break packages targeted at guests from neighboring Middle Eastern countries. In addition, commercial demand has not reached pre-invasion levels because of the continuing threat posed by Iraq. Nearly all visitors (81 percent) to Kuwait are from Middle Eastern countries. Despite the lack of new additions to the current stock of up-market hotels, the Kuwaiti hoteliers do not envisage growth in demand in the short-term.

ADRs in Kuwait City continue to be among the highest in the Middle East and North Africa and reached \$175 in 1994 as a direct result of actions taken by the Kuwaiti Hotel Owners Association, which has set a minimum charge for up-market hotels. In 1995, this rate was reduced as the market was forced to become more competitive in order to attract business. However the results of such high average rates can be clearly seen in the occupancy levels. Business and government travelers represent more than 95 percent of total room night demand in the up-market hotels; the remaining 2 percent is generated from individual leisure travelers.

Despite the promotion of short breaks and weekend packages, the tourism segment is not expected to become a major source of demand for hotels in Kuwait City. Hotels are expected to continue to depend largely on government and business travelers for the vast majority of their business. Given the current low occupancy levels, no new up-market hotels are expected to enter the market.

[6] Lebanon

Prior to the civil war, Lebanon was known as the "Switzerland of the Middle East," attracting large volumes of both business and leisure travelers. The country offered a diverse range of tourist attractions, from skiing in the mountains to swimming in the Mediterranean. Today, Beirut remains the capital and the main economic, political, and social center of the country. The stock of hotels in Lebanon has been drastically

reduced in comparison with pre-civil war levels. Today, the entire country has some 4,000 rooms, whereas in the 1970s, Beirut alone had 7,000 rooms.

Currently, there are only a few high-standard hotels operating in Beirut and, because of this, business travelers are forced to pay room rates well in excess of \$125 for standard accommodation. These hotels achieve an occupancy of between 50 percent to 60 percent. Improvements in the overall transient accommodation are expected with the addition of new up-market hotel rooms as well as the reconstruction of damaged hotel properties.

Two tourism-related projects are being sponsored by the government: one is a leisure complex including a casino, a theater, and restaurant outlets; the other is a project for a 500-room hotel with a 1,000-seat conference center, likely to be operated by an international hotel company.

[7] Morocco

The tourism industry in Morocco generates more than \$1.2 billion, more than 4 percent of the country's GDP in 1993. The major locations of tourism and business interest in Morocco are Rabat, Casablanca, and Marrakech. The capital, Rabat, has only a limited supply of hotels offering international standard accommodation. Casablanca, one of the largest hotel markets in Morocco, is the commercial and financial center of the country. Marrakech is considered to be Morocco's most developed and popular tourist destination; however, its up-market hotels are suffering from a degree of oversupply.

Morocco is expected to remain the leading country in terms of volume of tourists in the region, because of its wide variety of tourist attractions and strong commitment by its government toward the sector. The current privatization program represents a good opportunity for potential investors to gain a foothold in a lucrative market. The long-term challenge for Morocco will be to maintain its unique image and ADR in the face of ever-increasing competition.

[8] Oman

Tourism continues to represent a minimal portion of the national economy, accounting for 1 percent of GNP in 1993. The number of tourist arrivals to the Sultanate was 2 percent of the total number of tourist arrivals to the region in the same year. In contrast with the majority of other Gulf states, however, the largest proportion (approximately 30 percent) of visitors to Oman were from European countries, while arrivals from other Middle Eastern countries averaged only 13 percent per annum. Most of the international arrivals in Oman were business travelers. The government is actively involved in the promotion of the Sultanate's other tourism attractions, such as Nizwa, Rustaq, Mudarib Sur and Salah. It is expected that Oman will continue to attract only a small number of international visitors in the future, both for social reasons as well as the fact that the country's infrastructure is not capable of handling mass tourism at present.

The up-market hotel sector in Muscat has experienced an increase of nearly 10 occupancy points between 1993 and 1994, and a further 2 percentage points in 1995, while ADR has increased \$9 in the last two years. The local up-market hotels are expected to see more competition as a result of the addition of the 250-room, five-star Hyatt hotel in 1995. Approximately 60 percent of the room nights in Muscat are generated by corporate and government-related travelers. The remainder is made up of

airline crews (27 percent), leisure travelers (10 percent), and conference attendees (3 percent).

The Sultanate is making an effort to attract more leisure visitors both from other Middle Eastern countries and from Europe. However, the limited tourism infrastructure will prevent Oman from being able to handle large volumes of leisure travelers in the short term. Business travel related to the oil and gas industries is expected to remain the largest market for the local hotel industry.

[9] Palestinian Areas

Because of political and economic problems, demand for hotel accommodation is extremely limited from the commercial sector and nonexistent from the leisure sector. The supply of hotels in the Gaza Strip is limited to small lodging facilities, which account for a total of 92 rooms. Most of the government and commercial travelers are displaced to either Tel Aviv or Jerusalem. The existing hotels are generally outdated and do not provide facilities of an international standard.

It is envisaged that hotel demand in the Palestinian Areas will be dependent almost entirely on the redevelopment efforts in the area, at least in the short term. In fact, the numerous infrastructure projects planned for the area are expected to generate a considerable flow of travelers to the Gaza Strip and the West Bank. Reported published rates for double rooms in the local hotels range from \$50 to \$80. Plans are currently in place to start construction on the first international standard four- to five-star hotel in Gaza City. The 275-room hotel will be located approximately 2.5 kilometers from the city center and will be managed by Marriott Hotels.

[10] Qatar

In the past, the development of the tourism sector has not been a priority for the Qatari government, and, as a result, there is little official information on the contribution of tourism to the national income.

In 1993, an estimated 160,000 tourists arrived in Qatar, an increase of more than 13 percent compared to 1992. In 1994 it is estimated that 172,000 tourists visited Qatar. This represents less than 1 percent of the total number of international travelers visiting the Middle East and North Africa as a whole. Although the Qatari government has recently started attending international travel shows to attract tour operators to the country, future growth will revolve around business travelers, particularly those involved in the oil and gas industries.

The up-market hotels in Doha registered an occupancy of 75 percent in 1995, up from 61 percent in 1994, while the ADR increased by \$3. The Doha area has had an increase in business travelers since the Gulf War, largely because of increased activities in the oil and gas industries. Approximately 70 percent of room nights in the up-market hotels were bought by business and government-related travelers, 20 percent by airline crews, and 10 percent by leisure visitors and conference attendees.

Although Qatar has not actively tried to attract leisure travelers in the past, it has recently started, albeit in a limited way, to encourage international tourists to some of its beach resorts. Sporting events are also expected to generate leisure tourism, specifically from Middle Eastern countries and other Arab states.

[11] Saudi Arabia

International tourism continues to be limited in Saudi Arabia, with strict visa requirements making it virtually impossible to visit the country for leisure purposes. There are very limited tourist statistics available, and only recently has some official data been published. However, the kingdom does attract a massive annual pilgrimage, being the keeper of the Islamic holy sites Mecca and Medina. In 1993, there were an estimated two million international arrivals, of which the majority were Muslim visitors to the holy sites.

Principal destinations remain the capital city, Riyadh, the commercial city, Jeddah, and the holy cities of Mecca and Medina. Jeddah is the financial and commercial center as well as the main leisure destination. Seven hotels currently under construction will be operated by international hotel chains.

Non-pilgrimage tourist demand in Saudi Arabia will continue to be dominated by business travelers. Saudi Arabia will also follow the Middle Eastern trend of attracting more intra-regional travelers.

[12] Syria

The tourism industry offers a small contribution to GDP, accounting for an estimated 2 percent of the national wealth and only 4.1 percent of total international tourist arrivals to the Middle East and North Africa in 1993. This limited contribution can be partly attributed to the government's lack of international tourism promotion. The country's political stance has also been a strong deterrent to investments in tourism, despite the abundance of unexploited archaeological and historical sites in the country. The poor tourist-related infrastructure, the limited supply of Western-standard hotels, and the country's historic isolation from the West have disinclined international tourists from visiting Syria.

Damascus remains the focus of any future growth in tourism. Over 70 percent of the estimated 700,000 visitors to Syria arrive from other Middle Eastern countries, while Europe, the second largest geographic market, represents only 15 percent of total tourists.

The supply of up-market hotels in Damascus is very small in comparison with other capital cities in the region. Despite the drop in occupancy rates from 1993 to 1994, occupancy totals in Damascus are still among the highest in the region, primarily because of limited competition.

Syria has tremendous potential for tourism development, having a diverse geography of deserts, mountains, and seashores rich in historical significance, and there is an increased level of interest among major international hotel chains in Damascus. However, a significant influx of international tourists will not occur until Syria is perceived to be a more open and inviting destination.

[13] Tunisia

Tourism is a growing sector of the economy, accounting for more than 7 percent of total GDP in 1993, despite Tunisia's proximity to troubled Algeria and isolated Libya. The tourism industry in Tunisia is concentrated on less than 100 kilometers of the country's 1,300 kilometers of coastline, with the major share of investment concentrated in the resort areas of Hammamet/Nabuel, Sousse/Monastir, and the island of Jerba. Germany is by far the largest feeder market, followed by France, the U.K. and Italy. Europe accounted for 55 percent and Africa 23 percent of total tourist arrivals

in 1993. The continuing popularity of Tunisia as a tourism destination has spurred considerable investment in new hotel development, primarily along the coast.

Tunis and Hammamet are the major locations of tourism and business interest in Tunisia. Tunis has a limited supply of hotel rooms, dominated by Hilton, Meridien, and the domestic chain, Abou Nawas. Despite being the largest resort in Tunisia, Hammamet has only one property operated by an international hotel company, Sheraton.

The low occupancy levels achieved by hotels in Tunis and Hammamet in 1990 and 1991 were a direct result of the Gulf War. The business segment is the largest demand segment in Tunis (85 percent), with the balance made up by leisure groups and airline crews. In contrast, Hammamet hotels derive 85 percent of their demand from the tour operator market, and the balance from individual leisure travelers and incentive/conference business. ADR in Tunis hotels has stabilized at close to \$60 since 1992. However, in Hammamet, a price war among local hotels and an increased supply of hotels has meant that ADRs have constantly dropped since 1992.

[14] United Arab Emirates

The United Arab Emirates (UAE) has experienced a greater amount of tourism development during the past three years than any other nation in the Arabian Peninsula. Although Abu Dhabi is both the wealthiest emirate and the capital of the UAE, Dubai has the larger tourism market, with three golf courses, a race track, and a marina. Arrivals to Dubai now account for more than 6 percent of total tourists in the Middle East and North Africa. Although visitors from Middle East countries still represent the majority of visitors to Dubai (37 percent including UAE nationals), the share of Europeans increased from 20 percent in 1992 to 27 percent in 1993. An estimated 71,000 tourists from the former Soviet Union visited Dubai in 1993 and, although considered tourists, many of them visited the emirate to take advantage of Dubai's low consumer prices.

The uplift in occupancy in up-market hotels in Abu Dhabi was moderated by recent supply increases. Despite an increase in room supply, Dubai hotels achieved one of the highest occupancies in the Middle East and North Africa in 1994, with 74 percent, up from just 70 percent in 1993. It is expected, however, that occupancy will remain relatively flat or decline slightly in both Dubai and Abu Dhabi during the next few years to absorb the new supply. In addition, increased competition will be generated by small residence hotels (sixty to eighty rooms) catering to extended-stay guests who normally stay in up-market full service hotels.

While the UAE will capture more visitors in the future, Dubai will continue to be the dominant market, attracting both business travelers and an increasing number of leisure tourists traveling on package holidays. Given the significant level of recent hotel construction, as well as the development of more hotels in both Dubai and Abu Dhabi, it remains to be seen whether demand will be able to keep up with supply.

[15] Yemen

The tourism contribution to the national economy in Yemen accounts for less than 0.3 percent of GDP. The number of visitor arrivals has remained stable between 1992 and 1993 and dropped in 1994 as a result of a civil war. European nationals are by far the largest portion of visitor arrivals, accounting for 64 percent of the total. With the government's recent focus on oil exploration, the vast majority of European travelers in Yemen are business travelers to Sana'a or Aden. The lack of tourism infrastructure and the unstable political environment means that significant volumes of leisure trav-

elers are unlikely to visit the country in the near future. The presence of international hotel chains is very limited, with only Sheraton, Taj, and Movenpick currently represented. Holiday Inn will soon manage a 200-room hotel in Aden.

The lack of leisure tourist infrastructure, combined with the unstable political environment, will prevent Yemen from attracting many leisure tourists in the foreseeable future. Any growth in the number of visitors will continue to be generated primarily from commercial business travelers seeking opportunities in the country's growing oil and gas explorations.

¶ 22.06 **ASIAN MARKETS VALUES**

[1] **Hotel Values 1993 to 1997**

In general, the strong growth of the economies in Asia, prior to 1997, had a positive impact on the performance of hotels throughout the region. In many instances, occupancy levels continued to grow as demand outpaced new supply. At the same time, hotels are able to increase their rates, overall profitability and, subsequently, their asset values. This upward trend in most markets is clearly demonstrated by the increases in hotel values from 1993 to 1996 (see Exhibit 22-12 and Exhibit 22-13).

Exhibit 22-12 Asian HVI in US\$ Ranked by Index in 1997

Source: HVS International

	1993	1994	1995	1996	1997
Hong Kong	1.620	1.989	2.616	2.861	2.221
Tokyo	2.769	2.484	2.603	2.300	1.984
Average	1.000	1.114	1.265	1.298	1.158
Singapore	1.113	1.298	1.626	1.463	1.134
Seoul	0.912	1.230	2.009	1.492	1.119
Mumbai	0.872	1.077	1.484	1.319	1.004
Shanghai	0.667	0.884	1.215	1.096	0.947
Beijing	0.599	0.816	1.142	0.973	0.789
Jakarta	0.912	0.880	1.009	0.973	0.778
Manila	0.482	0.530	0.644	0.890	0.778
Bali	0.434	0.539	0.612	0.655	0.599
Bangkok	.0792	0.892	1.174	0.960	0.578
Kuala Lumpur	0.828	0.743	1.119	0.989	0.477

Between 1993 and 1996, values throughout the region increased by 30% on average. Manila recorded the strongest increase at 80%, closely followed by Hong Kong at 72%. During the period, the only city to show a value decline was Tokyo (at minus 19%), reflecting Japan's prolonged recession.

In the middle of 1997, this strong performance was interrupted by the onset of turmoil in the Asian economies. Sharply declining occupancy levels and room rates caused hotel values to decline by 11% on average in 1997, Kuala Lumpur experienced the most significant drop of almost 45%, followed by Bangkok at 31%. With

the exception of Bali and Manila, all other markets saw a decrease in hotel values during 1997.

By the end of 1997, only hotel values in Hong Kong, Tokyo, Singapore, and Seoul continued to remain above the Asian Average of around US\$288,250 per room. This figure is only slightly above the Asian-wide average of US\$277,000 achieved in 1994, and is significantly below the Asian-wide average of US\$314,000 achieved in 1995, indicating the severe impact of the economic turmoil on hotel values in Asia in 1997.

Exhibit 22-13 Hotel Values per Room in US\$ Ranked by Value in 1997

Source: HVS International

	1993	1994	% Change	1995	% Change	1996	% Change	1997	% Change
Hong Kong	403,000	495,000	22.8%	573,000	15.8%	694,000	21.1%	619,000	-10.8%
Tokyo	689,000	618,000	-10.3	570,000	-7.8	558,000	-2.1	553,000	-0.9
Singapore	277,000	323,000	16.6	356,000	10.2	355,000	-0.3	316,000	-11.0
Seoul	227,000	306,000	34.8	440,000	43.8	362,000	-17.7	312,000	-13.8
Mumbai	217,000	268,000	23.5	325,000	21.3	320,000	-1.5	280,000	-12.5
Shanghai	166,000	220,000	32.5	266,000	20.9	266,000	0.0	264,000	-0.8
Beijing	149,000	203,000	36.2	250,000	23.2	236,000	-5.6	220,000	-6.8
Jakarta	227,000	219,000	-3.5	221,000	0.9	236,000	6.8	217,000	-8.1
Manila	120,000	132,000	10.0	141,000	6.8	216,000	53.2	217,000	0.5
Bali	108,000	134,000	24.1	134,000	0.0	159,000	18.7	167,000	5.0
Bangkok	197,000	222,000	12.7	257,000	15.8	233,000	-9.3	161,000	-30.9
Kuala Lumpur	206,000	185,000	-10.2	245,000	32.4	240,000	-2.0	133,000	-44.6

[2] Hotel Values 1998

More recent statistics show a further and more dramatic decrease in hotel values throughout the region during the first half of 1998. On average, values have declined by approximately 20%. All markets—with the exception of Seoul, Shanghai, Singapore, Manila, Mumbai, and Tokyo—have shown a decline in excess of 20 percent, with Hong Kong and Jakarta experiencing a decrease of greater than 40%. Bangkok is the only market in which hotel values have increased in 1998 (see Exhibit 22-14).

On average, hotel values have declined by approximately 27% since their peak (see Exhibit 22-15). Interestingly, in most markets, values peaked at the end of 1995 and started to decline before the economic crisis, primarily as a consequence of rising supply. The markets that have witnessed the greatest value declines are Kuala Lumpur (58%), Jakarta (48%), and Hong Kong (47%). Manila has only seen a decline of 7%.

While values have shown dramatic declines, to-date there is little or no evidence of sales occurring at these levels. Even prior to the economic crisis, very few significant sales of hotels occurred. Most activity was focused on new developments rather than the acquisition of existing properties. Partly as a consequence of ineffective bankruptcy laws, as well as the long-term view taken by most Asian investors, so far very few hotels have been offered for sale at realistic current values. HVS's analysis has shown that Asian hotels are currently trading at historically low values, but there are few true opportunities to actually capitalize on these depressed levels.

Exhibit 22-14 Value per Room Comparison in US\$ (December 1997 and July 1998)

Source: HVS International

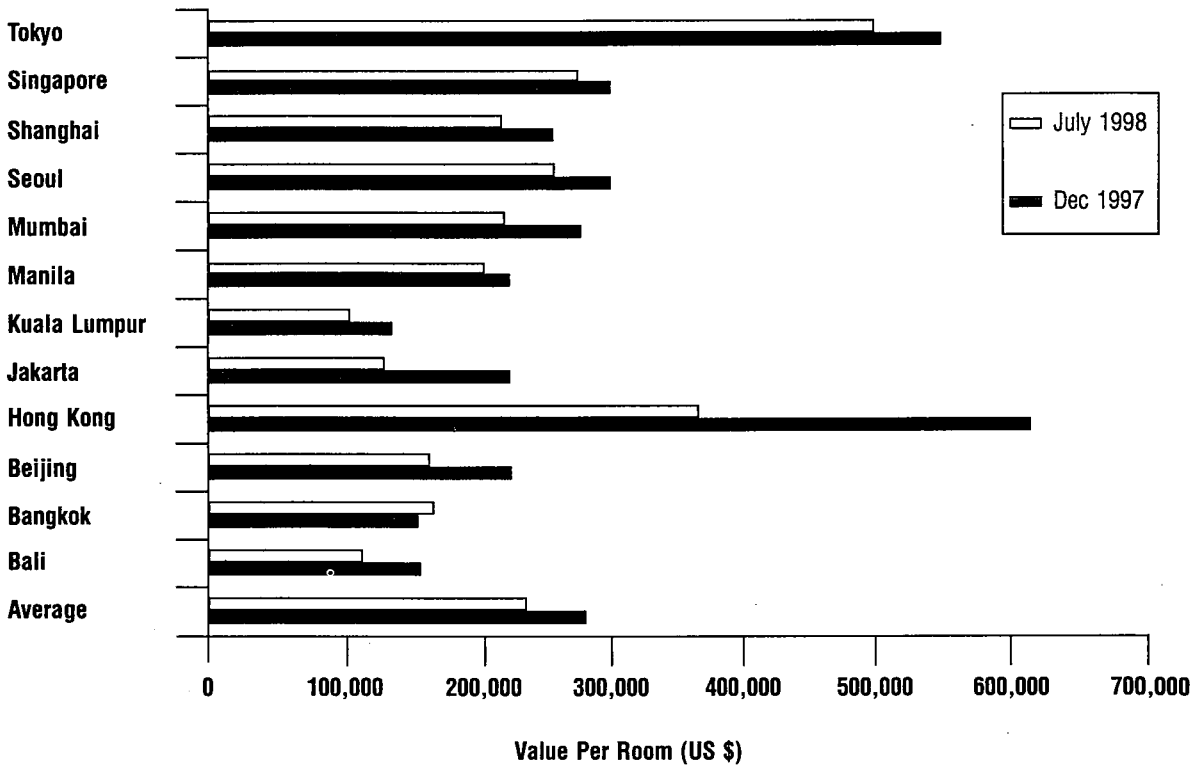
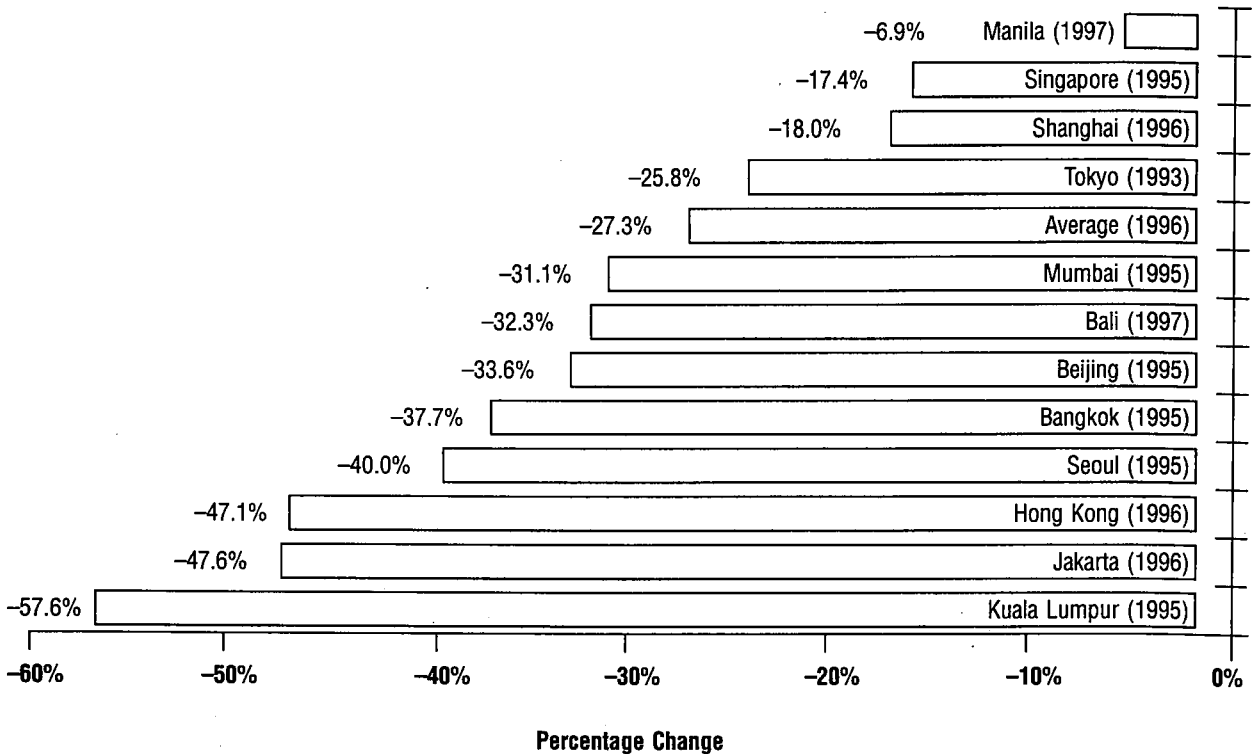


Exhibit 22-15 Percentage Change from Peak Value

Source: HVS International



¶ 22.07 **THE ASIAN COUNTRIES**

[1] **JAKARTA AND BALI, INDONESIA**

Although occupancies increased annually in Jakarta during the period 1993 to 1996, increased competition as a result of new supply limited increased in room rates, keeping room yields relatively stable. By the end of 1997, the economic crisis and the devaluation of the rupiah caused domestic social unrest and political riots in Jakarta and other parts of Indonesia, severely affecting both national and international demand. Hotel values dropped in 1997 after peaking in 1996.

As supply has remained relatively stable during the last four years, hotels in Bali have benefited from rising occupancy levels and average room rates. The combination of new supply and travelers' growing negative perceptions of Indonesia resulted in a drop in room yields during the first part of 1998.

After the stepping down of the former President Suharto in early 1998, the country accepted the IMF package to rescue the national banking system and economy. Among other plans, the government has introduced new legislation empowering banks to foreclosure more easily on defaulting borrowers, allowing transactions to take place more quickly than before.

Although the immediate economic outlook for Indonesia is improving in-line with the implementation of new laws and strengthening of the rupiah, hotel room yields are expected to increase only marginally, as new supply in both markets is likely to dilute any future demand growth. Hotel values are not expected to increase within the next 12 months.

[2] **Hong Kong**

Strong demand growth and significant annual occupancy and average room rate growth during 1994 to 1996. As a result, profitability increased and asset values peaked in 1996. The strong dependence of Hong Kong on travelers from other Asian countries was felt strongly as soon as the currencies of feeder markets were devalued during 1997, when hotel occupancies dropped by almost 10% and average room rates declined significantly.

Although occupancy levels have started to recover, average room rates are still far below the 1996 levels, making it unlikely that Hong Kong will see pre-crisis hotel values for some time.

[3] **Beijing and Shanghai, PR of China**

Although hotel values in Beijing and Shanghai peaked in 1996, average room rates and occupancy levels remained relatively stable during the period from 1995 to 1997. New supply only marginally affected occupancy and average room rate levels in both cities.

More recent statistics for both markets show a further decline in room yields, causing values to drop during the first part of 1998. The envisaged opening of new hotels, in combination with the persistent economic crisis in Asia, is expected to have a further negative effect on hotel values which are unlikely to reach 1996 levels within the foreseeable future.

[4] Kuala Lumpur, Malaysia

A two-month haze caused by the burning of land by Indonesian farmers, combined with new supply, the general economic downturn, and subsequent devaluation of the ringgit caused occupancy and average room rates to decline during the first seven months of 1998. New supply and the current political problems in Malaysia are expected to depress the performance of hotels further and a recovery of hotel values in the immediate future is unlikely.

[5] Mumbai, India

Hotel values in the five-star deluxe segment in Mumbai peaked in 1995 and have declined since. Although the average room rate continued to increase in 1996 and thereafter, as higher paying international business travelers replaced some domestic demand, hotel occupancies started to decline in 1996, mainly as a result of the slowdown in the domestic economy. With new supply envisaged to enter the market within the next five years, hotel values are not expected to reach 1995 levels within the immediate future.

[6] Seoul, South Korea

Hotel values in Seoul peaked in 1995 and fell by almost 18% in 1996, due to a substantial decline in occupancies and average room rates. This downturn was caused primarily by the instability of the Korean economy and, to some extent, by the opening of the Ritz Carlton Hotel in 1995. Although no new supply has been added to the market since 1995, domestic economic difficulties and the depreciation of the won caused a further deterioration in the performance of the local hotel market during the latter part of 1997.

Like Indonesia and Thailand, South Korea accepted a bailout program from the IMF in order to restructure the banking system and to improve the domestic economy. As no substantial new supply is envisaged to enter the market within the next 12 months, the performance of the existing hotels is expected to improve as soon as the economy starts to benefit from the IMF aid plan and the won regains strength. We expect hotel values to start to increase over the next 12 months. However, the market is vulnerable to the potential recession considering a number of previous postponed hotel projects.

[7] Tokyo, Japan

Unlike other Asian countries, Japan entered a recession in the early 1990s. Subsequently, hotel values have fluctuated in-line with the decline in room yields and net income. Tokyo hotel values achieved their highest level in the early 1990s and have declined every year since 1993.

As the Japanese economy depends on other Asian economies to a large extent, hotel values are not expected to increase within the foreseeable future. However, any improvement in the Japanese economy is likely to have a positive effect on hotel values as limited supply is envisaged to enter market.

[8] Singapore

A relatively stable supply of Singaporean hotels in the 'very large' (more than 601 rooms) hotel segment allowed occupancy and average room rate levels to increase annually during 1993 to 1996. After hotel values peaked in 1996, the 1997 general economic downturn in Asia and the dependence of Singapore on travelers from other Asian countries resulted in a decline in room yields, causing values to fall for the first time in 1997.

Although significant new supply is expected to enter the Singapore hotel market, this will be limited mainly to smaller or lower grade hotels. Nevertheless, the incidence of business travelers trading down to lower classified hotels is likely to affect the occupancy growth of the very large hotels. However, we expect the average room rate levels to be broadly maintained. Although we expect hotel values to increase slightly over the next 12 months, as more people start to travel to Singapore again, we consider that the increase will be modest.

[9] Manila, Philippines

Although occupancy levels started to fall in 1997 for the first time in several years, average room rates continued to grow as Manila benefited from strong commercial demand and no new supply; hence, hotel values in greater Manila peaked in 1997.

New room supply, further depreciation of the peso, together with the overall economic crisis in Asia are all expected to depress the performance of hotels in Manila further. Although we expect demand for hotel accommodation to increase, new supply is likely to dilute this demand growth. Therefore, we expect hotel values to fall slightly or to stabilize at current levels during the next 12 months.

[10] Bangkok, Thailand

Up until early 1996, little new supply allowed occupancy levels, average room rates and, subsequently, hotel values to increase year-on-year. Although average room rate levels continued to grow, the market-wide occupancy started to fall in 1996, mainly as a result of new supply, causing hotel values to drop for the first time during the 1990s.

The collapse of the Thai economy and the subsequent devaluation of the baht, together with the general downfall of Asian economies, cause occupancies and average room rates to decrease in Bangkok during the latter part of 1997 and early 1998. More recent statistics, however, show a marginal increase in visitation, hence occupancies and average room rates have increased slightly during the last few months. As only limited new supply is envisaged, and a further sterilization of the Thai economy and strengthening of the baht as a result of the IMF rescue package is anticipated, we expect hotel values to continue to increase within the next 12 months.

CHAPTER 23

Analysis of Casino Gaming

¶ 23.01 Overview of Gambling	23-2	[b] Tour and Travel Demand	23-20
[1] Gross Wagering and Revenue Trends	23-3	[c] Leisure Demand	23-21
[2] Gross Wagering by State	23-3	[2] Win per Unit per Day (WPUPD)	23-21
EXHIBIT 23-1 Trends in Gross Wagering (Handle) and Gross Revenue (Win), 1982–1993	23-4	EXHIBIT 23-7 Analysis of Cripple Stream Gaming Market	23-22
EXHIBIT 23-2 1994 Gross Wagering by State	23-6	EXHIBIT 23-8 Analysis of Supply and Demand Trends	23-23
[3] Table Game and Device Analysis by Market	23-8	¶ 23.05 Forecast of Gaming Win	23-24
[4] Publicly Traded Gaming Corporations	23-8	[1] Step One—Fair Share	23-24
EXHIBIT 23-3 Table Game and Device Analysis by Market	23-9	[2] Step Two—Forecasting Marketwide Gaming Revenue	23-24
EXHIBIT 23-4 Publicly Traded Gaming Corporations	23-10	EXHIBIT 23-9 Projected Marketwide Gaming Inventory and Calculated Fair Share	23-25
[5] Consumer Profile and Feeder Markets	23-11	[3] Step Three—Projected Market Penetration Rates	23-25
EXHIBIT 23-5 U.S. Casino Player Profile	23-11	EXHIBIT 23-10 Forecast of Marketwide Gaming Revenue—Cripple Stream Market	23-26
EXHIBIT 23-6 Top 10 Casino Feeder States, 1996	23-12	EXHIBIT 23-11 Projected Penetration Rates and Captured Gaming Revenue	23-26
[6] The Future of Gaming	23-12	[4] Step Four—Projecting WPUPD	23-27
¶ 23.02 Riverboat Gaming	23-13	EXHIBIT 23-12 Projected WPUPD and Total Gaming Win	23-27
[1] Illinois	23-13	¶ 23.06 Distance-Based Visitation Model—Riverboat Casinos	23-27
[2] Mississippi	23-13	[1] Step One—Concentric Circle Analysis	23-28
[3] Iowa	23-14	EXHIBIT 23-13 Estimated Base Population and Visitation Levels	23-28
[4] Louisiana	23-14	[2] Step Two—Forecasting Adjusted Capturable Population and Visitation	23-28
[5] Missouri	23-14	EXHIBIT 23-14 Base Population and Visitation Levels, Applied Growth Rates, and Overlap Adjustments	23-29
[6] Indiana	23-15	[3] Step Three—Projecting Casino Visits Within the Market	23-29
[7] Expansion	23-15	[4] Step Four—Projecting Casino Admissions	23-30
¶ 23.03 Native American Gaming	23-16		
[1] The Indian Gaming Regulatory Act (IGRA)	23-16		
[2] National Indian Gaming Commission (NIGC)	23-18		
¶ 23.04 Gaming Supply and Demand Analysis	23-19		
[1] Market Segmentation	23-20		
[a] Local Demand	23-20		

EXHIBIT 23-15 Calculation of Gaming Incidence Factor and Projected Annual Casino Visits . . .	23-30	EXHIBIT 23-17 Forecasted Win per Admission	23-33
EXHIBIT 23-16 Estimated Market Capture and Projected Number of Admissions	23-31	EXHIBIT 23-18 Forecasts of Marketwide Gaming Revenue and Subject Property's Gaming Revenue.	23-33
[5] Forecasted Win per Admission.	23-32		

¶ 23.01 **OVERVIEW OF GAMBLING**

Gambling is a near-universal pastime. The origins of gambling and the objects used in the ritual date back to our paleolithic ancestors who tossed polished dice-shaped bones, called astragalia. It is uncertain whether these objects were cast for prophecy, amusement, or to win the possessions of others; in any case, these acts began a custom that has survived throughout the ages. It was the gamblers of sixteenth-century Europe who provided the impetus for the formation of mathematical probability theory, when Antoine Gombauld posed a dice problem to Parisian mathematician Blaise Pascal. Since that time, hundreds of mathematicians, philosophers, and economists have pondered the laws of probability, statistical analysis, and calculus in an effort to master the games of chance.

Because of the widespread popularity of gaming throughout Europe, it is difficult to attribute the origin of gaming in the United States to one period or location. In addition, it is widely noted that Native Americans were enthusiastic gamblers centuries before the arrival of Europeans. The first casinos were placed in the early taverns of New England, where card games and other gaming activities were a part of everyday life. Gaming continued its immigration to America with the French colonization of New Orleans, and spread rapidly throughout the South, then north up the Mississippi. Following the Civil War, gaming in the form of state lotteries was introduced to replenish and rebuild the devastated South. As such, gaming flourished within the region, and soon the state of Louisiana became the center of all gaming activity in the United States. The gaming movement swept west with the "Gold Rush" (1848-1849); in many Western territories, gaming was declared neither legal nor illegal. As a result, gaming proliferated throughout the West until the early 1900s. Ironically, Nevada passed the first law banning gambling in the West, in 1910.

The modern era of casino gaming, as it is known today, began in 1931, when a bill to legalize gaming in Nevada was passed by the Nevada State Legislature in Carson City. Nevada enjoyed a monopoly on casino gaming until 1976, when New Jersey passed a referendum allowing legalized casino gambling in Atlantic City. Over the years, much suspicion regarding criminal involvement has surrounded the casino gaming industry in both Nevada and New Jersey. However, the tremendous amount of regulation on the part of both the Nevada and New Jersey gaming commissions has effectively eliminated the criminal element from the daily operation and ownership of legalized casinos. Although it is reported that elements of organized crime occasionally infiltrate a casino operation, these instances are relatively rare. Today's gaming industry, with its Wall Street backing, has become an accepted industry throughout the United States.

One form of gambling or another is now available in forty-seven of the fifty states. Casino-style gaming is currently legal in twenty-two states, in a variety of forms such as on riverboats, at riverside docks, and in saloons, and on various sites including Indian reservations, public parcels and waterways, and privately owned land. A combination of consumer acceptance and the local municipalities' need to increase revenue has resulted in an array of new jurisdictions and gaming venues.

[1] Gross Wagering and Revenue Trends

Exhibit 23-1 presents the gross wagering and gross revenue trends in the U.S. gaming industry for 1982, 1996, and 1997. "Handle" is defined as the gross amount wagered at any form of gambling, or the total amount of money wagered against the house. "Win" is defined as the total amount of money wagered against the house (handle) less winning payouts, or the total amount of money retained by the house from gaming transactions. From the consumer perspective, gross gaming win is the price paid for playing a commercial game.

Total pari-mutuel wagering (defined as a system of betting in which winners receive all money wagered on a race after the track's and state's shares and breakage have been paid) increased by a moderate average annual rate of 1.8 percent between 1982 and 1997. Lottery gross handle increased at an average annual rate of 17.5 percent between 1982 and 1997, as wagers rose from \$4.1 billion to more than \$42 billion. Casino gaming, which includes Nevada, New Jersey, riverboat jurisdictions, cruise ships, and other forms of casino-style gaming, increased handle figures by an average annual rate of 11.1 percent between 1982 and 1997, to an astounding \$370 billion. Total casino wagering activity increased by 7.5 percent in 1997, primarily as a result of a 11 percent increase in riverboat gaming activity; the Nevada/New Jersey slot handle rose by 5.6 percent, while table game activity rose by 6.7 percent. Total win generated by casinos rose at an average annual rate of 11.2 percent between 1982 and 1997, reflecting the array of new jurisdictions and gaming venues introduced during this period. Casinos generated almost \$471 billion in handle in 1997, they won only \$20.5 billion, or 4.4 percent. State lotteries generated \$46 billion in handle in 1997, but won \$16.5 billion, or 35.8 percent. Total bookmaking handle rose by an average annual rate of 11 percent between 1982 and 1997, and by decreased by 1.5 percent in 1997. Charitable games have posted moderate increases since 1982, as has charitable bingo. The Native American segment of the industry posted strong gains in 1997 increasing handle from approximately \$66 billion to \$80 billion, for a 21.3 percent increase. Gaming revenues rose by 19.1 percent in 1997, to approximately \$6.6 billion.

Overall, total wagers increased at an average annual rate of 11.4 percent between 1982 and 1997, and 8.7 percent in 1994. It is estimated that the total wagering activity of the US gaming industry exceeded \$638 billion in 1997, up from \$126 billion only fifteen years ago. Total gaming revenues in 1994 exceeded \$50 billion, up from \$10.4 billion in 1982. As indicated in the exhibit, of the total gaming revenues, approximately 32.5 percent was generated by state lotteries, 40.3 percent by casinos, 7.5 percent by pari-mutuel tracks, and 13.1 percent by Native American casinos.

[2] Gross Wagering by State

Exhibit 23-2 presents gross wagering activity (handle) by the type of gaming activity and the state. It should be noted that the data does not include revenues generated by Native American gaming facilities or cruise ships.

Gross wagering in the state of Nevada constituted approximately 43 percent of all gaming activity in the country in 1997. New Jersey accounted for approximately 17 percent of total gaming activity despite having only twelve casinos, all in Atlantic City. Mississippi accounted for approximately 7 percent of total wagering activity in 1997, reflecting the state's successful riverboat and barge gaming operations. The remaining wagering activity is spread throughout the country, with no other state accounting for more than 5 percent of gross wagering activity.

Exhibit 23-1 Trends in Gross Wagering (Handle) and Gross Revenue (Win), 1982-1993 (\$ millions)
Source: International Gaming & Wagering Business, August 1, 1995; HVS Gaming Services

	Handle					Win					1994 Market Share
	1982	1993	1994	% Change 1993-1994	Annual % Change 1982-1994	1982	1993	1994	% Change 1993-1994	Annual % Change 1982-1994	
Pari-mutuels											
Horses											
On-track	\$9,990.6	\$6,138.3	\$5,640.8	(8.1)%	(4.7)%	\$1,850.0	\$1,250.4	\$1,155.2	(7.6)%	(3.8)%	2.9%
ITW		3,572.6	4,284.5	19.9	N/A		736.1	872.7	18.6	N/A	2.2
OTB	<u>1,707.3</u>	<u>4,010.1</u>	<u>4,328.5</u>	<u>5.7</u>	<u>7.9</u>	<u>400.0</u>	<u>1,007.9</u>	<u>1,044.6</u>	<u>3.6</u>	<u>8.3</u>	<u>2.6</u>
Sub-total	11,697.9	13,721.0	14,163.8	3.2	1.6	2,250.0	2,994.4	3,072.5	2.6	2.6	7.7
Greyhounds											
On-track	2,208.6	2,872.6	2,361.6	(17.8)	0.6	430.0	615.5	509.8	(17.2)	1.4	1.3
ITW		268.5	479.8	78.7	N/A		57.8	102.9	78.0	N/A	0.3
OTB		<u>94.7</u>	<u>102.7</u>	<u>8.4</u>	<u>N/A</u>		<u>19.4</u>	<u>21.7</u>	<u>11.9</u>	<u>N/A</u>	<u>0.1</u>
Sub-total	2,208.6	3,235.8	2,944.1	(9.0)	2.4	430.0	692.7	634.4	(8.4)	3.3	1.6
Jai Alai	<u>622.8</u>	<u>379.9</u>	<u>317.0</u>	<u>(16.6)</u>	<u>(5.5)</u>	<u>112.0</u>	<u>84.5</u>	<u>70.2</u>	<u>(16.9)</u>	<u>(3.8)</u>	<u>0.2</u>
Total Parimutuel	14,529.3	17,336.7	17,424.9	0.5	1.5	2,792.0	3,771.6	3,777.1	0.1	2.6	9.4
Lotteries											
Video Lotteries		3,878.3	4,453.7	14.8	N/A		392.7	461.0	17.4	N/A	1.2
Other Games	<u>4,088.3</u>	<u>26,994.3</u>	<u>30,019.3</u>	<u>11.2</u>	<u>18.1</u>	<u>2,170.0</u>	<u>12,424.7</u>	<u>13,665.5</u>	<u>10.0</u>	<u>16.6</u>	<u>34.1</u>
Sub-total	4,088.3	30,872.6	34,473.0	11.7	19.4	2,170.0	12,817.4	14,126.5	10.2	16.9	35.3
Casinos											
Nevada/NJ Slots	14,400.0	102,559.8	113,030.3	10.2	18.7	2,000.0	6,158.6	6,605.0	7.2	10.5	16.5
Nevada/NJ Tables	87,000.0	150,908.8	170,830.8	13.2	5.8	2,200.0	3,232.0	3,569.1	10.4	4.1	8.9
Cruise Ships		4,494.5	5,100.0	13.5	N/A		320.7	362.1	12.9	N/A	0.9
Riverboats		27,122.1	63,803.9	135.2	N/A		1,457.0	3,259.2	123.7	N/A	8.1
Other Casinos		4,366.7	5,765.6	32.0	N/A		303.3	371.2	22.4	N/A	0.9
Other Commercial Gaming		410.0	423.6	3.3	N/A		143.2	122.3	(14.6)	N/A	0.3
Non-Casino Devices		<u>7,413.4</u>	<u>8,912.6</u>	<u>20.2</u>	<u>N/A</u>		<u>922.7</u>	<u>1,083.9</u>	<u>17.5</u>	<u>N/A</u>	<u>2.7</u>
Sub-total	101,400	297,275.3	367,866.8	23.7	11.3	4,200.0	12,537.8	15,372.8	22.6	11.4	38.4

Exhibit 23-1 (cont.)

Source: International Gaming & Wagering Business, August 1, 1995; HVS Gaming Services

	Handle					Win					1994 Market Share
	1982	1993	1994	% Change 1993-1994	Annual % Change 1982-1994	1982	1993	1994	% Change 1993-1994	Annual % Change 1982-1994	
Legal Bookmaking											
Sports Books	415.2	2006.3	2,137.0	6.5	14.6	7.7	75.0	122.5	63.3	25.9	0.3
Horse Books	<u>122.8</u>	<u>251.0</u>	<u>525.5</u>	<u>109.4</u>	<u>12.9</u>	<u>18.0</u>	<u>40.0</u>	<u>86.9</u>	<u>117.3</u>	<u>14.0</u>	<u>0.2</u>
Sub-total	538.0	2,257.3	2,662.5	18.0	14.3	25.7	115.0	209.4	82.1	19.1	0.5
Card Rooms	1,000.0	8,346.1	9,306.4	11.5	20.4	50.0	654.0	731.2	11.8	25.1	1.8
Charitable Bingo	3,000.0	4,226.1	4,253.3	0.6	3.0	780.0	1,037.0	1,041.1	0.4	2.4	2.6
Charitable Games	1,200.0	4,886.4	5,053.9	3.4	12.7	396.0	1,288.8	1,355.3	5.2	10.8	3.4
Native American Gaming											
Class II		1,450.9	1,497.4	3.2	N/A		435.3	449.2	3.2	N/A	1.1
Class III		<u>27,505.8</u>	<u>39,563.7</u>	<u>43.8</u>	<u>N/A</u>		<u>2,159.6</u>	<u>2,967.3</u>	<u>37.4</u>	<u>N/A</u>	<u>7.4</u>
Sub-total		28,956.7	41,061.1	41.8	N/A		2,594.9	3,416.5	31.7	N/A	8.5
Grand Total	\$125,755.6	\$394,157.2	\$482,101.9	22.3%	11.8%	\$10,413.7	\$34,816.2	\$40,029.9	15.0%	11.9%	100.0%

Exhibit 23-2 1994 Gross Wagering by State (\$ Millions)*Source: International Gaming & Wagering Business, August 1, 1995; HVS Gaming Services*

State	Total Pari-mutuels	Total Lotteries	Casinos & Devices ¹	Total Bookmaking	Card Rooms	Bingo ²	Charitable Games ²	Total ¹	Percent of Total
Alabama	\$351.8					\$57.2		\$409.0	0.1%
Alaska						54.5	\$154.0	208.5	0.0
Arizona	262.3	\$267.0				47.9	182.0	759.2	0.2
Arkansas	275.4							275.4	0.1
California	2,521.2	2,089.0			\$8,475.0	328.0	527.5	13,940.7	3.2
Colorado	217.1	322.6	\$5,225.6			68.9	158.5	5,992.7	1.4
Connecticut	349.8	648.7				32.7	27.5	1,058.7	0.2
Delaware	105.5	100.4				11.2	17.6	234.7	0.1
District of Columbia		209.5				3.9	1.0	214.4	0.0
Florida	1,675.9	2,208.1				187.0	141.3	4,212.3	1.0
Georgia		1,301.4				39.4		1,340.8	0.3
Hawaii								0.0	0.0
Idaho	46.1	72.1				5.1	0.9	124.2	0.0
Illinois	1,238.8	1,606.0	19,252.6			137.2	142.9	22,377.5	5.1
Indiana	20.2	582.4				65.6	212.8	881.0	0.2
Iowa	101.3	202.3	1,689.0			49.4	56.9	2,098.9	0.5
Kansas	220.3	159.3				43.8	25.4	448.8	0.1
Kentucky	598.4	487.0				51.3		1,136.7	0.3
Louisiana	375.0	330.3	16,189.3			148.2	138.0	17,180.8	3.9
Maine	59.5	145.0				22.9	20.2	247.6	0.1
Maryland	603.1	1,026.2	96.0		178.1	81.4	123.9	2,108.7	0.5
Massachusetts	492.1	2,647.0				141.2	92.1	3,372.4	0.8
Michigan	356.7	1,351.7				203.1	110.8	2,022.3	0.5
Minnesota	36.3	310.6				79.1	1,184.2	1,610.2	0.4
Mississippi			29,738.8			112.0	23.6	29,874.4	6.9
Missouri		368.8	2,207.8			150.4	84.6	2,811.6	0.6
Montana	9.9	31.8	2,015.7		112.5	9.1	15.7	2,194.7	0.5
Nebraska	124.2	269.3				24.5	180.0	598.0	0.1

Exhibit 23-2 (cont.)

Source: International Gaming & Wagering Business, August 1, 1995; HVS Gaming Services

State	Total Pari-mutuels	Total Lotteries	Casinos & Devices ¹	Total Bookmaking	Card Rooms	Bingo ²	Charitable Games ²	Total ¹	Percent of Total
Nevada	304.5		207,948.2	2,662.5		17.0		210,932.2	48.4
New Hampshire	217.8	120.0				39.6	49.5	426.9	0.1
New Jersey	1,190.6	1,479.4	75,912.9			83.7	50.7	78,717.3	18.1
New Mexico	130.9					44.4	32.5	207.8	0.0
New York	2,712.7	2,799.0				177.3	92.7	5,781.7	1.3
North Carolina						34.8		34.8	0.0
North Dakota	7.1				265.9	54.5	230.4	557.9	0.1
Ohio	438.0	1,982.8				341.0	437.1	3,198.9	0.7
Oklahoma	196.9					66.7		263.6	0.1
Oregon	108.4	2,884.8				83.8	2.9	3,079.9	0.7
Pennsylvania	835.7	1,565.7				195.8		2,597.2	0.6
Rhode Island	130.7	711.3				17.4	16.6	876.0	0.2
South Carolina			1,540.0			85.7		1,625.7	0.4
South Dakota	9.4	1,395.3	540.0			14.3	13.5	1,972.5	0.5
Tennessee								0.0	0.0
Texas	519.4	2,760.2				493.2	140.5	3,913.3	0.9
Utah								0.0	0.0
Vermont	0.8	60.7				5.9	3.0	70.4	0.0
Virginia		897.8				68.4	167.4	1,133.6	0.3
Washington	146.4	379.2	410.9		274.9	200.8	138.4	1,550.6	0.4
West Virginia	223.4	206.2				34.5	12.5	476.6	0.1
Wisconsin	200.0	493.7				29.6	35.8	759.1	0.2
Wyoming	11.3					9.5	9.1	29.9	0.0
Totals	\$17,424.9	\$34,472.6	\$362,766.8	\$2,662.5	\$9,306.4	\$4,252.9	\$5,054.0	\$435,940.1	100.0%

¹ Does not include gaming on ocean-going cruise ships or on Native American reservations.² Includes adjustments for potential underreporting in some states.

[3] **Table Game and Device Analysis by Market**

Exhibit 23-3 provides an analysis of gaming win segmented into table game revenues and gaming device revenues. The operation, odds structure, playing habits, and derivation of win for table games and gaming devices are distinct and should be analyzed separately, given the available data. The following table presents total win by market, the total number of units within the market, and the win per unit per day (WPUPD) statistics for 1996 and 1997. The WPUPD figure is calculated by dividing the total gaming win by the number of units and dividing that figure by the total number of days in the period.

With approximately 50 percent of the total table game units in 1997, Nevada casinos generated a table game win of approximately \$2.7 billion. New Jersey casinos generated approximately \$1.2 billion in table game win, despite having only 12 percent of total table game inventory. Mississippi riverboat casinos were a distant third with \$500 million in table game win in 1997. In terms of WPUPD, New Jersey's casinos are the most efficient, generating on average \$2,176 per table per day. Illinois casinos also posted favorable WPUPD figures of \$1,735 per table per day in 1997. The Atlantic City and Illinois markets are similar in their proximity to large population bases and the limited number of casino facilities, which results in high WPUPD figures. Overall, total table game win rose by 5.7 percent in 1997, while the total number of units increased by 5 percent, resulting in a small .23 percent increase in WPUPD.

Aggregate gaming device win increased by 9.2 percent in 1997, led by the secondary markets of Indiana, Missouri, and Iowa, which posted gains of 161.595 percent, 46.94 percent, and 16.01 percent, respectively. During the same period, Indiana, Missouri, and Iowa experienced increases in inventory of 63.9 percent, 77.33 percent and 16.01 percent, respectively. The result was a decrease in WPUPD for Missouri, indicating flat demand at the given level of supply. WPUPD among Indiana and Iowa riverboats rose by 59.61 percent and 12.23 in 1997. The established markets of Nevada and New Jersey increased gaming device inventory in 1994 by 0 percent and 3.75 percent, respectively. New Jersey casinos experienced a slight decrease in WPUPD, indicating a stabilization of demand. Similar to table game WPUPD figures, gaming device WPUPD is strongest in the markets proximate to large population bases with limited inventory. In 1997, New Jersey attained a gaming device WPUPD figure of \$221, while Illinois generated a WPUPD of \$260. Las Vegas, considered to be a mature, stable market, attained a WPUPD figure of \$76, with an inventory of 177,020 gaming devices, or 56 percent of the total gaming devices in the United States. It is this critical mass that separates the Las Vegas market from other gaming jurisdictions, and makes the Las Vegas gaming environment the most competitive in the world.

[4] **Publicly Traded Gaming Corporations**

[4] Exhibit 23-4 presents a list of publicly traded gaming corporations and suppliers. The chart divides the gaming companies into large-cap and medium-cap gaming stocks. The most notable observation is the consolidation, which has taken place in the casino industry in the past few years. Hilton has spun off its gaming operations into a separate company called Park Place Entertainment and it has in turned purchased the Grand Casino company and Caesars casinos owned by Starwood. Sun International has recently purchased the Desert Inn from Starwood, thus ending Starwood's participation in the casino industry. Harrah's has recently acquired the Rio and Showboat corporations. Finally, MGM Grand has recently acquired the Pri-

Exhibit 23-3 Table Game and Device Analysis by Market

Source: International Gaming & Wagering Business, August 1, 1995; HVS Gaming Services

	1993 Win (000)	1994 Win (000)	Percent Change	Number of Units (1993)	Number of Units (1994)	Percent Change	1993 WPUPD ¹	1994 WPUPD ¹	Percent Change
Table Games									
Nevada	\$2,145,334	\$2,628,192	22.5	5,551	5,248	(5.5)	\$1,059	\$1,372	29.6
New Jersey	1,086,700	1,125,500	3.6	1,288	1,310	1.7	2,312	2,354	1.8
Colorado	24,453	26,875	9.9	249	253	1.6	269	291	8.2
Deadwood, SD	5,047	4,892	(3.1)	79	74	(6.3)	175	181	3.5
Illinois Riverboats	234,130	334,304	42.8	301	469	55.8	2,131	1,953	(8.4)
Iowa Riverboats	6,567	25,143	282.9	79	131	65.8	228	526	130.9
Louisiana Riverboats	5,860	191,293	3,164.4	59	437	640.7	272	1,199.3	40.7
Mississippi Riverboats	315,934	512,511	62.2	440	961	118.4	1,967	1,461	(25.7)
Missouri Riverboats	N/A	66,412	N/A	N/A	313	N/A	N/A	581	N/A
Total	\$3,824,025	\$4,848,710	26.8%	8,046	8,883	10.4%	1,302	1,495	14.8%
Gaming Devices									
Nevada	\$3,944,042	\$4,307,727	9.2 %	147,174	156,837	6.6%	\$73	\$75	2.5%
New Jersey	2,214,600	2,297,300	3.7	24,561	27,041	10.1	247	233	(5.8)
Colorado	235,367	298,810	27.0	10,361	11,472	10.7	62	71	14.7
Deadwood, SD	38,294	40,635	6.1	1,977	2,255	14.1	53	49	(7.0)
Illinois Riverboats	371,555	645,247	73.7	4,296	7,523	75.1	237	235	(0.8)
Iowa Riverboats	38,659	79,696	106.2	1,393	1,934	38.8	76	113	48.5
Louisiana Riverboats	10,376	408,764	3,839.5	1,105	8,204	642.4	26	137	430.6
Mississippi Riverboats	473,901	951,805	100.8	6,951	15,612	124.6	187	167	(10.6)
Missouri Riverboats	N/A	43,880	N/A	N/A	1,557	N/A	N/A	77	N/A
Total	7,326,794	9,029,984	23.2	197,818	230,878	16.7	\$101	\$107	5.61

¹Win per unit per day

Exhibit 23-4 Publicly Traded Gaming Corporations

Source: Bear Stearns Gaming/Lodging Equity Research; HVS Gaming Services

Company	52-Week Range	Calendar-Year Earnings Per Share				Average Annual Percent Change	Price/Earnings Ratio		
		1994	1995	1996 (est.)	1997 (est.)		1995	1996 (est.)	1997 (est.)
Circus Circus	\$36.00-\$25.00	\$1.61	\$1.72	\$1.70	\$2.15	10.1%	19.4	19.6	15.5
ITT Corp.	63.00-47.00	0.48	1.75	2.75	3.35	91.1	33.2	21.1	17.3
Mirage Resorts	47.00-23.00	1.32	1.77	2.03	2.25	19.5	26.1	22.8	20.5
Grand Casinos	39.00-10.00	0.89	1.92	2.10	2.45	40.1	16.5	15.1	13.0
MGM Grand	38.00-23.00	1.50	1.08	1.90	2.10	11.9	34.7	19.8	17.9
Harrah's Entertainment	33.00-22.00	1.03	1.29	1.60	1.92	23.1	22.4	18.1	15.0
Hilton Hotels	100.00-60.00	2.52	3.64	3.82	4.50	21.3	26.8	25.5	21.7
IGT	17.00-11.00	1.00	0.78	1.07	1.07	2.3	17.4	15.3	12.6
Bally Gaming	17.00-7.00	0.00	0.62	0.75	1.15	N/A	26.6	21.9	14.4
Rio Hotel & Casino	17.00-11.00	0.74	0.88	0.95	1.10	14.1	16.7	15.4	13.3
Showboat Inc.	29.00-14.00	1.02	0.89	1.46	1.90	23.0	27.5	16.8	12.9
Aztar	11.00-7.00	0.41	(0.02)	0.45	0.60	13.5	N/A	18.7	14.1
Boyd Gaming	19.00-10.00	(0.32)	1.26	0.33	0.27	N/A	9.0	34.5	42.9
Hollywood Park	15.00-9.00	0.10	(0.17)	0.13	0.18	21.6	N/A	71.3	53.4
Players International	23.00-9.00	1.40	1.06	0.83	1.17	(5.8)	9.7	12.4	8.8
Primadonna Resorts	26.00-12.00	0.94	0.76	0.86	1.16	7.3	22.0	19.4	14.4
Santa Anita Casinos	17.00-12.00	0.50	0.63	0.75	0.90	21.6	22.3	18.7	15.6
Station Casinos	20.00-10.00	0.02	0.76	0.76	0.87	251.7	17.1	17.0	14.9
Average		\$0.84	\$1.15	\$1.35	\$1.62	24.3	19.3	22.4	18.8

madonna casino group and thus acquiring a 100 percent interest in the highly profitable New York, New York casino in Las Vegas.

It appears the industry is heading for more consolidation through mergers and acquisitions by the larger casino corporations. The small-cap gaming stocks appear to be the most likely take over targets in the near future.

As can be seen from the chart, gaming stocks in the past year have been performing below the market as a whole. This is do to the perception that the Las Vegas market where many of these companies are located is being saturated with new casino capacity. However, if you notice Year to date % change for 1999, with the exception of Sun International, large-cap gaming stocks have outperformed the market. The increase can be attributable to the better than expected operating results on the two new mega resorts (Mirage's Belligio and Circus Circus's Mandalay Bay) which have help drive up occupancies and room rates in Las Vegas.

[5] Consumer Profile and Feeder Markets

Exhibit 23-5, which gives data for a U.S. Casino player profile, was derived from *The Harrah's Survey of Casino Entertainment*, 1995, a joint publication of Harrah's Entertainment and the Home Testing Institute.

Exhibit 23-5

Source: *Harrah's Entertainment, Inc./NFO Research, Inc./U.S. Census

**The Harrah's Survey of Casino Entertainment, 1997

	1996 Year*		
	Traditional Destination Player Profile	New Destination Player Profile	United States Population
Median Household Income	\$44,000	\$39,000	\$32,000
Male/Female ratio	52/48	50/50	49/51
Median Age	49	47	48
Education			
No College	48%	50%	51%
Some College	23%	22%	22%
College Graduate	19%	18%	17%
Post Graduate	10%	9%	10%
Employment			
White Collar	43%	41%	41%
Blue Collar	27%	29%	28%
Retired	16%	16%	16%
Other	14%	14%	15%

Exhibit 23-5 (cont'd)

Source: *Harrah's Entertainment, Inc./NFO Research, Inc./U.S. Census

**The Harrah's Survey of Casino Entertainment, 1997

	1995 - 1996**					
	Traditional Destination Player Profile		New Destination Player Profile		United States Population	
	1995	1996	1995	1996	1995	1996
Median Household Income	\$41,700	\$44,000	\$39,000	\$39,000	\$30,400	\$32,000
Male/Female Ratio	44/55%	52/48%	44/56%	50/50%	43/57%	49/51%
Median Age	48 years	49 years	46 years	47 years	46 years	48 years
Education						
No College	45%	48%	47%	50%	51%	51%
Some College	24	23	23	22	22	22
College Graduate	19	19	10	18	17	17
Post College	12	10	11	9	10	
Employment						
White Collar	46%	43%	44%	41%	39%	41%
Blue Collar	27	27	31	29	33	28
Retired	27	16	25	16	28	15
Other	N/A	14	N/A	14	N/A	15

Players visiting the traditional destinations tend to earn more money than players visiting new casino destinations. The median age distribution appears similar within all three groups, while the level of education in both destination segments varies from the national average. Employment figures indicate that white-collar employees constitute the largest group of casino patrons in both segments.

Exhibit 23-6 lists the largest U.S. casino feeder states and markets in 1994.

Exhibit 23-6 Top 10 Casino Feeder States, 1996

Source: Harrah's Entertainment, Inc./NFO Research, Inc.

- | | |
|-----------------|---------------|
| 1. California | 6. Texas |
| 2. Illinois | 7. New Jersey |
| 3. Louisiana | 8. Wisconsin |
| 4. New York | 9. Nevada |
| 5. Pennsylvania | 10. Minnesota |

[6] The Future of Gaming

The gaming industry has seen a dramatic slowdown in the expansion of casino gaming. With the exception of Michigan approving three casinos for the city of Detroit, Michigan in 1996, no new markets have been created for casinos. The industry is cur-

rently going through a consolidation phase in which the stronger casino operators are buying out the smaller casinos as competition heats up in most markets. Las Vegas has seen a revival with the opening of the Mirage's Belligio, Circus Circus's Mandalay Bay, and the Venetian. The addition of the Park Place Paris and new Aladdin Casino, total hotel rooms in Las Vegas will top 120,000 rooms. Currently the new properties are attracting new visitors to Las Vegas and the despite the warnings from many analysts, Las Vegas seems to be absorbing the supply of new rooms without sacrificing profit. Nation wide, it appears that market saturation has taken its tow on Mississippi casino industry as more and more smaller casinos are closing because of the increase in building of new and bigger casinos by the major casino companies such as Mirage, Harrah's, Imperial Palace, and Horseshoe, to name a few.

¶ 23.02 **RIVERBOAT GAMING**

The modern era of riverboat gaming in the United States began in April of 1991 with the maiden voyage of the President Riverboat Casino located in Davenport, Iowa. Since that first excursion, riverboat gaming has grown to a more than \$3.5 billion industry. Currently, the following six states allow riverboat gaming: Iowa, Illinois, Mississippi, Missouri, Louisiana, and Indiana. The following is a state-by-state overview of riverboat gaming operations.

[1] **Illinois**

Riverboat gaming in Illinois was legalized in February 1990, and the first boat became operational in September 1991. Currently, a total of ten gaming licenses are allowed, with nine casinos operating as of December 1997. Recent changes in the law now permit Illinois riverboats to remain dockside and do away with the requirement of cruising. This move is intended to allow the Illinois riverboats to be more competitive with Indiana Riverboats which do not cruise in the Chicago area. Illinois riverboats can offer twenty-one, craps, roulette, baccarat, big six, red dog, sic boe, and gaming devices. Adjusted gross receipts, or win, are taxed at a rate of 25 percent, in addition to a \$2 per person admissions tax. This is one of the highest tax rates for any gaming jurisdiction.

[2] **Mississippi**

Riverboat gaming in Mississippi was legalized in April 1990; however, the first boat did not open until August 1992. Mississippi, unlike Illinois, has no restrictions on the number of gaming licenses issued. The number of gaming licenses and the selection of qualified applicants are at the discretion of the Mississippi Gaming Commission. Dockside casinos are permitted on navigable waters in counties adjacent to the Mississippi River or the three southernmost counties adjacent to the Mississippi Sound. Currently, dockside gaming has been approved via a local referendum in nine counties: Adams, Hancock, Claiborne, Issaquena, Warren, Harrison, Washington, Tunica, and Coahoma. Riverboat casinos in Mississippi are not required to cruise and can operate from docks and moorings, resulting in a free flow of pedestrian traffic into and out of the casino twenty-four hours a day. The following table games are permitted within Mississippi riverboat casinos: faro, monte, roulette, keno, fan-tan, twenty-one, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, wheel of fortune,

chemin de fer, baccarat, pai gow, beat the banker, panguingui, and gaming devices. Gaming revenues are taxed by the state as well as the counties and local municipalities on a sliding scale. In 1994, the Mississippi Gaming Commission established minimum investment levels for landside developments. All casinos, including those already constructed, must develop a minimum 250-unit hotel equivalent to a Mobil Travel Guide two-star rating and a minimum 500-space parking garage in close proximity to the gaming facility. Alternative developments are allowed at the discretion of the Gaming Commission. Alternative developments must enhance the local entertainment or leisure infrastructure at a cost no less than 25 percent of the cost of the casino. The result of this free market approach to gaming has resulted in a dramatic increase in the number of casinos in Tunica and Gulfport-Biloxi area to become the third largest gaming market in the United States after Las Vegas and Atlantic City.

[3] Iowa

As mentioned, the modern era of riverboat gaming began in Davenport, Iowa, in April 1991, with the opening of the President Riverboat Casino. As of December, 1995, seven riverboats were in operation, located in Bettendorf, Clinton, Davenport, Dubuque, Fort Madison, and Sioux City. The number of gaming licenses issued is at the discretion of the Iowa Racing and Gaming Commission. Currently, the following games are permitted on Iowa riverboat casinos: big six, roulette, poker, craps, twenty-one, red dog, Caribbean stud, 21 super bucks, and gaming devices. Riverboats are required to make a two-hour cruise on at least 100 days between the months of April and October; once the boats meet this requirement, they may operate from their docks. During the docking period, customers may board and disembark the riverboat casino at any time. In May 1994, Iowa reversed several of its restrictive gaming provisions such as the \$5 per hand betting limit and the \$250 per day loss limit. The market has rebounded, now that the boats are able to compete directly with Illinois boats located just across the Mississippi river.

[4] Louisiana

Riverboat gaming in Louisiana was legalized in June 1991. However, the first boat was not operational until October 1993, because of regulatory and political infighting and disorganization. Currently, fifteen gaming licenses are allowed, with twelve casinos operating as of December 1995. According to the Riverboat Gaming Division, boats must cruise, unless the captain deems the conditions to be hazardous, except in Shreveport, where boats are allowed to operate dockside year-round. Louisiana riverboats can offer twenty-one, craps, roulette, mini-baccarat, big six, poker, and gaming devices.

[5] Missouri

Riverboat gaming in Missouri was legalized in November 1992, with the first boat coming on-line in May 1994. The fate of the Missouri riverboat industry has been much publicized as a result of the ruling by the Missouri Supreme Court outlawing the use of slot machines on riverboat casinos or elsewhere in the state. The court ruled that games of chance (i.e., slot machines) were unconstitutional and therefore, illegal. The situation deteriorated further in April of 1994, when an amendment to the

constitution legalizing the games of chance failed to pass by approximately 1,200 votes. However, on November 8, 1994, a referendum to legalize games of chance passed 54 percent to 46 percent. Prior to the referendum, the following games were permitted on Missouri riverboat casinos: poker, craps, twenty-one, Caribbean stud, pai gow poker, Texas hold'em, double down stud poker, and the video representations of these games. Eight riverboats are currently in operation, located in St. Louis, St. Charles, Riverside, Kansas City, and St. Joseph. The number of gaming licenses issued is at the discretion of the Missouri Gaming Commission. Riverboats are required to cruise, unless conditions are such that passenger safety would be jeopardized. Casinos operating along the swift Missouri River in Kansas City have been granted exemptions to allow dockside gaming. However, the casinos must continue to operate "phantom excursions." For continuous dockside operation in other markets, the riverboats must have significant land-based developments resulting in permanent job creation.

[6] Indiana

Indiana's Riverboat Gaming Law was enacted on June 30, 1993. A total of eleven riverboat gaming licenses have been issued within the state of Indiana. Of the eleven licenses, five are in counties bordering Lake Michigan: two in Gary (Lake County), one in Hammond (Lake County), one in East Chicago (Lake County), and one in Michigan City. An additional five licenses were granted to counties located along the Ohio River. Gaming Commission, the following games are permitted: baccarat, twenty-one, poker, craps, slot machines, video games of chance, roulette, klondike, punchboards, faro, keno, numbers tickets, push cards, jar tickets, pull tabs, and big six. The Indiana Riverboats have surpassed all expectations of profitability. In little over three years of operation, the Indiana market does over \$1 billion in gross gaming revenue and is still growing. Especially negatively affected by the Indiana riverboats have been the two Illinois casinos in Joliet.

[7] Expansion

As evidenced by the significant amount of revenues generated by riverboat casinos, the industry as a whole has proven to be a successful way for states, counties, and local municipalities to increase revenues without directly taxing their respective residents. However, the socioeconomic impact of riverboat gaming is still being debated throughout the country. While several of the areas supporting riverboat casinos have experienced decreases in unemployment levels leading to economic growth, the social cost and redistribution of discretionary income has yet to be fully measured. Given the flow of discretionary income out of non-gaming states and counties, neighboring legislatures are anticipated to continue seeking approval from voters to bring casinos into their communities. However, the absence of riverboat gaming referendums in key states such as Florida, Texas, Kentucky, Ohio, and Pennsylvania reflects the formidable opposition to gaming. From the referendums that were brought to the voters, it is evident that a successful gaming campaign is dependent on well-organized and clearly communicated legislation emphasizing the following issues: regulation, location, distribution of revenues, restrictions, environmental and socioeconomic impact, and law enforcement.

¶ 23.03 **NATIVE AMERICAN GAMING**

Since the enactment of the Indian Gaming Regulatory Act (IGRA) on October 17, 1988, Native American gaming activity has increased tremendously throughout the United States. Native American gaming venues can now be found across the nation, from northwestern Washington State to southeastern Florida and from Southern California to eastern Connecticut. Gaming activity taking place on Native American land is classified into three distinct categories as defined in the IGRA:

- *Class I gaming.* This includes social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals.
- *Class II gaming.* This includes all forms of bingo and other games similar to bingo, such as pull-tabs, and punch boards, provided these are played in the same location as bingo games. Class II also includes certain card games authorized, or not prohibited by state law and played in conformity with statewide regulations and specifically excluding any banking card games, such as baccarat, twenty-one, or any electronic facsimile of such games.
- *Class III gaming.* This includes all forms of gaming that are not Class I or II, including slots, casino games, banking card games, horse and dog racing, pari-mutuel wagering, and jai-alai.

Another concept affecting Native American gaming—and the focus of much controversy—is the gaming compact that must be negotiated between the state and the tribe. The compact is defined as an agreement between sovereigns (tribes and states), similar to a treaty. Tribal/state Class III compacts deal with the sovereign powers (e.g., application of laws and jurisdiction and enforcement of laws) of the parties to the compact. Compacts also delineate the type and quantity of games and/or devices permitted within the casino. Guidelines to establish independent gaming commissions are also included in the compacts. Since the enactment of the IGRA, several court battles have been waged between Native American tribes and state governments over what games are to be permitted in Native American casinos, given the existing state laws on gaming.

[1] **The Indian Gaming Regulatory Act (IGRA)**

The Indian Gaming Regulatory Act (IGRA) was enacted by Congress on October 17, 1988. According to the IGRA, a principal goal of federal policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal governments. The IGRA was drafted after a congressional committee found that Indian tribes were engaging in gaming activities on Indian lands as a means of generating tribal revenues. Additionally, the study concluded that Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by federal law and is conducted within a state that does not, as a matter of criminal law and public policy, prohibit such gaming activity. It was also concluded that existing federal law did not provide clear standards or regulations for the conduct of gaming on Indian lands.

The purpose of the IGRA is to provide a statutory basis for the operation of gaming by Indian tribes as a means of accomplishing the aforementioned goals. In addition, the IGRA will provide a basis for the regulation of gaming by an Indian tribe to shield it from organized crime and other corrupting influences, to ensure that the tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players. The IGRA also

established an independent federal regulatory authority for gaming on Indian lands, federal standards for gaming on Indian lands, and the National Indian Gaming Commission. The regulatory authority was deemed necessary to address congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue. The IGRA is composed of the following sections:

- Findings
- Declaration of Policy
- Definitions
- National Indian Gaming Commission
- Powers of the Chairman
- Powers of the Commission
- Commission Staffing
- Commission—Access to Information
- Interim Authority to Regulate Gaming
- Tribal Gaming Ordinances
- Management Contracts
- Review of Existing Ordinances and Contracts
- Civil Penalties
- Judicial Review
- Subpoena and Deposition Authority
- Investigative Powers
- Commission Funding
- Authorization of Appropriations
- Gaming on Lands Acquired After Enactment of This Act
- Dissemination of Information
- Severability
- Criminal Penalties
- Conforming Amendment

Of all the sections of the IGRA, the sections dealing with the formation of the National Indian Gaming Commission (NIGC), tribal ordinances, and management contracts have the greatest impact on the feasibility and economic viability of a Native American gaming operation. The formation and purpose of the NIGC is addressed in ¶ 23.03[2].

The tribal gaming ordinances sets forth a broad overview of Indian gaming requirements and regulations ranging from licensing procedures to background investigations. The following points are outlined within the tribal ordinances section of the IGRA:

- Class I gaming activities are not subject to provisions of the IGRA, while all Class II and Class III gaming operations are.
- An Indian tribe may engage in, or license and regulate, class II and III gaming, as long as the tribe is located within a state that permits such gaming for any purposes by any person or organization.
- With limited exception, the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity.

- The net revenues must be used for the purposes of funding tribal government operations and programs; they must provide for the general welfare of the tribe, promote tribal economic development, be donated to charitable organizations, and help fund operations of local government agencies.
- The construction and maintenance of the gaming facility, and the operation of the facility is conducted in a manner that adequately protects the environment and the public health and safety.
- The tribe must have a system for conducting background checks on key managers and employees and must license such officials.
- Tribes may also license an individual or entity to conduct gaming within the limits of applicable state law.

These are the rules for management contracts:

- The permitted fees are up to 30 percent of net revenues with exceptions up to 40 percent.
- The commission must investigate contractors and may disapprove a contract based on such investigation.
- The contract must allow tribal access to daily operations of the game, monthly audits, minimum guaranteed payment to the tribe, and have terms of no more than five years, with exceptions up to seven years.

[2] National Indian Gaming Commission (NIGC)

According to the IGRA, the National Indian Gaming Commission (NIGC) is to be composed of five people, three of whom must be members of federally recognized tribes. The chairman will be appointed by the President of the United States with advice and consent from the senate. The Department of Justice will conduct background investigations of all appointees. Under the IGRA, the NIGC performs a wide variety of regulatory, enforcement, and advisory functions. The follow items illustrate the breadth of NIGC responsibilities in regulating Indian gaming. The NIGC has the authority to:

- Permanently close tribal games;
- Enforce collection of civil fines;
- Enforce tribal gaming ordinances;
- Monitor all Indian gaming activities;
- Inspect gaming premises;
- Conduct background investigations of employees and contractors;
- Access records, books and other documents and audit accounts;
- Conduct any investigation necessary in connection with regulation of class II gaming;
- Consult with law enforcement officials where appropriate; and
- Request the U.S. Attorney General to conduct necessary criminal investigations.

NIGC funding is derived from tribal assessments and congressional appropriations. Assessments are set on a sliding scale from .5 percent to 2.5 percent of the first \$1,500,000 of gross revenues and up to 5 percent of amounts in excess of \$1,500,000.

¶ 23.04 GAMING SUPPLY AND DEMAND ANALYSIS

The initial step in analyzing supply and demand trends within a given gaming market is to quantify the existing level of gaming inventory, segmented by table games and gaming devices. To quantify gaming supply levels, a detailed review of all competitive gaming facilities is performed. Once the market's supply level and gaming mix are known, an analysis of the demand for gaming facilities is performed.

Unlike traditional economic models of supply and demand, the price variable associated with gaming is largely determined by the consumer. Gaming is an intangible product: what the consumer is purchasing is the "experience" and "excitement" casino gaming offer. The price that the consumer is willing to pay for this experience is known as the "win," and is quantified on a per-unit basis known as the "win per unit per day" (WPUPD). Research indicates that the WPUPD, or the price a market can bear for gaming activity, is highly correlated with the level of available gaming inventory. The actual WPUPD attained by a market, say \$250 per gaming device, provides an indication of the marketwide demand for gaming devices. These demand levels within a market can be estimated through an analysis of the actual WPUPD attained by the market versus the market's theoretical maximum WPUPD. The resultant statistic is known as the market's capacity utilization rate. Historical fluctuations in the marketwide capacity utilization rate at various levels of supply can provide insight into the future demand for gaming. Further affecting the demand for gaming facilities in the market are current and projected trends in economic and demographic factors such as population base, employment, disposable income, and visitation. In addition, seasonal fluctuations must be taken into consideration.

Once the various demand trends have been identified, a variety of analytical methodologies may be employed to forecast gaming revenue for an overall market or an individual property. The employment of a specific methodology must take into consideration the reliability and availability of the data to be utilized.

The following procedures are employed in the analysis of gaming supply and demand trends:

1. Analysis of Supply:

- Identify all local and regional gaming facilities;
- Quantify the number of existing and proposed gaming facilities by gaming units (i.e., table games and gaming devices) available in the market area; and
- Determine whether additional gaming facilities will enter the market in the foreseeable future.

2. Analysis of Demand:

- Review the area and neighborhood economic and demographic data to determine the market's overall health and ability to support existing and proposed levels of gaming supply;
- Examine the local and regional demand sources by market segment to determine potential market mix, demand levels, player gaming habits, and the populace's propensity to gamble; and
- Review historical marketwide trends in WPUPD and capacity utilization levels to determine the area's potential for growth, stabilization, or saturation.

[1] Market Segmentation

Demand for gaming can be classified into four primary categories: the local residents, tour and travel groups, leisure visitation, and convention visitation. Each of these gaming demand segments has distinct characteristics that affect the market's potential gaming revenues; these characteristics include gaming frequency, duration of play, gaming budgets, game preferences, and preferred facilities. With the exception of local residents, the demand generally originates from outside the subject property's primary market.

[a] Local Demand

In emerging riverboat, dockside, and Native American gaming markets, local residents constitute a significant portion of the overall gaming demand. The majority of patronage, an estimated 65 percent to 75 percent, originates within a fifty-mile radius. In such markets as Las Vegas and Atlantic City, which possess a critical mass of gaming, lodging, and entertainment facilities, local demand plays a secondary role to demand from the tour and travel, leisure, and convention segments. However, local patronage is necessary to provide a base level of annual demand, mitigating the effects of seasonality on revenues. In competitive markets, local patrons possess a high degree of loyalty, based on personal service and incentives. Such incentives include complimentary food and beverage service, bonus winnings, complimentary room nights, complimentary travel, and gift items. Gaming frequency among local patrons depends on a number of factors, including the convenience of the casinos, the average age of the populace, and disposable income levels. Typically, local residents can be expected to allot a higher percentage of discretionary income to gaming activities than other demand segments. Locals often possess superior gaming skills and seek tables and devices that offer the highest payouts and best odds. In certain markets, locals tend to be seasonal in an attempt to circumvent the crowds associated with "peak" demand periods of tourist and leisure visitation.

[b] Tour and Travel Demand

The seasonality of tour and travel demand varies, depending on the type and mode of transportation. Demand generated by the tour and travel segment is primarily a function of an individual property's marketing efforts. While bus tours organized by outside wholesalers and recreational groups tend to be more seasonal, motor-coach tours, gaming junkets, and all-inclusive vacations marketed by the individual properties are booked in the shoulder and off-seasons to offset declining leisure visitation. The costs of marketing to this segment are high, and in some instances negate the potential gain in revenue. The primary goal in attracting tour and travel groups is gaming activity; rooms and food and beverage outlets tend to be loss leaders. Gaming frequency among tour and travel patrons is high. Traditionally, tour and travel patrons favor gaming devices as opposed to table games. Depending on the type of group and pre-determined gaming levels, tour and travel patrons allocate a considerable portion of their total travel budget for gaming activities and tend to make median-sized wagers per hand, or pull.

[c] Leisure Demand

Leisure visitation tends to be seasonal in nature, with visitors taking advantage of the favorable summer and spring seasons. Traditionally, the leisure segment uses both table game and gaming devices, showing a higher propensity to play table games than the other demand segments. Gaming propensity and frequency within the leisure segment vary significantly, from “grind players,” to “rated players.” Further, the gaming budgets of leisure patrons vary considerably, as do their average wagers. While the primary goal in attracting the leisure traveler is gaming activity, food and beverage and retail outlets can also be priced to break even.

[2] Win per Unit per Day (WPUPD)

The win per unit per day (WPUPD) statistic provides the basis for the analysis and projection of table game and gaming device revenues. WPUPD is calculated by dividing total gaming revenues generated by a particular type of gaming unit by the number of gaming units available. Gaming statistics published in a majority of the gaming markets include the number of gaming units and total win figures by either table games and gaming devices or by individual games and devices (e.g., twenty-one tables, crap tables, five-cent devices, twenty-five-cent devices). The WPUPD provides insight into the efficiency of a market, demand levels, and saturation levels. In the forecast of gaming revenues, a WPUPD estimate is applied to the projected level of supply to arrive at an overall gaming win figure.

Like all other industries, gaming is subject to the laws of supply and demand. In open markets such as Mississippi and Las Vegas, supply can be expected to rise to a level supported by existing demand. During the initial growth phase, WPUPD levels are high, as the limited gaming inventory is insufficient to support high levels of pent-up demand. As new competition enters the market, demand is either dispersed among the competition, or the increase in inventory induces new demand to the market. The latter of the two scenarios will produce a stable WPUPD trend as demand increases at a rate equal to the increase in inventory. However, if demand is held constant or decreases, the result will be a declining WPUPD trend in the face of increasing inventory and competition. In addition, an entire market can be negatively affected by the emergence of a new gaming market proximate to the existing demand base. Through an analysis of the gaming market, an acceptable range of WPUPD levels can be derived and used to forecast marketwide gaming revenue.

Exhibit 23-7 presents an analysis of the hypothetical Cripple Stream gaming market. This analysis will be further used in the forecast of gaming win presented subsequently. Exhibit 23-8 presents an analysis of supply and demand trends in casinos.

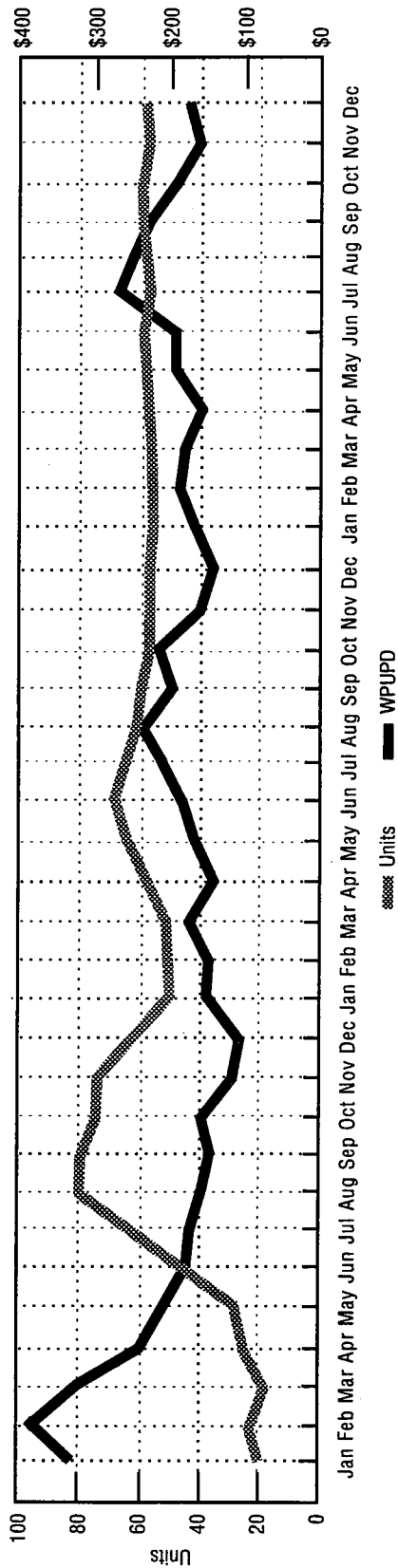
The forecast of marketwide gaming win, presented in ¶ 23.05, factors in the historical WPUPD levels attained by the market and the incremental change in WPUPD as inventory levels either increase or decrease. Additional factors affecting WPUPD levels are inflation, population growth, economic expansion, lodging supply, and tourism trends. The WPUPD estimates are then multiplied by the existing and proposed table game and gaming device inventory levels to arrive at a projection of marketwide gaming win.

Exhibit 23-7 Analysis of Cripple Stream Gaming Market

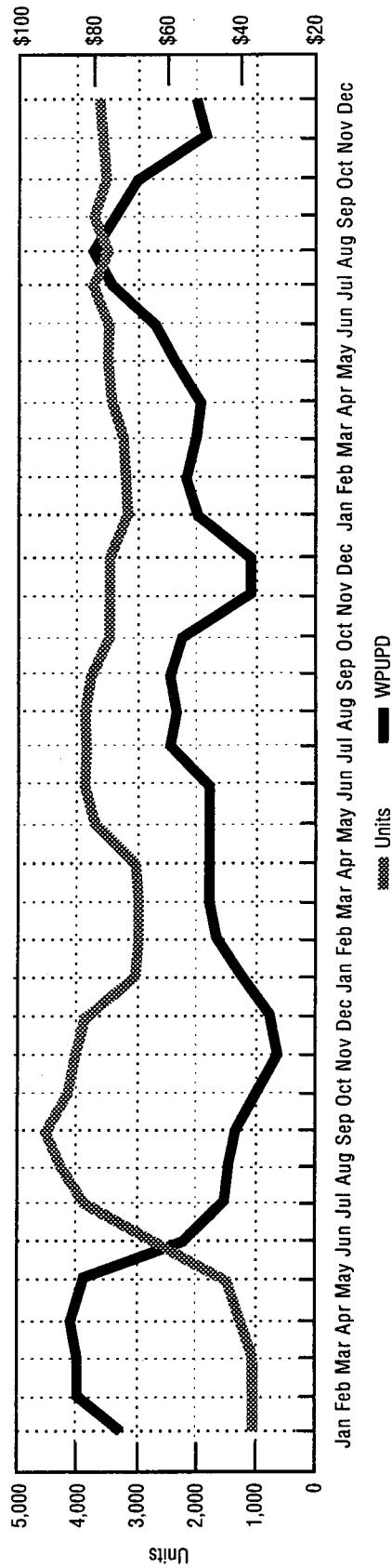
Year/Month	No. Casinos	Tables and Games			Gaming Devices			Total WIN
		Table WIN	Units	WPUPD	Device WIN	Units	WPUPD	
1994								
January	13	\$202,164	20	\$326	\$2,370,108	1,070	\$71	\$2,572,272
February	13	244,790	22	384	2,585,439	1,075	83	2,830,229
March	13	166,869	17	317	2,780,110	1,081	83	2,946,979
April	13	168,129	24	234	3,183,923	1,253	85	3,352,052
May	17	170,403	26	211	3,820,072	1,512	82	3,990,475
June	23	243,750	45	181	4,316,607	2,553	56	4,560,357
July	29	361,144	67	174	5,470,867	3,780	47	5,832,011
August	31	399,472	82	157	5,867,578	4,294	44	6,267,050
September	33	359,055	81	148	5,817,913	4,530	43	6,176,968
October	33	336,909	72	151	5,048,371	4,172	39	5,385,280
November	33	242,033	72	112	3,368,401	4,078	28	3,610,434
December	28	202,393	62	105	3,347,329	3,694	29	3,549,722
Total/Avg.		<u>3,097,111</u>	<u>49</u>	<u>172</u>	<u>47,976,718</u>	<u>2,758</u>	<u>48</u>	<u>51,073,829</u>
1995								
January	26	237,100	52	147	3,733,456	3,112	39	3,970,556
February	26	213,780	53	144	3,907,363	3,034	46	4,121,143
March	26	267,003	52	166	4,662,736	3,034	50	4,929,739
April	26	252,989	57	148	4,600,438	3,139	49	4,853,427
May	28	334,206	65	166	5,623,708	3,657	50	5,957,914
June	29	380,773	68	187	5,611,062	3,785	49	5,991,835
July	28	413,578	64	208	7,189,124	3,745	62	7,602,702
August	28	441,921	61	234	6,936,248	3,782	59	7,378,169
September	27	337,853	59	191	6,719,065	3,675	61	7,056,918
October	27	328,057	54	196	6,195,193	3,446	58	6,523,250
December	26	242,474	54	145	4,055,783	3,413	38	4,298,257
Total/Avg.		<u>3,711,132</u>	<u>58</u>	<u>176</u>	<u>63,094,871</u>	<u>3,437</u>	<u>50</u>	<u>66,806,003</u>
1996								
January	23	277,032	53	169	5,162,703	3,214	52	5,439,735
February	23	274,380	53	185	4,932,181	3,229	55	5,206,561
March	23	300,704	53	183	5,320,333	3,257	53	5,621,037
April	24	277,853	55	168	5,355,477	3,398	53	5,633,330
May	24	335,976	56	194	6,414,613	3,462	60	6,750,589
June	24	334,151	58	192	6,507,027	3,465	63	6,841,178
July	26	458,261	56	264	8,515,328	3,673	75	8,973,589
August	26	439,483	57	249	7,939,595	3,337	77	8,379,078
September	25	391,582	58	225	7,764,571	3,610	72	8,156,153
October	22	352,176	58	196	7,038,869	3,400	67	7,391,045
November	23	288,503	56	172	5,247,191	3,498	50	5,535,694
December	23	307,068	57	174	5,781,639	3,545	53	6,088,707
Total/Avg.		<u>4,037,169</u>	<u>56</u>	<u>198</u>	<u>75,979,527</u>	<u>3,424</u>	<u>61</u>	<u>80,016,696</u>

Exhibit 23-8 Analysis of Supply and Demand Trends

Table Games



Gaming Devices



¶ 23.05 **FORECAST OF GAMING WIN**

Once the subject market has been defined, and the supply and demand factors analyzed and quantified, the anticipated amount of gaming revenue generated by a specific casino operating within this market can be determined. The compilation of supply and demand data combined with research into the various external factors impacting an individual property's market share has led to the development of a market penetration model. Using the market derived data in the penetration model results in a forecasting tool that can be applied with a high degree of confidence. The market penetration model uses the following four steps in deriving a forecast of gaming revenue for the subject property.

1. The marketwide existing and proposed level of supply is quantified by table games and gaming devices throughout the projection period. The subject property's proposed level of supply is quantified by table games and gaming devices throughout the projection period. The subject property's fair share of marketwide gaming supply by table games and gaming devices is then calculated.
2. A forecast of marketwide gaming revenue is developed, based on the WPUPD and supply trends. Subjective factors such as latent demand levels, induced demand, and shifting demand patterns have been considered and included in the forecast of WPUPD levels and the resultant projection of marketwide gaming revenue.
3. Market penetration rates attainable by the subject property are projected for table games and gaming devices. The market penetration rates are then multiplied by the subject property's calculated fair share percentages to determine the subject's capture rate. The subject property's capture rate is then multiplied by the forecasted amount of marketwide gaming revenue, equating to the gaming revenue projected to be generated by the subject property.
4. The forecasted gaming win captured by the subject property is reconciled with a WPUPD analysis to check the reasonableness of the revenue projections. Combining the table game and gaming device win equates to an estimate of total gaming revenue.

[1] Step One—Fair Share

The subject property's fair share is calculated by dividing the subject's gaming inventory by the marketwide gaming inventory. For example, if the subject property has 100 table games and the total number of table games in the market, including the subject property, is 1,000, the subject property's fair share is equal to 10% ($100 \div 1,000 = 10$ percent). Exhibit 23-9 shows projected marketwide gaming inventory and calculated fair share for the hypothetical Cripple Stream casino, as well as for a hypothetical Casino X.

[2] Step Two—Forecasting Marketwide Gaming Revenue

Step two involves the forecasting of marketwide gaming revenue in each year of the projection period. In order to minimize the effect of seasonality, the aggregate table game and gaming device win over a twelve-month period is used in the calculation of base year WPUPD. The base year table game WPUPD estimate is calculated as follows:

$$\begin{aligned} \text{Table Game Win/Average Units/365} &= \text{WPUPD} \\ \$4,037,169/56/365 &= \$197.51 \text{ (rounded to \$198)} \end{aligned}$$

Exhibit 23-9 Projected Marketwide Gaming Inventory and Calculated Fair Share

	Base Year	1997	1998	1999	2000	2001
Table Games						
Gaming Inventory—Cripple Stream						
Existing Table Games	55	55	80	80	80	80
Additions to Supply	0	25	0	0	0	0
Total Table Games	55	80	80	80	80	80
Percent Change		45.5	0.0	0.0	0.0	0.0
Casino X						
Existing Table Games		25	25	25	25	25
Additions to Supply		0	0	0	0	0
Total Table Games		25	25	25	25	25
Calculated Fair Share—						
Table Games	31.3%	31.3%	31.3%	31.3%	31.3%	
Gaming Devices						
Gaming Inventory—Cripple Stream						
Existing Gaming Devices	3,500	3,500	4,500	4,750	4,750	4,750
Additions to Supply	0	1,000	250	0	0	0
Total Gaming Devices	3,500	4,500	4,750	4,750	4,750	4,750
Percent Change		28.6	5.6	0.0	0.0	0.0
Casino X						
Existing Gaming Devices	1,000	1,000	1,250	1,250	1,250	
Additions to Supply	0	250	0	0	0	
Total Gaming Devices	1,000	1,250	1,250	1,250	1,250	
Calculated Fair Share—						
Gaming Devices	22.2%	26.3%	26.3%	26.3%	26.3%	
Overall Fair Share	22.4%	26.4%	26.4%	26.4%	26.4%	

On the basis of the historical WPUPD trend of the market, the incremental changes in gaming supply, and the anticipated impact of the new supply on the demand trends within the market, future WPUPD levels are estimated. The WPUPD figure is multiplied by the projected level of table game or gaming device inventory to arrive at a forecast of marketwide gaming revenue (see Exhibit 23-10).

[3] Step Three—Projected Market Penetration Rates

Step three of the analysis includes projections of the subject property's market penetration rates. A penetration rate is defined as the percentage of marketwide gaming revenue the subject property will capture in relation to its fair share. For example, if the subject property's fair share of the marketwide gaming device inventory was 10 percent, and the property penetrates the gaming device segment at 110 percent, the subject would capture approximately 11 percent of marketwide gaming device revenue ($1.10 \times 0.10 = 0.11$). The capture rate is then applied to the aggregate amount of marketwide gaming revenue to derive the subject property's gaming revenue forecast.

The forecast of market penetration rates attainable by the subject property must take into consideration the competitive advantages or disadvantages of the property, including location, visibility, accessibility, management, name recognition, historical operation, physical condition, and marketing (see Exhibit 23-11).

Exhibit 23-10 Forecast of Marketwide Gaming Revenue—Cripple Stream Market

	Base Year	1997	1998	1999	2000	2001
Table Games						
Estimated WPUPD	\$198	\$175	\$187	\$192	\$196	\$200
Units	55	80	80	80	80	80
Total Win	\$3,981	\$5,109	\$5,449	\$5,620	\$5,732	\$5,847
Growth Rate		28.3%	6.7%	3.1%	2.0%	2.0%
Gaming Devices						
Estimated WPUPD	\$53	\$46	\$45	\$47	\$48	\$49
Units	3,500	4,500	4,750	4,750	4,750	4,750
Total Win	\$67,381	\$75,994	\$77,542	\$81,285	\$82,911	\$84,569
Growth Rate		12.8%	2.0%	4.8%	2.0%	2.0%
Total Gaming Win	\$71,362	\$81,103	\$82,991	\$86,905	\$88,643	\$90,416
Growth Rate		13.7%	2.3%	4.7%	2.0%	2.0%
Revenue Mix						
Table Games	5.6%	6.3%	6.6%	6.5%	6.5%	6.5%
Gaming Devices	94.4%	93.7%	93.4%	93.5%	93.5%	93.5%

Exhibit 23-11 Projected Penetration Rates and Captured Gaming Revenue

	1997	1998	1999	2000	2001
Total Gaming Win					
Table Games	\$5,109	\$5,449	\$5,620	\$5,732	\$5,847
Gaming Devices	\$75,994	\$77,542	\$81,285	\$82,911	\$84,569
Total Gaming Win	\$81,103	\$82,991	\$86,905	\$88,643	\$90,416
Estimated Penetration Factors					
Table Games	110.0%	110.0%	115.0%	120.0%	120.0%
Gaming Devices	120.0%	125.0%	130.0%	130.0%	130.0%
Overall	121.4%	125.0%	130.0%	130.4%	130.4%
Captured Gaming Win					
Table Games	\$1,760	\$1,870	\$2,020	\$2,150	\$2,190
Gaming Devices	\$20,270	\$25,510	\$27,810	\$28,360	\$28,930
Total	\$22,030	\$27,380	\$29,830	\$30,510	\$31,120
Percentage Change					
Table Games		6.3%	8.0%	6.4%	1.9%
Gaming Devices		25.9%	9.0%	2.0%	2.0%
Total		24.3%	8.9%	2.3%	2.0%
Revenue Mix					
Table Games	8.0%	6.8%	6.8%	7.0%	7.0%
Gaming Devices	92.0%	93.2%	93.2%	93.0%	93.0%

[4] **Step Four—Projecting WPUPD**

In step four, the projection of gaming revenue derived via the market penetration analysis is reconciled with a WPUPD analysis. Exhibit 23-12 presents estimated WPUPD projections for the subject property throughout the five-year projection period.

Exhibit 23-12 Projected WPUPD and Total Gaming Win					
	1997	1998	1999	2000	2001
Table Games					
WPUPD	\$193	\$205	\$221	\$236	\$240
Units	25	25	25	25	25
Win	\$1,760	\$1,870	\$2,020	\$2,150	\$2,190
Gaming Devices					
WPUPD	\$56	\$56	\$61	\$62	\$63
Units	1,000	1,250	1,250	1,250	1,250
Win	\$20,270	\$25,510	\$27,810	\$28,360	\$28,930
Total Gaming Win	\$22,030	\$27,380	\$29,830	\$30,510	\$31,120
Growth Rate		24.3%	8.9%	2.3%	2.0%

¶ 23.06 **DISTANCE-BASED VISITATION MODEL — RIVERBOAT CASINOS**

The current and projected trends in economic and demographic factors such as population base, employment trends, disposable income levels, and visitation statistics have a direct impact on a market's demand for gaming facilities. Forecasting potential casino visitation becomes a function of this economic and demographic data as well as specific information pertaining to the gaming habits and preferences of a particular market's populace. General data on penetration rates and trip frequencies within certain geographical areas have been compiled by the research departments of several leading gaming companies. The compilation of this data has led to the development of a distance-based visitation model, which uses the following four steps in deriving a forecast of marketwide casino visitation.

1. Identify the subject market's capturable base population by using a concentric-circle analysis. The sizes of the concentric circles are typically 0–50 radial miles, 50–100 radial miles, and 100–150 radial miles. In addition to identifying and quantifying the capturable base population, the current level of visitation from outside the 150-mile radius is quantified.
2. Growth rates are applied to the capturable base population figures over the estimated projection period. In addition, an overlap adjustment is applied to the base population estimates within each of the concentric circles to account for regional competition. Similar to the population estimate, a growth rate is applied to the base visitation estimate over the projection period. Finally, the incremental level of visitation generated by the opening of the subject property or other gaming facilities is quantified.
3. Penetration and trip frequency rates are projected for each of the concentric circles, the current visitation levels, and the incremental visitation levels. The

rates are then multiplied to derive the gaming incidence factor specific to each concentric circle and visitation segment. The gaming incidence factor is then multiplied by the adjusted base population estimate for each concentric circle and both visitation estimates, equating to the projected number of casino visits within the market.

4. The subject property’s fair share, market penetration, and market capture rates are then estimated and applied to the projected number of accommodated casino visits within the market to arrive at the projected number of casino admissions at the subject property.

[1] Step One—Concentric Circle Analysis

Three concentric circles are plotted around the subject property. The circles represent the primary local market within a 50-mile radius of the subject property, the secondary market from 50 to 100 miles, and the tertiary market from 100 to 150 miles. The primary market includes local residents who tend to have a higher propensity to gamble because of the convenience of the casino facility. For the same reason, the local market also generates a higher average trip frequency figure. The secondary market, while viable, can be subject to regional competition depending on the proximity of the subject property to competitive gaming markets and its relative accessibility from primary transportation routes. An additional factor affecting the secondary market is the marketing campaign employed by management. The tertiary market is composed of “day trippers,” who often have a choice between gaming locations of equal distance given the location of the subject property. The tertiary market necessitates the highest overlap adjustment and the lowest penetration and trip frequency estimates.

Exhibit 23-13 delineates the derived base population figures, the capturable adult population, and the current adult visitation level.

Exhibit 23-13 Estimated Base Population and Visitation Levels (000s)

Data Type	0-50 Miles	50-100 Miles	100-150 Miles	Total
Base Population (000)	1,057.3	1,735.3	556.8	3,349.4
Percent of Populace Over 21	75.0%	75.0%	75.0%	75.0%
Capturable Adult Population (000)	793.0	1,301.5	417.6	2,512.1
Plus: Estimated Adult Visitation				4,600.0
Total Capturable Adult Population				7,112.1

[2] Step Two—Forecasting Adjusted Capturable Population and Visitation

On the basis of the area’s population statistics, an annual growth rate is applied to the capturable population figures. Similarly, a growth rate is applied to the current visitation levels, reflecting the area’s tourism and convention climate. Incremental visitation as a result of the subject casino’s opening is projected to decrease by 50 percent in the second year and cease in the third year of the projection period. Overlap adjustments have been applied to each of the concentric circles in order to account for the lost visitation due to the proximity of regional competitive gaming markets.

The overlap adjustments are then applied to the capturable population projections to arrive at an adjusted capturable population estimate. Exhibit 23-14 presents the capturable population base, applied growth rates, and overlap adjustments resulting in a forecast of adjusted capturable population and visitation.

Exhibit 23-14 Base Population and Visitation Levels, Applied Growth Rates, and Overlap Adjustments (000s)

	Base Year	1997	1998	1999	2000	2001
Capturable Population and Visitation Levels						
Capturable Population Growth Rates		0.5%	0.5%	0.5%	0.5%	0.5%
0-50 Miles	793	801	805	809	813	817
50-100 Miles	1,301	1,315	1,321	1,328	1,334	1,341
100-150 Miles	418	422	424	426	428	430
Subtotal	2,512	2,537	2,550	2,563	2,576	2,588
Overlap Adjustment						
0-50 Miles		0.10	0.10	0.10	0.10	0.10
50-100 Miles		0.40	0.40	0.40	0.40	0.40
100-150 Miles		0.90	0.90	0.90	0.90	0.90
Adjusted Capturable Population						
0-50 Miles		721	724	728	732	725
50-100 Miles		789	793	797	801	805
100-150 Miles		42	42	43	43	43
Subtotal		1,552	1,560	1,567	1,575	1,583
Visitation Growth Rate		0.5%	0.5%	0.5%	0.5%	0.5%
Current Visitation	4,600	4,646	4,669	4,693	4,716	4,740
Incremental Visitation Growth Rate			(50.0%)	(100.0%)	0.0%	0.0%
Incremental Visitation		50	25	0	0	0
Total Population and Visitation	7,112	7,234	7,244	7,256	7,292	7,328

[3] **Step Three—Projecting Casino Visits Within the Market**

Step three includes the forecast of penetration rates and trip frequency factors equating to a gaming incidence factor. A penetration rate is defined as the percentage of capturable population in each market segment that is projected to visit a casino at least once annually. Trip frequency is defined as the average number of visits per annum. A penetration rate of 60 percent and a trip frequency of 7.0 equates to a gaming incidence factor of 4.2 (.60 x 7.0 = 4.2). The gaming incidence factor is then applied to the adjusted capturable population and visitation levels to derive the projected number of annual casino visits to the subject's market area.

Based on the various sources, penetration rates range from 50 percent to 70 percent within primary markets, from 25 percent to 50 percent within secondary markets, and from 10 percent to 35 percent within tertiary markets. Trip frequencies range from 3.0 to 7.0 within a 50-mile radius, 1.5 to 4.0 from 50 to 100 miles, and 1.0 to 3.0 from 100 to 150 miles. Exhibit 23-15 presents calculated gaming incidence factors and projected annual casino visits throughout the projection period.

[4] Step Four—Projecting Casino Admissions

Step four of the analysis includes the calculation of the subject property’s fair share, and projection of market penetration rates equating to the overall estimate of casino admissions captured by the property. The subject property’s fair share is calculated by dividing the subject’s estimated capacity, expressed as the casino square footage, by the marketwide capacity. For example, if the subject property’s casino is 30,000 square feet and the total capacity of the market, including the subject property, is 100,000 admissions per day, the subject property’s fair share is equal to 30% (30,000 ÷ 100,000 = 30 percent).

A penetration rate is defined as the percentage of marketwide gaming visitation the subject property will capture in excess of its fair share. For example, if the subject property’s fair share of the marketwide capacity was 30 percent, and the property was projected to penetrate the market at 110 percent, the subject would capture approximately 33 percent of marketwide visitation (1.10 × 0.30 = 0.33). The capture rate is then applied to the aggregate amount of marketwide visitation to derive the subject property’s admissions forecast.

Penetration into the market reflects a variety of factors including accessibility, available parking, visibility, and proximity to population centers, lodging supply, and tourist attractions. Second, the design and layout of the riverboat complex has a direct impact on visitation. Finally, management’s expertise in marketing, customer data base, and name recognition all affect casino visitation.

Exhibit 23-15 Calculation of Gaming Incidence Factor and Projected Annual Casino Visits

	1997	1998	1999	2000	2001
Projected Penetration Rates					
0–50 Miles	0.48	0.48	0.48	0.48	0.48
50–100 Miles	0.40	0.40	0.40	0.40	0.40
100–150 Miles	0.30	0.30	0.30	0.30	0.30
Current Visitation	0.40	0.40	0.40	0.40	0.40
Incremental Visitation	1.00	1.00	N/A	N/A	N/A
Estimated Trip Frequency					
0–50 Miles	7.00	7.00	7.00	7.00	7.00
50–100 Miles	4.00	4.00	4.00	4.00	4.00
100–150 Miles	2.00	2.00	2.00	2.00	2.00
Current Visitation	1.00	1.00	1.00	1.00	1.00
Incremental Visitation	1.00	1.00	N/A	N/A	N/A
Gaming Incidence Factor					
0–50 Miles	3.36	3.36	3.36	3.36	3.36
50–100 Miles	1.60	1.60	1.60	1.60	1.60
100–150 Miles	0.60	0.60	0.60	0.60	0.60
Current Visitation	0.40	0.40	0.40	0.40	0.40
Incremental Visitation	1.00	1.00	N/A	N/A	N/A

Exhibit 23-15 (Cont'd)

	1997	1998	1999	2000	2001
Projected Annual Casino Admissions—Marketwide (000)					
0–50 Miles	2,422	2,434	2,446	2,459	2,471
50–100 Miles	1,262	1,268	1,275	1,281	1,287
100–150 Miles	25	25	26	26	26
Current Visitation	1,858	1,868	1,877	1,887	1,896
Incremental Visitation	50	25	0	0	0
Total	5,618	5,621	5,624	5,652	5,680
Growth Rate		0.1%	0.1%	0.5%	0.5%
Unaccommodated Demand Adjustment					
Weekly and Seasonal Fluctuations	5.0%	5.0%	5.0%	5.0%	5.0%
Accommodated Casino Admissions					
0–50 Miles	2,301	2,312	2,324	2,336	2,347
50–100 Miles	1,199	1,205	1,211	1,217	1,223
100–150 Miles	24	24	24	24	25
Current Visitation	1,766	1,774	1,783	1,792	1,801
Incremental Visitation	50	25	0	0	0
Total	5,339	5,341	5,342	5,369	5,396

Exhibit 23-16 presents the subject property's calculated fair share percentages, projected penetration rates, and captured gaming admissions throughout the five-year projection period.

Exhibit 23-16 Estimated Market Capture and Projected Number of Admissions

	1997	1998	1999	2000	2001
Marketwide					
Existing Capacity (Square Footage)	195,000	195,000	195,000	195,000	195,000
Additions to Supply	0	0	0	0	0
Total	195,000	195,000	195,000	195,000	195,000
Percentage Change	0.0	0.0	0.0	0.0	0.0
Riverboat Casino					
Existing Capacity (Square Footage)	30,000	30,000	30,000	30,000	30,000
Additions to Supply	0	0	0	0	0
Total	30,000	30,000	30,000	30,000	30,000
Calculated Fair Share	15.4%	15.4%	15.4%	15.4%	15.4%
Estimated Penetration Rate	100.0%	105.0%	110.0%	110.0%	110.0%
Calculated Market Share Rate	15.4%	16.2%	16.9%	16.9%	16.9%

Exhibit 23-16 (Cont'd)

**Projected Admissions—
Riverboat Casino (000)**

0–50 Miles	354	374	393	395	397
50–100 Miles	184	195	205	206	207
100–150 Miles	4	4	4	4	4
Current Visitation	272	287	302	303	305
Incremental Visitation	<u>8</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	821	863	904	909	913
Percentage Change		5.0	4.8	0.5	0.5

[5] Forecasted Win per Admission

A forecast of aggregate gaming win generated by the market and the subject property can be derived by multiplying the forecasted casino visitation statistics by an estimated win per admission figure. The following is a step-by-step analysis of win per admission levels:

- A survey of comparable facilities operating within similar gaming markets is performed to determine average wagers and average duration of play for both table game and gaming device patrons.
- These estimates are multiplied by the average number of decisions per hour and the weighted house advantage for both table games and gaming devices to determine a respective win per admission figure.
- The estimated table game and gaming device win per admission figures are then weighted by each segment's typical contribution to total gaming revenue. Our analysis of comparable gaming markets indicates that table game revenues contribute approximately 20 percent of total gaming win, while gaming device revenues contribute the remaining 80 percent of total gaming win.
- The two weighted win per admission estimates are summed, equating to an overall win per admission figure.

Exhibit 23-17 presents the first-year forecast of overall win per admission.

The variables used in the analysis reflect both industry averages and estimates specific to the market. Variables such as decisions per hour and the house advantage are industry standards, while the average wagers and duration of play estimates are based on comparable market activity and discussions with local operators. Estimated average table game wagers reflect the changes in minimum wagers set by the house as a function of peak and off peak demand periods. The duration of play is based on an average excursion times, including embarkation and disembarkation. Average wagers for gaming devices reflect the estimated predominance of reel machines, which allow a maximum drop of three coins per pull. Video poker and progressive video poker machines generally allow a maximum drop of five coins per pull but are anticipated to account for only a moderate portion of the overall device inventory. Gaming devices hold percentages are based on industry averages reflecting the level of competition and marketwide demand levels. Reflecting a stable supply of gaming inventory, economic, demographic, and inflationary growth within the market, a 1.0 percent average annual growth rate has been applied to win per admission figures throughout the projection period.

Applying the win per admission estimates to the projected gaming admissions captured by the subject property equates to the forecasted gaming revenue anticipated to be generated throughout the five-year period (see Exhibit 23-18).

Exhibit 23-17 Forecasted Win per Admission

Table Game Patron		Gaming Device Patron	
Average Wager	\$10.00	Average Wager	\$0.75
Average Duration of Play (hours)	3	Average Duration of Play (hours)	3
Decision per hour	55	Decision per hour	240
House Advantage	1.80%	Hold Percentage	7.0%
Average Win per Admission	\$29.70	Average Win per Admission	\$37.80
Percentage of Total Win	20		80%
Weighted Average Win per Admission	\$5.94		\$30.24
Overall Win per Admission	\$36.18		

Exhibit 23-18 Forecasts of Marketwide Gaming Revenue and Subject Property's Gaming Revenue

	1997	1998	1999	2000	2001
Forecast of Marketwide Gaming Revenue					
Forecasted Admissions	5,617,843	5,620,682	5,623,660	5,651,779	5,680,037
Win per Admission	<u>\$36.18</u>	<u>\$36.90</u>	<u>\$37.64</u>	<u>\$38.39</u>	<u>\$39.16</u>
Marketwide Gaming Win	\$203,253,547	\$207,423,395	\$211,683,976	216,997,243	\$222,443,874
Rounded	<u>\$203,300,000</u>	<u>\$207,400,000</u>	<u>\$211,700,000</u>	<u>\$217,000,000</u>	<u>\$222,400,000</u>
Growth Rate		2.0%	2.1%	2.5%	2.5%
Forecast of Subject Property's Gaming Revenue					
	1997	1998	1999	2000	2001
Forecasted Admissions	821,454	862,760	904,112	908,632	913,175
Win per Admission	<u>\$36.18</u>	<u>\$36.90</u>	<u>\$37.64</u>	<u>\$38.39</u>	<u>\$39.16</u>
Total Forecasted Gaming Win	<u>\$29,720,203</u>	<u>\$31,838,965</u>	<u>\$34,032,270</u>	<u>\$34,886,480</u>	<u>\$35,800,000</u>
Growth Rate		7.1%	6.9%	2.5%	2.5%

CHAPTER 24

Selecting a Consulting and Appraisal Firm

¶ 24.01 The Impact of FIRREA	24-1	¶ 24.04 Firm Qualifications Checklist	24-3
¶ 24.02 Basic Requirements	24-2	¶ 24.05 Assignment Proposal	24-4
¶ 24.03 Initial Selection Process	24-3		

¶ 24.01 **THE IMPACT OF FIRREA**

The 1990s brought about significant change in the hotel appraisal and consulting industry. During the 1980s, the deregulation of savings and loans led many uninformed lenders to finance commercial real estate projects, including hotels, that were not economically viable. Other commercial lenders followed suit, and the commercial real estate markets became greatly overbuilt. The resultant demise of numerous savings and loans and commercial banks led to the passing of the Financial Institutions Reform and Recovery Enforcement Act (FIRREA), which went into effect in August, 1990. The bill called for stricter regulation of lenders, which in turn helped lead to the capital crunch for commercial real estate from mid-1990 through 1993.

Prior to the enactment of FIRREA, hotel developers interested in obtaining mortgage financing used the following procedure. First they would bring their proposal to a lender, whose usual response was to request that the developer have a feasibility study prepared by one of the major accounting firms with an active hotel accounting practice. After thirty to sixty days, the developer would deliver this study to the lender. The study would often have a bias in favor of the developer and his or her project, because the consultant was being directed and paid by the developer. If, after reviewing the study, the lender wanted to proceed, the developer would be told that an appraisal performed by a member (MAI) of the American Institute of Real Estate Appraisers (now known as the Appraisal Institute) was required to justify the amount of the loan. The developer could then hire the appraiser directly. A generalist appraiser who did not understand the hotel industry was often hired to “cap” the forecast of net income set forth in the feasibility analysis. Cost and sales comparison approaches were added to the analysis and the appraisal was complete. Only after another twenty to thirty days had passed and additional fees were paid would the developer have finally satisfied the lender’s requests for market and financial analyses and valuation.

Some firms developed the in-house expertise to develop a combined economic study and appraisal that contained all the components of a feasibility study as well as those of an appraisal. This product reduced the cost and time of the process, but no matter how the due diligence was undertaken, the developer was always in control of the process and often pressured the consultants and appraisers to be overly optimistic. One of the most significant changes brought about by the FIRREA legislation was the requirement that any federally insured financial institution had to directly hire the appraiser for the financing of a piece of real estate. The developers and owners looking to build, finance a purchase, or refinance an existing asset were removed as the middleman in the appraisal process. This legislation lifted the pressure to "make a number" that appraisers and consultants previously had to deal with.

FIRREA had many drawbacks, including regulations so strict that lenders became paralyzed in the lending process and were forced to write down any undersecured loans and to foreclose on borrowers who could not come up with the additional equity to meet regulated loan-to-value requirements. The restrictive lending environment led to a shortage of capital for refinancing and healthy economic activity, and financial institutions and the real estate industry eventually spoke up about the regulation that helped exacerbate the economic downturn of the early 1990s. The interpretation of FIRREA began to loosen up in 1993, and the remnants of the legislation that remain with us today are generally conducive to a healthy and prudent lending environment.

FIRREA also resulted in the requirement that any appraisal performed for a federally insured real estate transaction must be performed by a state-certified appraiser. State certification is the minimum level of qualification that should be expected from professional appraisers. The requirements to become an MAI are significantly greater than those required to become state certified, but the law requires that a federally insured lender must not discriminate against an individual who does not hold a professional designation such as the MAI. Lenders are, however, permitted to retain the most qualified appraiser, which is generally someone holding the MAI designation.

¶ 24.02 **BASIC REQUIREMENTS**

The key to obtaining a report that will fulfill the lender's requirements for both feasibility analysis and appraisal is twofold: (1) select a qualified hotel consulting and appraisal firm, and (2) provide that firm with detailed instructions regarding the specific issues that must be addressed in the study and the format that the final report should take.

Choosing the wrong consulting and appraisal firm to perform a market study and appraisal can be a costly mistake. A market study and appraisal of a lodging facility requires in-depth knowledge of hotel markets and operations; the consulting firm that is chosen should be staffed by either hotel management school graduates or consultants with extensive on-the-job hotel operating experience. Similarly, the appraiser who works on the project should have a hotel management background to ensure that he or she thoroughly understands the unique dynamics of hotel market studies and appraisals.

Some consulting firms try to integrate the work of market consultants trained by hotel schools with that of appraisers with general real estate backgrounds. In such cases, the market study portion is usually performed by the hotel expert, who also prepares the financial projections. The appraiser then capitalizes the resulting net income and renders an opinion of value. This division of responsibility does enable these firms to perform hotel market studies and appraisals, but difficulties frequently arise with the coordination of professionals possessing divergent areas of expertise.

As a result, the final product is too often a compromise of conclusions. The lodging industry is complex and constantly changing, which means that specialists who concentrate all their efforts within the field are best suited to conduct market studies and appraisals for this market.

¶ 24.03 **INITIAL SELECTION PROCESS**

The key to choosing the best company to undertake a study is to look beyond the prestige of the firm and concentrate instead on the abilities of the personnel that will actually produce the study. When first assembling a list of candidates to perform a market study or to recommend to a lender for an appraisal, the developer must make sure that limiting conditions are clearly understood. Many firms will not allow their reports to be used in any form of public or private offering, which can seriously impair the utility of a study. The developer should also beware of firms that isolate or limit interaction with any of the personnel working on the study. Starting with the first meeting and with every meeting thereafter, all members involved with the project should be in attendance. This personal interaction is necessary for everyone to be as familiar as possible with the concepts behind the project and to fully share the combined knowledge, experience, and insights of the team.

¶ 24.04 **FIRM QUALIFICATIONS CHECKLIST**

The selection of a consulting and appraisal firm requires a thorough evaluation of each prospective firm's expertise and credibility. The following checklist is a useful means of determining whether a company is able to conduct a proper market study and appraisal.

- Does the firm operate on a national level? Does it have strong regional expertise?* Exposure to many types of markets enhances the level of expertise, while regional expertise deepens the knowledge of particular markets. A local firm may be handicapped in its knowledge of various lodging products and how they perform under different market conditions. A national firm with regional expertise often provides the best of both worlds.
- Does the firm use hotel-trained personnel for both the market study and appraisal portions of the study?* A study of this type should not be divided between market study consultants and appraisers, particularly if the appraisers have no specific expertise in hotel operations.
- Does the firm have specialized expertise in hotel-related studies?*
- Who will be working on the assignment?* Copies should be obtained of the consultants' and appraisers' qualifications, background, and experience. Since a hotel is a highly specialized business venture, it is essential to meet with the appraisers, including the state-certified MAI who will be working on the assignment, to determine whether each individual has the following minimum qualifications:
 - A degree from an accredited hotel management school;
 - Actual operating experience in the hospitality industry;
 - Postgraduate courses in real estate principles and practices, real estate appraisal, and real estate finance; and

- Experience in evaluating a wide range of lodging facilities, both proposed and existing.

Does the firm have the high level of credibility necessary to defend its conclusions in the event they are questioned? This issue is especially important. Generalists who devote time to other types of real estate have difficulty staying current with industry data, statistics, and trends. True experts tend to publish widely in professional journals and to be active as lecturers in the field. If the most qualified expert is sought out to perform a hotel market study and appraisal, the client will be assured of receiving a high-quality, reputable product.

¶ 24.05 **ASSIGNMENT PROPOSAL**

After a qualified hotel consulting and appraisal firm has been selected, the next step is to ascertain the fee the firm will charge and the time it will need to complete the study. The right approach at this early stage can often save money. Usually, the officer or partner in charge of the appraisal practice is contacted by phone to discuss the potential assignment. At this point, the developer should discuss the nature and scope of the project. All the details and issues of the project and assignment should be clarified up front so that the consultant can quote a fair fee for all the work that will be involved and so that the developer will not face any unanticipated fees on the conclusion of the assignment.

While the developer may have already prepared an in-house analysis of the market and the feasibility of a project, he should not expect the consultant to reduce his or her fee quote. Good consultants and appraisers will have to perform their own primary research in performing a market study or appraisal, and any attempt to reduce either the time they spend or the resultant fee may end up causing more trouble than it is worth in the long run.

If the developer is planning to build several hotels, it is a good idea to tell the appraiser before determining the fee. In addition, the fee might be reduced if the developer is willing to wait for the appraisal until a time that is convenient for the appraiser. It is important to remember, however, that quality generally corresponds to price. It is worthwhile to make an effort to reduce costs, but not at the expense of the careful selection of the most qualified firm possible. The time and money spent to secure a capable firm that will produce an accurate study will be recouped in the future, because the myriad decisions involved in the development or acquisition of a lodging facility will be based on a thoroughly researched and soundly reasoned study.

The developer should ask for an all-inclusive fee that comprises professional and computer time charged, report production costs, and miscellaneous expenses (e.g., telephone, postage, and photocopying). It is best, however, to reimburse out-of-pocket travel expenses on the basis of actual receipt invoices rather than a lump-sum estimate. Beware of firms that bill travel expenses at a rate higher than their actual cost. Finally, expect to pay a sizable retainer fee before work commences.

After preliminary discussions regarding the objectives of the assignment, a capable consultant should be able to present a detailed document outlining what steps will be taken to provide the services discussed. The proposal is actually a contract in letter form, outlining the services to be rendered and fees charged. Once the contract has been signed and returned by the developer, the valuation company is usually given forty-five to sixty days to complete the assignment.

A proposal that does not appear to adequately address any of your specific needs or concerns may be an indication that the consultant has not grasped what you are

looking for. This is the time to have another discussion with the consultant or to find an alternate prospect to perform the work. Preparing a formal request for proposal (RFP) containing specifications for the assignment is not recommended in this age of time and fee constraints. Many excellent consultants and appraisers will not respond to an RFP because they do not believe that the potential client has taken the time to narrow the field of competition to truly qualified players. Responding to an RFP can be time consuming, and the good consultants are often too busy to reply.

Directory of Hotel Franchise Companies

Company Name and Address	Contact	Current Status	Primary Location
ADMIRAL BENBOW INNS Admiral Benbow Inns of America 2160 Kingston Ct. Marietta, GA 30067	T.J. Hurt Pres. 770-952-9145	Properties: 13 Rooms: 1,389	1. SE 2. US 3.
DAYS INN OF AMERICA FRANCHISING, INC. Days Inn of America Franchising, Inc. 339 Jefferson Road Parsippany, NJ 07054	John Russell Pres. & COO 201-428-9700	Properties: 1,687 Rooms: 158,986	1. US 2. Can 3.
EMBASSY SUITES, INC. Embassy Suites, Inc. 850 Ridge Lake Blvd. #400 Memphis, TN 38120	Raymond E. Schultz Pres. 901-680-7200	Properties: 112 Rooms: 27,062	1. US 2. 3.
HAMPTON INNS, INC. Hampton Inns, Inc. 6800 Poplar, Suite 200 Memphis, TN 38138	Raymond Schultz Pres. & CEO 901-758-3100	Properties: 407 Rooms: 46,895	1. US 2. 3.
HAWTHORN SUITES HOTELS Hawthorn Suites Hotels 400 Fifth Avenue Waltham, MA 02154	Nicholas J. Pritzker Chairman & Pres. 617-290-0175	Properties: 17 Rooms: 2,174	1. SW 2. MW 3. SE
HOLIDAY INN WORLDWIDE Holiday Inns, Inc. 3 Ravinia Drive Atlanta, GA 30338	Bryan D. Langton Chairman & CEO 770-604-2000	Properties: 196 Rooms: 36,061	1. US 2. Int'l 3.
INN SUITES HOTELS Innsuites International 1615 East Northern Avenue Phoenix, AZ 85020	James Worth Pres. 602-944-1500	Properties: 14 Rooms: 1,712	1. SW 2. 3.
MICROTEL INNS AND SUITES FRANCHISE, INC. Microtel 13 Corporate Square #250 Atlanta, GA 30329	Michael A. Leven Pres. & CEO 404-321-4045	Properties: 27 Rooms: 2,631	1. US 2. 3.
NATIONAL NINE INNS National Nine Inns 2285 South Main #9 Salt Lake City, UT 84115	Rodney H. Jensen Pres. 801-446-9820	Properties: 107 Rooms: 4,754	1. US 2. 3.
NENDELS CORPORATION Nendels Corporation 520 Pike Street #1310 Seattle, WA 98101	C.R. Kearns Pres. 206-623-4832	Properties: 17 Rooms: 1,244	1. W 2. 3.
OMNI HOTELS Omni Hotels Corporation Hampton, NH 03842	Jerry Best Pres. & CEO 603-926-8911	Properties: 40 Rooms: 17,007	1. US 2. Mex 3.

DIRECTORY OF HOTEL FRANCHISE COMPANIES

Company Name and Address	Contact	Current Status	Primary Location
PARK INNS INTERNATIONAL Park Inns International, Inc. 339 Jefferson Road, P.O. Box 278 Parsippany, NJ 07054-0278	Eric E. Pfeffer Pres. & COO 201-428-9700	Properties: 50 Rooms: 5,863	1. US 2. 3.
RAMADA FRANCHISE SYSTEMS, INC. Ramada Franchise Systems, Inc. 339 Jefferson Road Parsippany, NJ 07054-0278	Steven J. Belmonte Pres. & COO 201-428-9700	Properties: 834 Rooms: 123,231	1. US 2. 3.
SUPER 8 MOTELS, INC. Super 8 Motels, Inc. 339 Jefferson Road Parsippany, NJ 07054-0278	Robert N. Weller Pres. & COO 201-428-9700	Properties: 1,251 Rooms: 77,037	1. US 2. CAN 3.
TRAVELODGE Travelodge 339 Jefferson Road P.O. Box 278 Parsippany, NJ 07054-0278	Joseph A. McInerney Pres. 201-428-9700	Properties: 450 Rooms: 36,000	1. US 2. Can 3. Mex
WOODFIN FRANCHISE SYSTEMS Woodfin Franchise Systems 12707 High Bluff Drive #200 San Diego, CA 92130	Samuel A. Hardage Pres. 619-791-4100	Properties: 7 Rooms: 835	1. US 2. 3.

Directory of Hotel Management Companies and Owners

Company Name and Address	Contact	Primary Location	Representative Managed Properties/Hotels Owned	
Accor North America 2 Overhill Rd. Scarsdale, NY 10583	John F. Lehodey Pres. 914-725-5055	1. NE 2. SE 3. SW	Hotel Sofitel L.A. Novotel Compri Hotel Hotel Sofitel Miami Novotel Downtown	Los Angeles, CA New York, NY Princeton, NJ Miami, FL Toronto, CAN
Allen & O'Hara, Inc. 3385 Airways Blvd. Memphis, TN 38116	Robert D. Bird Executive VP 800-664-1116	1. NE 2. MW 3.	Holiday Inn Hampton Inn Residence Inn Brookfield Hampton Inn Philadelphia	Philadelphia, PA Bloomington, IL Milwaukee, WI Mount Laurel, NJ
Atlas Hotels, Inc. 500 Hotel Circle N. San Diego, CA 92108	C. Terry Brown Pres. 619-291-2232	1. SW 2. 3.	Town & Country Carriage Inn Carriage Inn Sunburst Hotel	San Diego, CA Ridgecrest, CA Van Nuys, CA Scottsdale, AZ
B.F. Saul Co. 8401 Connecticut Ave. Chevy Chase, MD 20815	Philip D. Caraci Senior VP 301-986-6000	1. SE 2. MW 3.	Holiday Inn Select Holiday Inn Airport Holiday Inn Holiday Inn East Holiday Inn Dulles Airport	Auburn Hills, MI Gaithersburg, MD Rochester, NY Columbus, OH Sterling, VA
Boykin Management Co. 1500 Terminal Tower Cleveland, OH 44113	Robert Boykin Pres. 216-241-6375	1. NE 2. SE 3. SW	Buffalo Marriott Marriott Quality Suites Columbus N. Marriott Airport Marriott	Buffalo, NY Melbourne, FL Columbus, OH Cleveland, OH
Brown Motel Investments 31194 La Baya Drive #201 Westlake Village, CA 91362	George A. Brown Pres. 818-991-8072	1. NW 2. SW 3.	Inn of Lancaster Shell Beach Motel Best Western Inn & Suites Comfort Inn Northpark Suites	Lancaster, CA Shell Beach, CA Tyler, TX Denver, CO Austin, TX
Budgetel Inns 250 East Wisconsin Ave. #1750 Milwaukee, WI 53203	Charles Hopper Senior VP 414-272-6020	1. US 2. 3.	Budgetel Inn Budgetel Inn Budgetel Inn Budgetel Inn Budgetel Inn	Tampa, FL Milwaukee, WI Atlanta, GA Nashville, TN Chicago, IL
C.F. Vatterott Hotels, Inc. 10449 St. Charles Rock Rd. St. Ann, MO 63074	Gregory B. Vatterott Manager/Owner 314-427-4000	1. MW 2. MO 3.	Hampton Inn Best Western Midway	St. Charles, MO Maryland Heights, MO
California Innkeepers 1350 Bayshore Highway #850 Burlingame, CA 94010	Ray Newbern VP/Operations 415-348-7400	1. SW 2. 3.	Sheraton Hotel Holiday Inn Resort Best Western Inn Roadway Inn	Concord, CA Monterey, CA Bakersfield, CA Reno, NV
Chalet Suisse International Chalet Dr. Wilton, NH 03086	Fred B. Roedel Pres. 603-654-2000	1. NE 2. 3.	Chalet Suisse Chalet Suisse Chalet Suisse Chalet Suisse Chalet Suisse	Hartford, CT Baltimore, MD Boston, MA Burlington, VT Portsmouth, NH

DIRECTORY OF HOTEL MANAGEMENT COMPANIES AND OWNERS

Company Name and Address	Contact	Primary Location	Representative Managed Properties/Hotels Owned	
Coachman Inn 301 NW 63rd Street #55 Oklahoma City, OK 73116	Dennis Bradford Pres. 405-840-4667	1. SW 2. 3.	Coachman Inn	San Antonio, TX
Concord Hospitality Enterprises Co. 6449 Wilson Mills Rd. #101 Mayfield Village, OH 44143	Mark Laport Pres. 216-460-1763	1. NE 2. MW 3.	Best Western Marriott Fairfield Marriott Courtyard Hampton Inn	State College, PA Jacksonville, FL Columbus, OH Parsippany, NJ
Crown America Corp. Pasquerilla Plaza Johnstown, PA 15907	Michael Horgan VP Operations 814-535-9450	1. SE 2. NE 3.	Holiday Inn Holiday Inn Express Comfort Inn Best Western	York, PA Frederick, MD Macon, GA Harrisburg, PA
Doral Hotels & Resorts Management 122 East 42nd Street New York, NY 10168	Bruce Blum COO 212-557-3300	1. E 2. 3.	Doral Inn Doral Tuscan Arrowwood Doral Resort & Country Club Doral Plaza Corp. Suites	New York, NY New York, NY Rye Brook, NY Miami, FL Chicago, IL
Drury Inns, Inc. 10801 Peartree La. St. Ann, MO 63074	Charles Drury, Jr. Pres. 314-429-2255	1. MW 2. SW 3.	Drury Inn Drury Inn Drury Inn Drury Inn Pear Tree Inn	St. Louis, MO San Antonio, TX Nashville, TN Chicago, IL Poplar Bluff, MO
Embassy Suites, Inc. 850 Ridge Lake Blvd. #400 Memphis, TN 38120	Raymond E. Schultz Pres. 901-680-7200	1. US 2. 3.	Embassy Suites Embassy Suites Embassy Suites Embassy Suites Embassy Suites LAX	Phoenix, AZ Tucson, AZ Dallas, TX Austin, TX Los Angeles, CA
Executive Management Inns 420 East 6th Street PO Box 1598 Topeka, KS 66601	Samuel Cohen Pres. 816-221-2700	1. MW 2. 3.	Ramada Inn East Ramada Inn Liberty Inn	Colorado Springs, CO Leavenworth, KS Topeka, KS
Fairmont Hotels 950 Mason Street San Francisco, CA 94108	Robert I. Small Pres. & CEO 415-772-5000	1. US 2. 3.	Fairmont Hotel Fairmont Hotel Fairmont Hotel Fairmont Hotel Fairmont Hotel	San Francisco, CA Dallas, TX Chicago, IL San Jose, CA New Orleans, LA
Four Seasons— Regent Hotels & Resorts 1165 Leslie St. Don Mills, Ont. Canada M3C2K8	John L. Sharpe Pres. & COO 416-449-1750	1. US 2. Int'l 3.	The Pierre Ritz Carlton Chicago Four Seasons The Regent Hotel Four Seasons	New York, NY Chicago, IL Austin, TX Hong Kong Toronto, CAN
Hampton Inns 6800 Poplar, Suite 200 Memphis, TN 38138	David C. Sullivan EVP & COO 901-758-3100	1. SE 2. SW 3.	Hampton Inn Hampton Inn Hampton Inn Hampton Inn Hampton Inn	Birmingham, AL Little Rock, AR Atlanta, GA Memphis, TN Dallas, TX
Harley Hotels, Inc. 17000 Bagley Rd. Middleburg Heights, OH 44130	Robert Dunbar VP 216-891-3600	1. SE 2. MW 3.	Harley Hotel Harley Hotel Harley Hotel Harley Hotel	St. Louis, MO Lansing, MI Columbus, OH Lexington, KY
Helmsley Hotels, Inc. 36 Central Park South New York, NY 10019	Freeman Hill VP/General Manager 212-888-7000	1. NE 2. 3.	Helmsley Park Lane New York Helmsley Helmsley Windsor Helmsley Middletown	New York, NY New York, NY New York, NY New York, NY

DIRECTORY OF HOTEL MANAGEMENT COMPANIES AND OWNERS

Company Name and Address	Contact	Primary Location	Representative Managed Properties/Hotels Owned	
Hilton Hotels Corp. 9336 Civic Center Dr. Beverly Hills, CA 90210	Stephen Bollenbach Pres. & CEO 310-205-4321	1. 2. 3.	Waldorf-Astoria Chicago Hilton & Towers Hilton Hawaiian Village Capitol Hilton Beverly Hilton	New York, NY Chicago, IL Honolulu, HI Washington, DC Beverly Hills, CA
Horizon Hotels Ltd. 442 Highway 35 South Bldg. A Eatontown, NJ 07724	Stanley Cox Chmn. 908-935-9553	1. NE 2. MW 3. SE	Ramada Inn Arrowwood Days Inn Days Inn	Lafayette, IN Rye Brook, NY Hampton, VA Fort Myers, FL
Interstate Hotels Corp. Foster Plaza #10, 680 Andersen Pittsburgh, PA 15220	Milton Fine Chairman & CEO 412-937-0600	1. US 2. 3.	Marriott Marriott Marriott Marriott Hilton	Key West, FL Albany, NY San Diego, CA North Miami, FL Denver, CO
Jackson Hospitality Services, Inc. One Office Pk. Circle Birmingham, AL 35223	Cory G. Jackson Sr. Chairman & CEO 205-879-1241	1. SE 2. 3.	Days Inn Sheraton Perimeter Pk Hampton Inn Key West Inn	Huntsville, AL Birmingham, AL Gadsden, AL Tunica, MS
John Q. Hammons Hotels, Inc. 300 John Q. Hammons Pkwy. Springfield, MO 65806	Dave Jones, CHA Pres. & COO 417-864-4300	1. US 2. 3.	Holiday Inn Pyramid Holiday Inn East Holiday Inn Bay Bridge Embassy Suites Montgomery	Albuquerque, NM Tulsa, OK Emmeryville, CA Montgomery, AL
Konover Hotel Corp. 345 North Main Street #317 West Hartford, CT 06117	David Kagan Executive Director 860-586-7492	1. NE 2. 3.	Radisson Hotel Centennial Inn Ramada Hotel Howard Johnson Lodge	New London, CT Farmington, CT Norwich, CT Newburgh, NY
Landmark Hotel Group 44 Montgomery Street #4100 San Francisco, CA 94105	Craig Sweeney Pres. 415-399-1313	1. SW 2. 3.	L'Auberge de Sedona Kea Lani Hotel Embassy Suites Resort	Sedona, AZ Wailea, Maui, HI Kaanapali, Maui, HI
Lees Inns of America, Inc. 130 N. State St. North Vernon, IN 47265	Lester Lee Pres. 812-346-5072	1. MW 2. 3.	Lees Inn Lees Inn Lees Inn Lees Inn Lees Inn	Greensburg, IN Muncie, IN Greenfield, IN Indianapolis, IN Fort Wayne, IN
Linguist & Craig Hotels/Resorts 1611 St. Andrews Lawrence, KS 66047	Steven J. Craig Pres. 913-841-3100	1. SW 2. MW	Holiday Inn Westwood Plaza Holiday Inn Holiday Inn Holiday Inn Bristol Plaza Holiday Inn	Los Angeles, CA Kansas City/Lenexa, KS Anaheim, CA Costa Mesa, CA Tuscaloosa, AL
Little America Hotels 550 East South Temple Salt Lake City, UT 84102	Ken Knight Pres. 801-363-5100	1. SW 2. MW 3.	Sun Valley Little America Little America West Gate Hotel Little America	Sun Valley, ID Cheyenne, WY Salt Lake City, UT San Diego, CA Flagstaff, AZ
Mardeck Ltd. 1700 Rockville Pike #200 Rockville, MD 20852	Alan Margolius Sen. VP 301-468-0707	1. NE 2. 3.	Holiday Inn Holiday Inn Hampton Central City Travelodge Holiday Inn Elyria	Alexandria, VA Hampton, VA Washington, DC Elyria, OH
Marshall Management, Inc. 718 Nalor Mill Rd. Salisbury, MD 21801	Michael Getzey Ex VP & COO 410-749-8464	1. SE 2. MW 3.	Quality Inn Comfort Inn Quality Inn Natural Bridge Hotel	Chicago, IL Salisbury, MD Columbus, OH Natural Bridge, VA
Motels of America, Inc. 701 Lee Street #1000 Des Plaines, IL 60016	Kurt M. Mueller Pres. 708-803-1200	1. US 2. 3.	Richmond Shoneys Inn Phoenix Howard Johnson Super 8 Motel Super 8 Motel Super 8 Motel	Richmond, VA Phoenix, AZ Louisville, KY Knoxville, TN Spokane, WA

DIRECTORY OF HOTEL MANAGEMENT COMPANIES AND OWNERS

Company Name and Address	Contact	Primary Location	Representative Managed Properties/Hotels Owned	
Omni Hotels Hampton, NH 03842	Jerry Best Pres. & CEO 603-926-8911	1. US 2. Mexico 3. Asia	Omni Hong Kong Omni Durham, NC Omni Ambassador East Omni Royal Orleans Omni Marco Polo	Hong Kong Durham, NC Chicago, IL New Orleans, LA Singapore
Prudential Realty Group Three Gateway Center, 13th Floor 100 Mulberry Street Newark, NJ 07102	Allen J. Ostroff Managing Director 201-802-7522	1. US 2. 3.	Hilton Hawaiian Village Hyatt Regency Embassy Suites Radisson Town Center Ritz Carlton	Waikiki, HI San Francisco, CA Atlanta, GA Southfield, MI Laguna Nigel, CA
Rahn Properties, Inc. 1512 E. Broward Blvd. Ft. Lauderdale, FL 33301	John Anderson Principal 305-524-5336	1. SE 2. SW 3.	Marriott Harbor Beach Resort Pier 66 Hotel & Marina Sonoma Mission Inn & Spa Holiday Inn Beach Side Courtyard	Ft. Lauderdale, FL Ft. Lauderdale, FL Sonoma, CA Key West, FL Alexandria, VA
Red Lion Hotels & Inns 4001 Main St. Vancouver, WA 98666	Dave Johnson Pres./CEO 206-696-0001	1. NW 2. SW 3.	Fess Parker's Red Lion Red Lion/Seatac Red Lion/Airport Red Lion Lloyd Center Red Lion San Jose	Santa Barbara, CA Seattle, WA Costa Mesa, CA Portland, OR San Jose, CA
Red Roof Inns, Inc. 4355 Davidson Rd. Hilliard, OH 43026	John E. Campbell VP Operations 614-876-3322	1. NE 2. SE 3. MW	Red Roof Inn Red Roof Inn Red Roof Inn Red Roof Inn Red Roof Inn	Chicago, IL Atlanta, GA Detroit, MI Dallas, TX Columbus, OH
Registry Hotel Corp. 3030 LBJ Freeway #1515 Dallas, TX 75234	Jerry R. Thoele Pres. 214-484-8686	1. US 2. 3.	The Registry Hotel The Registry Hotel The Registry Hotel The Registry Hotel	Charlotte, NC Scottsdale, AZ Naples, FL Bloomington, MN
Ritz-Carlton Hotel Co. 3414 Peachtree Rd. Atlanta, GA 30326	Ed Staros VP Operations 404-237-5500	1. US 2. 3.	Ritz Carlton Ritz Carlton Ritz Carlton Ritz Carlton Ritz Carlton	Boston, MA Atlanta, GA Naples, FL Laguna Beach, CA Dearborn, MI
Rosewood Hotel Group 500 Crescent Court Dallas, TX 75201	Atef Mankarios Pres. 214-871-5400	1. SW 2. 3.	Mansion on Turtle Creek Hotel Crescent Court Hotel Bel-Air	Dallas, TX Dallas, TX Los Angeles, CA
Select Hotel Management, Inc. 24455 South Industrial #A Ann Arbor, MI 48104	Jim Winter Pres. 313-663-1900	1. MW 2. 3.	Holiday Inn West Holiday Inn Hampton Inn Hampton Inn	Muskegon, MI Auburn Hills, MI Traverse City, MI Ann Arbor, MI
Serj Corp. 1138 India St. San Diego, CA 92101	Jack Scull Pres. 619-696-9908	1. SW 2. 3.	Ramada Inn Downtown Radisson Harbor View Radisson Inn National City	San Diego, CA San Diego, CA San Diego, CA
Sheraton Corp. 60 State St. Boston, MA 02109	Evanthea Vlahakis Mgr. Press Relation 617-367-3600	1. Int'l 2. 3.	Sheraton Carlton Maria Isabel Sheraton Brussels Sheraton Rio Sheraton Sheraton San Cristobal	Washington, DC Mexico City, Mexico Brussels, Belgium Rio de Janeiro, Brazil Santiago, Chile
Signature Inns, Inc. 8335 Allison Pointe Trail Indianapolis, IN 46250	Robert H. Goodwell VP, Admin. Treas. 317-577-1111	1. MW 2. 3.	Signature Inn Castleton Signature Inn Signature Inn Signature Inn Detroit Signature Inn	Indianapolis, IN Lexington, KY Dayton, OH Romulus (Detroit), MI Peoria, IL
Snavely Building Co. 2550 Som Center Rd. Willoughby Hill, OH 44094	Peter Snavely VP 216-585-9091	1. MW 2. 3.	Holiday Inn Pierre Radisson Inn Pierre Radisson Inn Quality Hotel	West Lake, OH Beachwood, OH Akron, OH Beachwood, OH

DIRECTORY OF HOTEL MANAGEMENT COMPANIES AND OWNERS

Company Name and Address	Contact	Primary Location	Representative Managed Properties/Hotels Owned	
Snyder Corp. 690 Delaware Ave. Buffalo, NY 14209	Paul Snyder, Jr. Pres. 716-881-6200	1. NE 2. 3.	Hyatt Regency Beaver Hollow Lodge	Buffalo, NY Java Center, NY
Sojourner Inn 605 Gold Star Hwy. Groton, CT 06340	Carmine DeStefanno Pres. 203-445-1986	1. NE 2. 3.	Sojourner Inn	Groton, CT
Sonnenblick-Goldman Corp. of California 1901 Ave. of the Stars Century City, CA 90067	Robert E. Sonnenblick Pres. 213-277-0600	1. SW 2. NE 3.		
Stendig Development Co. 2500 Riverside Dr. Danville, VA 24540	Joseph Stendig Pres. 804-792-5161	1. SE 2. NE 3.	Best Western Holiday Inn	Augusta, ME Danville, VA
Stouffer Hotel Co. 29800 Bainbridge Rd. Solon, OH 44139	Mona Mesereau PR 216-248-3600	1. US 2. 3.	Stouffer Concourse Hotel Stouffer Austin Hotel Stouffer Greenway Plaza Stouffer Harborplace Stouffer Hotel	Los Angeles, CA Austin, TX Houston, TX Baltimore, MD Buford, GA
Sunway Hotel Group 800 W. 47th St. Kansas City, MO 64112	Don Culbertson Pres. 816-531-4884	1. SE 2. SW 3. MW	Days Inn Days Inn Howard Johnson Days Inn Days Inn	Miami, FL Melbourne, FL Kissimmee, FL Fort Wayne, IN Arlington, TX
Super 8 Motels, Inc. 1910 8th Ave. Aberdeen, SD 57401	Joan Ganje-Fisher VP Corp. Relations 605-225-2272	1. US 2. Can 3.	Super 8 Motel Super 8 Motel Super 8 Motel Super 8 Motel Super 8 Motel	Las Vegas, NV Anchorage, AK Phoenix, AZ Jacksonville, FL San Diego, CA
Surbana Properties Corp. 10769 Wellerwoods Dr. Cincinnati, OH 45242	William H. Troutman Pres. 513-247-0600	1. MW 2. 3.	Quality Suites Sleep Inn (3)	Cincinnati, OH Cincinnati, OH
Sverdrup Investment, Inc. 13723 Riverport Dr. Maryland Height, MO 63043	Bruce R. Smith III VP 314-436-7600	1. MW 2. 3.	Compri Hotel Sheraton	St. Louis, MO St. Louis, MO
Sybedon Corp. 560 Lexington Ave. New York, NY 10022	Mitchell Davis Sen. VP 212-319-4770	1. US 2. 3.	U.S. Grant Jefferson Sheraton Clarion	San Diego, CA Richmond, VA New Orleans, LA
Teak Associates Investments 5727 Lewis Tulsa, OK 74105	William B. Smith Pres. 918-744-1051	1. MW 2. 3.	Brighton Place Super 8 Super 8 Troy Budget Inn South County Super 8	Branson, MO Eureka, MO Rock Port, MO Troy, MO St. Louis, MO
Terracon Corp. South Eagle Rd. Newtown, PA 18940	Robert Jones Mktg. Dir. 215-860-7788	1. NE 2. 3.	Royce Hotel	Langhorne, PA
Tishman Realty Corp. 1200 EPCOT Resort Blvd. Lake Buena Vista, FL 32830	John A. Griswold VP 407-934-4400	1. SE 2. 3.	Walt Disney World Swan Walt Disney World Dolphin Hilton at Walt Disney World Hotel Nikko Chicago	Orlando, FL Orlando, FL Lake Buena Vista, FL Chicago, IL
TMH Hotels, Inc. P.O. Box 2176 Wichita, KS 67201	William Hamrick Pres. 316-262-2841	1. SE 2. NE 3.	Residence Inn Residence Inn Residence Inn Residence Inn Residence Inn	Charlotte, NC Richmond, VA Binghamton, NY Hartford, CT Shelton, CT

DIRECTORY OF HOTEL MANAGEMENT COMPANIES AND OWNERS

Company Name and Address	Contact	Primary Location	Representative Managed Properties/Hotels Owned	
Transamerica Realty Services 600 Montgomery St. San Francisco, CA 94111	Robert W. Cramer Sen. VP 415-983-5447	1. SW 2. 3.	Ventana Inn Compri Hotel	Big Sur, CA Costa Mesa, CA
Tucker Hotels 150 N. Meridien Indianapolis, IN 46204	Dale Scott Pres. 317-236-2500	1. MW 2. 3.	Canterbury Hilton at the Circle Hilton at the Airport	Indianapolis, IN Indianapolis, IN Indianapolis, IN
Urgo, Butts & Co. 2 Wisconsin Circle Chevy Chase, MD 20815	Richard L. Vilardo VP 301-657-2130	1. NE 2. 3.	Long Island Marriott Park Terrace Hotel	Uniondale, NY Washington, DC
Valle Realty & Management Co. 13499 Biscayne Blvd. N. Miami, FL 33181	Andrew J. Del Valle Pres. 305-947-1668	1. SE 2. 3.	Indian Creek Lodge	Miami Beach, FL
Valley Forge Investment Corp. P.O. Box 837 Valley Forge, PA 19482	Brian McElwee VP 215-687-2400	1. NE 2. 3.	Holiday Inn Holiday Inn Golden Holiday Inn	King of Prussia, PA Lands Kultsville, PA Avalon, NJ
Vesper Properties, Inc. One Post Office Sq. Boston, MA 02109	Paul Guaraldi Partner 617-423-0550	1. NE 2. SE 3.		
Virginia Beach Hotel Corp. 1900 Pavillion Dr. Virginia Beach, VA 23451	Michael Gallardi Owner 804-422-8900	1. NE 2. 3.	Radisson Hotel	Virginia Beach, VA
Walter Uccellini/Riverside Associates P.O. Box 799 Albany, NY 12201	Al Sorrentino VP 518-434-2801	1. NE 2. 3.	Quality Inn-Riverside	Fulton, NY
Westbrooke Hospitality Corp. 2901 W. Airport Freeway Irving, TX 75062	Philip J. Brookes Pres. 214-258-0900	1. US 2. 3.	Holiday Inn Airport Holiday Inn Medical Ctr. Executive Guest House Holiday Inn Kiva Hotel	Green Bay, WI Spokane, WA San Antonio, TX Temple, TX Abilene, TX
WestCor Resorts 11811 N. Tatum Blvd. Phoenix, AZ 85028	Milton Ericksen Dir. of PR 602-953-6400	1. SW 2. 3.	The Boulders Hotel Westcourt Westcourt in the Buttes	Carefree, AZ Phoenix, AZ Tempe, AZ
Wilson Hotel Management Co. P.O. Box 30185 Memphis, TN 38130	George Glover Pres. 901-346-8800	1. SE 2. MW 3.	Wilson Inn Wilson Inn Wilson Inn Wilson Inn Wilson Inn	Birmingham, AL Houston, TX Charleston, SC Jackson, MI Baton Rouge, LA
Woodbine Development Co. 1401 Elm St. Dallas, TX 75202	Don McDaniel VP 214-744-6000	1. MW 2. SW 3.	Hyatt Regency Hyatt Regency Hyatt Regency DFW Airport	Dallas, TX Fort Worth, TX Dallas/Ft. Worth, TX
Wyndam Hotel Co. 3200 Trammel Crow Center Dallas, TX 75201-2997	James Carreker Pres. 214-978-4440	1. NE 2. SW 3.	Wyndam Bristol Wyndam Franklin Plaza Wyndam Greenspoint Wyndam Wyndam Paradise Valley	Washington, DC Philadelphia, PA Houston, TX Palms Springs, CA Scottsdale, AZ
Zaitek Corp. 3566 Harding Ave. Honolulu, HI 96817	Dan Morikawa Pres. 808-533-2600	1. HI 2. 3.	Honolulu Prince	Honolulu, HI

Index

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

A

- AA utility bond and mortgage interest rate, 13.04[1]
- Access and visibility, site analysis, Exh. 6-1
- Accommodated room-night demand formula, 9.03[1]
- Acquisition of property
 - See also Financing
 - due diligence, 14.08[3]
 - market potential, 5.03
 - planning steps, 1.02
- Actual market share, 10.02, Exh. 10-1
- Advertising
 - See also Brands; Marketing
 - brand creation as investment strategy, 14.04[11][b]
 - franchises
 - contract provisions, 18.09[6]
 - fees, 18.07[2][b]
 - hotel brokers, marketing package preparation, 17.02[4]
 - publicity and promotion assistance by franchisor, 18.06[5]
- Agreements. See Contracts; Franchises
- Airline industry
 - airports. See Airports
 - communication technology, effect on demand, 5.01
 - deregulation, effect on demand, 5.01
 - fare wars of 1992, 4.03[1]
 - frequent flyer programs, 4.01
 - integration with lodging industry, 2.02[2][b]
 - transportation used by commercial travelers, Exh. 4-8
 - travel industry. See Travel industry
- Airports
 - See also Airline industry
 - location, 3.02[3][a]
 - statistics, market area analysis, 7.03[2][g]
 - traffic counts, market area analysis, Exh. 7-19
- Alcoholic beverages, zoning restrictions affecting site selection, 6.04
- All-suite hotels, 2.05[4], 3.02, 3.02[1][d], 3.03
 - classification by type, 3.02[1][d], 5.05[1]
 - floor plan, 3.03, Exh. 3-6
- Amenities
 - competition, 8.02
 - costs, 3.04, 3.05
 - creep, 5.05
 - customer preferences, Exh. 4-15
 - expected, 3.04, Exh. 3-7
 - franchise standards, adherence to, 18.05[6]
 - national demand, 4.04, 4.06[4]
 - national supply, 3.02, 3.04
 - usage, Exh. 3-8
- Amortization, earnings before interest, taxes, depreciation, and amortization (EBITDA), 14.03[8]
- Amusement parks as demand generators, Exh. 9-1
- Analysis
 - casino gaming. See Casino gaming analysis
 - expenses. See Expenses
 - lodging demand. See Demand
 - lodging supply. See Supply
 - market area. See Market area analysis
 - revenue. See Revenue
 - room-nights. See Room-night analysis
 - site location. See Site analysis, market study, and appraisal
 - traffic. See Traffic analysis
- Annual management plan. See Management
- Appraisal
 - appraisal and consulting firm, selection of, 24.01–24.05
 - assignment proposals, 24.04
 - basic requirements, 24.02
 - FIRREA, impact of, 24.01
 - initial selection process, 24.03
 - qualifications checklist, 24.04
 - markets. See Market study and appraisal
 - property valuation, 1.02[3], 13.01
 - property valuation tool, 13.04[2][a]
 - site location. See Site analysis, market study, and appraisal
- Appreciation, as investment strategy, 14.04[3]
- Arbitration during budget approval process, 20.06[1]
- Architects, investment partnership with, 14.02[2]
- Area attractions. See Demand generators
- Assessments
 - nonresidential property, Exh. 7-14
 - personal property, 12.11[2]
 - real property, 12.11[1]
- Assignment, franchise agreement provisions, 18.09[9]
- Audits, franchise agreement provisions, 18.09[8]
- Average room rate, 10.05
 - See also Room rates
 - bottom-up method, 10.06[2][b]
 - class, by, Exh. 3-4
 - comparison with occupancy, 10.06[1][b]
 - competitive positioning method, 10.06[2][b]
 - forecasting procedure, 10.06
 - existing hotels, 10.06[1]

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (¶), exhibits (Exh.), and appendixes (App.).]

- Average room rate (*cont'd*)
 forecasting procedure (*cont'd*)
 existing hotels (*cont'd*)
 average rate projection for
 subject property,
 10.06[1][d]
 competitor rates,
 10.06[1][a]
 competitor rates,
 compared,
 10.06[1][b]
 future changes in market
 area economy and
 supply, 10.06[1][c]
 proposed hotels, 10.06[2]
 abridged income and
 expense statement,
 Exh. 10-14
 bottom-up method, Exh.
 10-14
 bottom-up method
 (Hubbart Formula),
 10.06[2][b]
 competitive positioning
 method, 10.06[2][a],
 Exh. 10-13
 hypothetical market area's
 average room rates,
 Exh. 10-13
 market segmentation
 method, 10.06[2][d]
 rule of thumb method,
 10.06[2][c], Exh.
 10-15
 Hubbart Formula (bottom-up
 method), 10.06[2][b]
 market segmentation method,
 forecasting procedure for
 proposed hotels,
 10.06[2][d]
 rule of thumb method,
 forecasting procedure for
 proposed hotels,
 10.06[2][c]
*Uniform System of Accounts
 for Hotels*, 10.05
- B**
- Bahrain, 22.05[1]
See also International
 markets
- Bankruptcy
See also Foreclosure
 mortgages, 2.06[1]
- termination of management
 contract, 20.08[1],
 20.08[10]
- Banks
 commercial
 financing, role in, 16.02
 real estate mortgage
 investment conduits
 (REMICs), 2.06[4]
 Uniform Rule on Real
 Estate Lending, 16.02
 investment bankers and
 commercial mortgage-
 backed securities (CMBS),
 16.08[2]
- Banquet demand,
 11.03[1][a][iv]
- Barriers to entry
 incentive to investment,
 14.04[11][b]
 market area analysis factors,
 5.03
- Bars. *See* Cocktail lounges
- Bed and breakfast inns, national
 supply, 3.02[1][i]
- Belgium. *See* International
 markets
- Beverages
 alcoholic beverages, zoning
 restrictions, 6.04
 expense forecast, 12.03, Exh.
 12-4
 revenue forecasting, 11.03,
 11.03[2]
 build-up cover approach,
 11.03[2][a]
 fixed and variable
 component approach,
 11.03[2][b]
- Boatels, 3.02[1][m]
- Bonds, AA utility, and mortgage
 interest rate, 13.04[1]
- Booker, demand interview,
 9.02[3]
- Booking arrangements
 lead time, 4.06[2], Exh. 4-11
 meetings and conventions,
 4.06[2]
- Bottom-up method, room rate
 forecasting procedure,
 10.06[2][b]
- Boundaries, neighborhood, 7.02,
 7.03[1]
- Boutique hotels, national supply,
 3.02[1][k]
- Brands
See also Advertising;
 Marketing
 creation as investment
 strategy, 14.04[11][b]
 franchises, loyalty and
 recognition, 18.02[3]
 income from, 18.02[4]
 property development,
 importance to, 21.02[2]
- Breach of contract, 20.08[2]
- Break-even analysis, 13.05
- Brokers
 hotel. *See* Hotel brokers
 public relations as investment
 strategy, 14.04[11][a]
 real estate brokers, role,
 1.02[2]
- Budget approval process, 20.06
 arbitration procedures,
 20.06[1]
 ownership control, 20.06[2]
- Budget hotels. *See* Economy
 (budget) hotels
- Build-up cover approach to
 revenue forecasting
 beverages, 11.03[2][a]
 food, 11.03[1][a]
 banquet demand,
 11.03[1][a][iv]
 house count, 11.03[1][a][i]
 in-house capture,
 11.03[1][a][ii]
 out-of-house restaurant
 demand, 11.03[1][a][iii],
 Exh. 11-2
 restaurant activity index
 (RAI), 11.03[1][a]
Restaurant Business
 magazine, data source,
 11.03[1][a]
 restaurant growth index
 (RGI), 11.03[1][a]
- Businesses and market area
 analysis, 7.03[2][d]
- Business travelers
 customer preferences, Exh. 4-
 15
 demographics, Exh. 4-7
 demographics of, 4.06[1]
 nights spent per trip,
 Exh. 4-6

INDEX

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- patronage factors, 3.02,
3.02[1][a], 3.02[3][a]–
3.02[3][c], 3.02[3][e],
4.05[1]
 - transportation used by, Exh.
4-8
 - trips per month, statistics,
Exh. 4-9
 - trips per year, statistics, Exh.
4-5
 - Buy-outs and termination of
management contracts,
20.08[6]
- C**
- Capital
 - See also Financing
 - asset sales of franchises,
2.04[2]
 - availability as investment
factor, 14.03
 - equity investment, stocks,
2.05[6]
 - hotel brokers' sources of,
17.01[3]
 - Case studies
 - investor financing, 17.04
 - neighborhood and market area
analysis, Ch. 7
 - site feasibility, Exh. 6-1
 - Casino gaming analysis
 - casino hotels and national
supply, 3.02, 3.02[1][h]
 - casino player profile, Exh. 23-5
 - definitions
 - handle, 23.01[1]
 - win, 23.01[1]
 - demand. *See this heading:*
supply and demand
analysis
 - demand generators, Exh.
9-1
 - distance-based visitation
model, riverboat casinos,
23.06
 - step one: concentric circle
analysis, 23.06[1]
 - estimated base population
and visitation levels,
Exh. 23-13
 - step two: adjusted
capturable population
and visitation,
23.06[2]
 - base population and
visitation levels, Exh.
23-14
 - step three: casino visits
within market,
projection of, 23.06[3]
 - gaming incidence factor
and projected annual
visits, Exh. 23-15
 - step four: casino admissions,
projection of, 23.06[4]
 - estimated market capture
and projected
admissions, Exh.
23-16
 - win per admission forecast,
23.06[5], Exh. 23-17
 - marketwide gaming
revenue and subject
property's gaming
revenue, Exh. 23-18
 - gambling overview and
history, 23.01
 - casino player profile, Exh.
23-5
 - consumer profile and feeder
market, 23.01[5]
 - casino feeder states and
markets, Exh. 23-6
 - casino player profile, Exh.
23-5
 - future of gaming, 23.01[6]
 - gross wagering and revenue
trends, 23.01[1]
 - trends in gross wagering
(handle) and gross
revenue (win), 1982,
1993 (\$ millions),
Exh. 23-1
 - gross wagering by state,
23.01[2], Exh. 23-2
 - International Gaming and
Wagering Business*, Exh.
23-2
 - publicly traded gaming
corporations, 23.01[4],
Exh. 23-4
 - table game and device
analysis by market,
23.01[3], Exh. 23-3
 - gaming win forecast, 23.05
fair share, 23.05[1]
 - projected marketwide
gaming inventory and
calculated fair share,
Exh. 23-9
 - marketwide gaming revenue,
23.05[2]
 - Cripple Stream market
revenue, Exh. 23-10
 - projected market penetration
rates, 23.05[3]
 - projected market
penetration rates and
captured gaming
revenue, Exh. 23-11
 - WPUPD projection,
23.05[4]
 - projected WPUPD and
total gaming win,
Exh. 23-12
 - Indian Gaming Regulatory Act
(IGRA), 23.03, 23.03[1]
 - International Gaming and
Wagering Business*, Exh.
23-2
 - National Indian Gaming
Commission (NIGC),
23.03[2]
 - Native American gaming,
23.03
 - classification of categories,
23.03
 - Indian Gaming Regulatory
Act (IGRA), 23.03,
23.03[1]
 - National Indian Gaming
Commission (NIGC),
23.03[2]
 - player profile, Exh. 23-5
 - riverboat gaming, 23.02
 - distance-based visitation
model. *See this heading:*
distance-based visitation
model, riverboat casinos
 - expansion issues, 23.02[7]
 - Illinois, 23.02[1]
 - Indiana, 23.02[6]
 - Iowa, 23.02[3]
 - Louisiana, 23.02[4]
 - Mississippi, 23.02[2]
 - Missouri, 23.02[5]
 - supply and demand analysis,
23.04
 - Cripple Stream gaming
market analysis, Exh.
23-7
 - market segmentation,
23.04[1]
 - leisure demand,
23.04[1][c]
 - local demand, 23.04[1][a]

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (¶), exhibits (Exh.), and appendixes (App.).]

- Casino gaming analysis (*cont'd*)
 supply and demand analysis (*cont'd*)
 market segmentation (*cont'd*)
 tour and travel demand, 23.04[1][b]
 WPUPD (win-per-unit-per-day), 23.04, 23.04[2]
- win
 defined, 23.01[1]
 forecasting. *See this heading:*
 gaming win forecast
 trends in gross wagering (handle) and gross revenue (win) for 1982 and 1993, Exh. 23-1
 win per admission forecast, riverboat casinos, 23.06[5], Exh. 23-17, Exh. 23-18
 WPUPD. *See this heading:*
 win-per-unit-per-day
 win-per-unit-per-day (WPUPD), 23.04, 23.04[2]
- Casino hotels and national supply, 3.02, 3.02[1][h]
- Casinos as demand generators, Exh. 9-1
- Casualty loss, 20.08[4]
- C corporations, 15.05[1]
- Census Bureau, 3.01
- Census of hotels, motels, and other lodging facilities, Exh. 3-1
- Centralized reservation systems, 18.06[8]
See also Reservation systems
- Chains. *See* Franchises
- Checklists
 appraisal and consulting firm, qualifications of, 24.04
 data collection, App. 1
 partnership agreements, 15.04[2]
- Classification, lodging facilities, 3.02
 class of facility, 3.02[2], Exh. 3-6
 first-class designation, 3.02[2]
 floor plans, 3.03, Exh. 3-6
 market share, Exh. 3-3
- occupancy, average rate, Exh. 3-4
 room rate, average, Exh. 3-4
 location, 3.02[3], Exh. 3-2, Exh. 3-3
 airports, 3.02[3][a]
 convention centers, 3.02[3][e]
 downtown, 3.02[3][c]
 highway, 3.02[3][b]
 mixed-use, 3.02[3][g]
 resort, 3.02[3][f]
 suburban, 3.02[3][d]
 market share, Exh. 3-3
 occupancy, average rate, Exh. 3-4
 operating statistics by type, Exh. 3-9
 room rate, average, Exh. 3-4
 type, 3.02[1]
 bed and breakfast inn, 3.02[1][i]
 boate1, 3.02[1][m]
 boutique, 3.02[1][k]
 casino, 3.02[1][h]
 commercial, 3.02[1][a]
 conference center, 3.02[1][f]
 convention center, 3.02[1][b]
 extended stay, 3.02[1][e], 5.05[1]
 health spa, 3.02[1][l]
 mega-resort, 5.05[1]
 microtel, 3.02[1][g], 5.05[1]
 Mom-and-Pop motels, 3.02[1][j]
 operating statistics, Exh. 3-8
 resort, 3.02[1][c], 5.05[1]
 suite, 3.02[1][d], 5.05[1]
- CMBS. *See* Commercial mortgage-backed securities
- CMSA (Consolidated Metropolitan Statistical Area), 7.03[3]
- Cocktail lounges, 3.02, 3.04, 3.05
See also Amenities; Beverages; Services
 zoning restrictions, 6.04
- Colleges and universities as demand generators, Exh. 9-1
- Comfort Inn, 2.06[7]
- Commercial banks. *See* Banks
- Commercial hotels
 historical origins, 2.01[2][a]
 national supply, 3.02, 3.02[1][a], 3.02[3][a]-3.02[3][c]
- Commercial mortgage-backed securities (CMBS), 16.08
 future outlook, 16.08[5]
 history and evolution of, 16.08[1]
 investment bankers, role of, 16.08[2]
 rating agencies, role of, 16.08[4]
 RTC role, 16.08[1]
 underwriting criteria, 16.08[3]
- Commercial room rate, defined, 10.06[1][a]
- Commercial travelers. *See* Business travelers
- Communication technology, effect on demand, 5.01
- Competition
 amenities, 3.02, 3.04, 3.05, 8.02
 competitive index method, 10.03
 competitive positioning method, 10.06[2][a]
 competitor interviews as supply analysis tool, 8.05
 evaluation, supply analysis, 8.02
 market area analysis, 1.02[1], 10.01
 market penetration method, 10.02
 occupancy levels, 10.03[2], 10.04, 10.05, 10.06
 pricing of amenities and services, 3.02, 3.04, 3.05
 primary, 8.02
 secondary, 8.02
- Competitive index method
 advantages of, 10.03[1]
 calculation of, 10.03, Exh. 10-3, Exh. 10-4
 evaluation of proposed properties, 10.03[2]
 current room-night demand, 10.03[2][a], Exh. 10-8
 market share projection, Exh. 10-9
 occupancy projection, 10.03[2][c], Exh. 10-10

INDEX

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).

References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- projected market share, 10.03[2][b]
 - room-nights captured (occupancy), Exh. 10-10
 - stabilized occupancy estimate, Exh. 10-7
 - market segment percentage and market segment competitive index, Exh. 10-6
 - penetration method, comparison with, Exh. 10-5
 - Competitive positioning method, room rate forecasting procedure, 10.06[2][a]
 - Competitive pricing of amenities and services, 3.04, 3.05
 - Concurrent ownership, 15.03 defined, 15.01[1]
 - Condemnation of property, 20.08[4], 20.12
 - Conference centers demand, 4.06[2] supply, 3.02, 3.02[1][f]
 - Confidential information, franchise agreements, 18.09[2]
 - Conflicts of interest management contract issues, 19.06[4][g]
 - Consolidated Metropolitan Statistical Area (CMSA), 7.03[3]
 - Consolidation as investment strategy, 14.06
 - Construction costs construction cost services, 13.02[1] estimated construction cost of proposed property, Exh. 13-1 mortgage financing, 16.09[1], 16.09[2] plans and specifications provided by franchisor, 18.06[2] property development process, 21.06
 - Consultants. *See* Appraisal; Market study and appraisal
 - Consumer Price Index (CPI), 7.03[4], Exh. 7-5
 - Contract room rate, defined, 10.06[1][a]
 - Contracts franchise. *See* Franchises, *subheading*: agreements management. *See* Management property purchase contract process, 21.05 room rate, 10.06[1][a] sample clauses for purchase and sale agreement, App. 2
 - Convention centers demand, 4.06[2] demand generators, Exh. 9-1 lead time, 4.06[2] supply, 3.02, 3.02[1][b], 3.02[3][c], 3.02[3][e]
 - Convention hotels, evolution in late 1950s and early 1960s, 2.02[2][c]
 - Conventions. *See* Meetings and conventions
 - Corporate meetings *See also* Meetings and conventions characteristics of, Exh. 4-10 demand, 4.06[2] lead time, 4.06[2]
 - Corporations, 15.05 C corporations, 15.05[1] S corporations, 15.05[2] election and termination of status, 15.05[2][b] eligibility requirements, 15.05[2][a] limited partnerships, compared with, 15.05[2][c] tax considerations, 15.01[1]
 - Cost approach, property valuation. *See* Valuation
 - Costs *See also* Expenses; Operating expenses construction, 13.02[1], Exh. 13-1
 - County seats as demand generators, Exh. 9-1
 - Court houses as demand generators, Exh. 9-1
 - CPI. *See* Consumer Price Index
 - Credit companies, 16.04
 - Critical mass brand creation, 14.04[11][c] management contracts, 19.06[1][c]
 - Cyclical markets, 5.03
 - Czech Republic. *See* International markets
- ## D
- Data Census Bureau, 3.01 demand statistics, 4.06, 8.03[3] market area analysis, 7.03 market supply, 3.01, 3.05 neighborhood analysis, 7.02 operating statistics, 3.01 publications. *See* Publications sources. *See* Data sources
 - Data collection checklist, App. 1 sources and methods, 7.03[3]
 - Data sources *See also* Publications benchmark information for supply analysis, 8.04 competitor interviews, 8.05 construction cost services, 13.02[1] Federal Aviation Administration, 7.03[3], Exh. 7-2 *International Gaming and Wagering Business*, Exh. 23-2 *Meetings and Conventions* magazine, 4.06[2] *Meetings Market* magazine, 4.06[2] *Restaurant Business* magazine, 11.03[1][a] Smith Travel Research, 4.03 *Statistical Abstract of the United States*, 4.04[1], 4.04[2] *Uniform System of Accounts for Hotels*, 10.05, 11.01 U.S. Travel Data Center, 4.03, 4.03[1], 4.06[1]

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- Data sources (*cont'd*)
 Wharton Economic
 Forecasting Associates
 Group, 14.01
- Days Inns, 5.05
- Debt financing, 1.03, 2.05[6],
 Ch. 16
See also Financing; Mortgages
 mezzanine financing, 14.07
- Debt rating agencies, 16.08[4]
- Default or foreclosure, and
 termination of management
 contract, 20.08[10]
- Deferred exchanges of property,
 17.02[4]
- Definitions
 beverage revenue, 11.03
 build-up cover approach to
 food revenue forecasting,
 11.03[1][a]
 concurrent ownership,
 15.01[1]
 food revenue, 11.03
 franchise, 18.01
 handle, casino gaming,
 23.01[1]
 house count, food revenue
 forecasting, 11.03[1][a][i]
 Hubbart Formula, 10.06[2][b]
 individual ownership, 15.01[1]
 in-house capture, food revenue
 forecasting, 11.03[1][a][ii]
 joint tenancy, 15.03[2]
 limited liability company
 (LLC), 15.01[1]
 market penetration method,
 10.02
 mezzanine financing, 14.07
 neighborhood, 7.02
 ownership entities, 15.01
 partnership, 15.01
 real estate investment trust
 (REIT), 15.01
 regular corporation, 15.01
 replacement cost, 13.02[1]
 room rate types, 10.06[1][a]
 S corporation, 15.01
 sole proprietorship, 15.02
 stabilized occupancy, 10.04
 tenancy by the entirety,
 15.03[3]
 tenancy in common, 15.03[1]
 total property leases, 19.02
 total revenue, 11.06
 trusts, 15.01
 win, casino gaming, 23.01[1]
- Demand, 1.01[2], 4.01
 analysis, 9.01
 automotive fuel prices, effect
 on, 4.01
 banquet demand,
 11.03[1][a][iv]
 capital availability, 14.03
 casino gaming. *See* Casino
 gaming analysis
 characteristics of, 4.06
 commercial, 4.06, 4.06[1]
 comparison of, 4.06[4]
 leisure, 4.06, 4.06[3]
 meetings and conventions,
 4.06, 4.06[2]
 creating, 5.05[2]
 data, 4.06, 8.03[3]
See also Data sources
 demand generators. *See*
 Demand generators
 disposable income, 4.01, 4.05
 diversity factors, 5.03
 dual-income households, 4.01
 due diligence issues, 14.08[4]
 food and beverages
 banquet, 11.03[1][a][iv]
 in-house, 11.03[1][a][ii]
 out-of-house, 11.03[1][a][iii]
 frequent flyer/frequent guest
 programs, 4.01
 future trends, 2.06[7]
 generators. *See* Demand
 generators
 historically, 2.01[3], 2.01[5]
 increases of the 1990s, 2.06[6]
 latent
 induced, 9.03[2][b]
 lodging activity build-up
 approach, 9.03[2]
 unaccommodated,
 9.03[2][a]
 lodging activity build-up
 approach. *See* Lodging
 activity build-up approach
 market area evaluation, 5.03,
 5.04, 9.01
See also Market area
 evaluation
 national, 4.01, 4.02
 out-of-house restaurant
 demand, 11.03[1][a][iii],
 Exh. 11-2
 overdevelopment, 2.01[3],
 2.05[5]
 product diversification and
 segmentation, 2.02[2][e]
 room-night analysis, 9.02[1],
 9.03[6]
 statistics, 4.04-4.04[5]
 food and beverage, 4.04[1]
 foreign and U.S. travelers,
 4.04[4]
 passenger-miles, 4.04[2]
 travel price index, 4.04[3]
 trends, 4.05
 supply and demand levels,
 Exh. 2-2
 telecommunications, effect on,
 4.01
 transient accommodations,
 4.03
 industry receipts, 4.03[2]
 travel growth rates, Exh. 4-2
 travel volume, hotels, Exh.
 4-1
 trends, 4.03[1]
 trends, 5.02
- Demand generators, 9.02
 build-up approach, 9.02
 market area definition,
 9.02[1]
 potential generators,
 identification of, 9.02[2]
 interview form, Exh. 9-2
 latent, 9.03[2], 9.03[5]
 market area definition, 9.02[1]
 potential, 9.02[2]
 sample survey, Exh. 9-3
 site analysis factors, Exh. 6-2
 types, Exh. 9-1
- Demographics
 market demand data, 4.02,
 4.05, 5.03, 5.04
 neighborhood market area
 analysis, 7.03[2]
- Depreciation
 earnings before interest, taxes,
 depreciation, and
 amortization (EBITDA),
 14.03[8]
 management contracts as
 avoidance technique,
 19.06[1][e]
 property valuation analysis,
 13.02
- Development of property, Ch. 21
 construction phase, 21.06[2]
 design phase, 21.06[1]

INDEX

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- developing time line for 200-room commercial hotel, Exh. 21-1
- development team, 21.04
- due diligence issues, 14.08[3]
- environmental concerns, 5.03
- financing
 - components of, 21.08
 - location issues, 21.03[3]
- franchisor assistance, 18.06[3]
- location strategies, 21.03
 - See also Site analysis, market study, and appraisal
 - financial factors, 21.03[3]
 - segment and brand importance, 21.03[1]
 - siting process, 21.03[1]
- market study and appraisal, 5.03, 5.04
- opening process, 21.07
- planning steps, 1.02
- pre-opening/opening process, 21.07
- purchase contract process, 21.05
- Disclosure statement, mandatory for franchisors, 18.03[7]
- Disposable income, 4.01, 4.05
- Distressed properties, acquisition as investment strategy, 14.04[4]
- Dollar (U.S.) valuation, 4.01, 7.03[4]
- Due diligence, 14.08
 - financial analysis, 14.08[5]
 - market factors, 14.08[1]
 - other analyses, 14.08[6]
 - site and neighborhood analysis, 14.08[2]
 - subject property analysis, 14.08[3]
 - supply and demand analysis, 14.08[4]
- E**
- Earnings before interest, taxes, depreciation, and amortization (EBITDA), 14.03[8]
- Eastern European markets. See International markets
- EBI (Effective buying income), 7.03[2][b]
- EBITDA (Earnings before interest, taxes, depreciation, and amortization), 14.03[8]
- Economic data
 - international market projections
 - Belgium, Exh. 22-2
 - Czech Republic, Exh. 22-9
 - France, Exh. 22-3
 - Germany, Exh. 22-4
 - Hungary, Exh. 22-10
 - Italy, Exh. 22-5
 - Netherlands, Exh. 22-6
 - Poland, Exh. 22-11
 - Russia, Exh. 22-12
 - Spain, Exh. 22-7
 - United Kingdom, Exh. 22-1
 - neighborhood market area analysis, 7.03[2]
- Economic trends, 4.01, 5.01
 - market evaluation, 5.03, 5.04
- Economy (budget) hotels
 - classification of, 3.02[2]
 - floor plan, 3.03, Exh. 3-5
 - franchise fees, Exh. 18-3
 - regional performance, 5.02[1]
 - trends, 5.02
- Effective buying income (EBI), 7.03[2][b]
- Egypt, 22.05[2]
 - See also International markets
- Electric utility service, 6.03
- Eminent domain condemnation, 20.08[4], 20.12
- Employee issues in management contracts, 20.13
- Energy crisis, effects of, 2.03
- Energy expenses, 12.10, Exh. 12-11
- England. See International markets
- Environmental concerns, 5.03
- Equipment. See Furniture, fixtures, and equipment
- Equity, 1.03
 - investment, 2.05[6]
 - investor interviews, property valuation, Exh. 13-5
 - leveraging as investment strategy, 14.04[9]
 - property valuation, Exh. 13-10
- income capitalization
 - approach, 13.04, 13.04[1], 13.04[2], 13.04[4]
 - cash flow to equity calculation, Exh. 13-7
 - investor interviews, 13.04[2][b], Exh. 13-5
 - past appraisals, 13.04[2][a]
 - summary of derived rates and yields, Exh. 13-4
 - total property value, Exh. 13-8
- European markets. See International markets
- Evaluation
 - competition, supply analysis, 8.02
 - competitive index method. See Competitive index method
 - economic trends, 5.03, 5.04
 - franchisor services, 18.06[11]
 - investment planning, property and site evaluation, 5.07
 - market area. See Demand; Market area analysis; Market study and appraisal; Neighborhood and market area analysis
 - property, competitive index method, 10.03[2][b], 10.03[2][c], Exh. 10-10
 - property tax assessments, 13.07[2]
 - proposed properties, 10.03[2]
 - supply analysis and competition, 8.02
- Excess land, site analysis factors, 6.05
- Exchanges of property. See Sales and purchasing strategies, *subheading*: like-kind exchanges
- Expansion
 - history, 2.06[7]
 - international, 2.02[2][a]
 - motels, 2.02[1]
 - sale of assets or ownership, 2.04[2]
- Expenses
 - See also Costs
 - administrative general expense, 12.06, Exh. 12-7

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- Expenses (*cont'd*)
- due diligence, analysis, 14.08[5]
 - energy expense, 12.10, Exh. 12-11
 - food and beverage service, 12.03, Exh. 12-4
 - forecasting, annual management plan, 20.05[1]
 - insurance expense, 12.12
 - management fee expense, 12.07, Exh. 12-8
 - marketing expense, 12.08, Exh. 12-9
 - operating expenses, 3.05
 - Host Study*, data source, 3.01
 - lodging facilities by type, Exh. 3-8
 - operating statistics by hotel type, Exh. 3-8
 - other expenses, 12.05, Exh. 12-6
 - property operation and maintenance expense, Exh. 12-10
 - property tax expense, 12.11
 - personal property assessment, 12.11[2]
 - real property assessment, 12.11[1]
 - replacement reserve, 12.13
 - rooms expense, 12.02, Exh. 12-2, Exh. 12-3
 - statement of income and expense, 12.14
 - taxes. *See this heading:*
 - property tax expense
 - telephone expense, 12.04, Exh. 12-5
- Extended stay hotels
- floor plan, 3.03, Exh. 3-5
 - historical origins, 2.05[4]
 - national supply, 3.02, 3.02[1][e], 3.03
- F**
- FAA. *See* Federal Aviation Administration
- Fairfield Inn, 2.06[7]
- Fairs as demand generators, Exh. 9-1
- FAR (Floor/area ratio), 6.01
- Feasibility analysis, 13.06
- Feasibility studies. *See* Market area analysis; Market study and appraisal
- Federal Aviation Administration (FAA), 7.03[3], Exh. 7-2
- Federal Trade Commission (FTC) franchising regulations, 18.03[7]
- Fees
- franchise fees, 18.07
 - amenity creep, effect of, 5.04
 - continuing fee assessment formulas, 18.07[3]
 - budget hotels, summary table of chain franchise fees, Exh. 18-3
 - first-class hotels, summary table of chain franchise fees, Exh. 18-5
 - lodging facility class distinctions, Exh. 18-2
 - mid-rate hotels, summary table of chain franchise fees, Exh. 18-4
 - summary revenue percentages over past five years, Exh. 18-6
 - continuing fees, 18.07[2]
 - advertising or marketing fee, 18.07[2][b]
 - assessment formulas, 18.07[3]
 - budget hotels, summary table of chain franchise fees, Exh. 18-3
 - first-class hotels, summary table of chain franchise fees, Exh. 18-5
 - frequent traveler program, 18.07[2][d]
 - lodging facility class distinctions, Exh. 18-2
 - mid-rate hotels, summary table of chain franchise fees, Exh. 18-4
 - miscellaneous fees, 18.07[2][d]
 - reservation fee, 18.07[2][c]
 - royalty fee, 18.07[2][a]
 - summary revenue percentages over past five years, Exh. 18-6
 - franchise agreement provisions, 18.09[7]
 - initially, 18.07[1]
 - management fee expenses, 12.07, Exh. 12-8
 - partnership organization fees, 15.04[7]
 - syndication fees, 15.04[7]
- Festival sites as demand generators, Exh. 9-1
- FF&E. *See* Furniture, fixtures, and equipment
- Fieldwork, supply analysis techniques, 8.03
- Finance, insurance, and real estate (FIRE) sectors, 7.03[2][c]
- Financial Institution Recovery, Reform, and Enforcement Act (FIRREA), 14.02[4]
- impact on hotel appraisal and consulting industry, 24.01
- Financial operating characteristics, 3.05
- Financial projections
- average room rate, existing hotels, 10.06[1][d]
 - beverage service revenues, 11.03[2]
 - competitive index method, proposed property evaluation, 10.03[2][b], 10.03[2][c], Exh. 10-9, Exh. 10-10
 - food service expenses, 12.03
 - food service revenues. *See* Food
 - lodging activity build-up approach, 9.03[2], 9.03[2][b], 9.03[2][c]
 - market share, competitive index method, 10.03[2][b], Exh. 10-9
 - neighborhood and market area analysis, sample case study

INDEX

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- employment, historical and projected, Exh. 7-12
- personal income, historical and projected, Exh. 7-10, Exh. 7-11
- population trends, historical and projected, Exh. 7-7
- test for reasonableness, food revenues, 11.03[1][c]
- Financing, 16.01
 - See also Mortgages
 - alternative sources, 2.06[4]
 - case study, 17.04
 - commercial banks, 16.02
 - commercial mortgage-backed securities (CMBS), 16.08
 - future outlook, 16.08[5]
 - history and evolution of, 16.08[1]
 - investment bankers, role of, 16.08[2]
 - rating agencies, role of, 16.08[4]
 - RTC role, 16.08[1]
 - underwriting criteria, 16.08[3]
- credit companies, 16.04
- due diligence issues, 14.08[5]
- forecasting. See Financial projections
- franchisor assistance, 18.06[4]
- hotel loan performance, Exh. 2-1
- life insurance companies, 16.03
- loan-to-value ratio, lending guidelines, 16.02
- market study and appraisal, 5.02, 5.03
- methods of
 - asset sales, 2.04[2]
 - debt financing, 2.05[6]
 - franchises, 2.04[2]
 - mortgages, 2.06[3]
 - real estate investment trusts (REITs), 2.06[3]
 - real estate mortgage investment conduits (REMICs), 2.06[4]
 - syndication, 2.04[2]
- mezzanine financing, 14.07
- mortgages, 2.06[3], 16.09
 - accrual loans, 16.09[5]
 - bullet loans, 16.09[4]
 - construction loans, 16.09[1], 16.09[2]
 - mini-permanent loans, 16.09[2]
 - obtaining of. See this heading: obtaining a hotel mortgage
 - permanent loans, 16.09[3]
 - term loans, 16.09[4]
 - zero coupon financing, 16.09[5]
- nonperforming loans, 2.06[1]
- obtaining a hotel mortgage, 16.10
 - application submission requirements, 16.10[4]
 - approaching the lender, 16.10[1]
 - closing the loan, 16.10[7]
 - commitment issuance, 16.10[5]
 - fulfillment of conditions, 16.10[6]
 - negotiating of terms, 16.10[3]
 - submission package requirements, 16.10[2]
- pension funds, 16.05
- projections. See Financial projections
- property development issues, 21.08
- real estate investment trusts (REITs), 16.07
 - debt leverage, 16.07[1]
 - equity leverage, 16.07[2]
- real estate limited partnerships (RELPs), 16.06
 - basic syndication structures, 16.06[1]
 - blind-pool syndicates (specified-property), 16.06[2]
 - master limited partnerships, 16.06[3]
 - specified-property or blind-pool syndicates, 16.06[2]
- Tax Reform Act of 1986 (TRA), effects of, 16.06
- real estate mortgage investment conduits, 2.06[4]
- savings and loans, 2.05[2]
- stock market issues, 2.05[6]
- syndicates. See this heading: real estate limited partnerships
- Uniform Rule on Real Estate Lending, 16.02
- FIRE (Finance, insurance, and real estate) sectors, 7.03[2][c]
- FIRREA. See Financial Institution Recovery, Reform and Enforcement Act
- First-class hotels
 - designation and classification of, 3.02[2]
 - franchise fees, Exh. 18-5
- Fixtures. See Furniture, fixtures, and equipment
- Floor/area ratio (FAR), 6.01
- Floor plans, room types, 3.03, Exh. 3-6
- Food
 - See also Restaurants
 - expense forecast
 - fixed and variable expenses, range of, Exh. 12-1
 - food and beverage expense, 12.03, Exh. 12-4
 - Uniform System of Accounts for Hotels, 12.01
 - revenue forecasting, 11.03, 11.03[1], Exh. 11-1
 - build-up cover approach, 11.03[1][a]
 - banquet demand, 11.03[1][a][iv]
 - house count, 11.03[1][a][i]
 - in-house capture, 11.03[1][a][ii]
 - out-of-house restaurant demand, 11.03[1][a][iii], Exh. 11-2
 - restaurant activity index (RAI), 11.03[1][a]
 - Restaurant Business magazine, data source, 11.03[1][a]
 - restaurant growth index (RGI), 11.03[1][a]
- definitions
 - banquet demand, 11.03[1][a][iv]
 - house count, 11.03[1][a][i]
 - in-house capture, 11.03[1][a][ii]

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (¶), exhibits (Exh.), and appendixes (App.).]

- Food (*cont'd*)
 revenue forecasting (*cont'd*)
 definitions (*cont'd*)
 out-of-house restaurant demand,
 11.03[1][a][iii]
 fixed and variable component approach,
 11.03[1][b], Exh. 11-3
 reasonableness, test for,
 11.03[1][c]
 primary units of comparison, Exh. 11-4
 restaurant activity index (RAI), 11.03[1][a]
 sales, 4.04[1]
 zoning restrictions, food service operations, 6.04
- Foreclosure, and termination of management contract, 20.08[10]
- Foreign markets. *See* International markets
- Foreign travel, 4.04[3], 4.04[4]
- France. *See* International markets
- Franchises, 1.04, 18.01
Note: A directory of hotel franchise companies follows the appendixes.
 advantages for franchisees, 18.04
 instant recognition, 18.04[1]
 marketing training and support, 18.04[3]
 market segmentation attraction factor, 18.04[2]
 operations training and support, 18.04[3]
 start-up period shortened, 18.04[1]
 advantages for franchisors, 18.02
 brand loyalty, 18.02[3]
 brand name, income from, 18.02[4]
 customer recognition, 18.02[3]
 expansion, rapid and inexpensive, 18.02[1]
 image and goodwill, income from, 18.02[4]
 profitable revenue source, 18.02[2]
 revenue source, 18.02[2]
 trademarks, income from, 18.02[4]
- advertising
See also this heading:
 marketing brands. *See this heading:*
 brands
 fees, 18.07[2][b]
 franchise agreement provisions, 18.09[6]
 agreements, 18.09
 advertising, 18.09[6]
 assignment, 18.09[9]
 fees, 18.09[7]
 image and operating standards, 18.09[4]
 inspections, audits and reports, 18.09[8]
 marketing, 18.09[6]
 operating standards and image, 18.09[4]
 proprietary information, 18.09[2]
 relationship to parties, 18.09[3]
 reservation systems, 18.09[6]
 termination provisions, 18.09[10]
 term of agreement, 18.09[1]
 training and guidance, 18.09[5]
- amenity creep, 5.04
 assignment, franchise agreement provisions, 18.09[9]
 audits, franchise agreement provisions, 18.09[8]
 brands
 See also this heading:
 advertising
 creation as investment strategy, 14.04[11][b]
 income from, 18.02[4]
 loyalty and recognition factors, 18.02[3]
 confidential information, franchise agreements, 18.09[2]
 contracts. *See this heading:*
 agreements
 Days Inns, 5.05
- defined, 18.01
 disadvantages for franchisees, 18.05
 exclusive market area, lack of, 18.05[5]
 image, lack of control over, 18.05[7]
 no guarantee of success, 18.05[2]
 nontransferability of franchise, 18.05[3]
 number of properties in chain, 18.05[7]
 quality, lack of control over, 18.05[7]
 selection error resulting in excessive costs, 18.05[1]
 short term of franchise, 18.05[4]
 standards, adherence to, 18.05[6]
 disadvantages for franchisors, 18.03
 cash flow problems at start-up, 18.03[6]
 cleanliness control problems, 18.03[4]
 disclosure statement, mandatory regulations, 18.03[7]
 liability without control, 18.03[3]
 operational control, loss of, 18.03[1]
 owners, difficulties with, 18.03[2]
 pricing control, lack of, 18.03[5]
 quality control problems, 18.03[4]
 service problems, 18.03[4]
 start-up costly, 18.03[6]
 fees, 18.07
 amenity creep, effect of, 5.05
 continuing fee assessment formulas, 18.07[3]
 budget hotels, summary table of chain franchise fees, Exh. 18-3

INDEX

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- first-class hotels, summary
 - table of chain franchise fees, Exh. 18-5
 - lodging facility class distinctions, Exh. 18-2
 - mid-rate hotels, summary
 - table of chain franchise fees, Exh. 18-4
 - summary revenue
 - percentages over past five years, Exh. 18-6
 - continuing fees, 18.07[2]
 - advertising or marketing fee, 18.07[2][b]
 - budget hotels, summary
 - table of chain franchise fees, Exh. 18-3
 - first-class hotels, summary
 - table of chain franchise fees, Exh. 18-5
 - frequent traveler program, 18.07[2][d]
 - lodging facility class distinctions, Exh. 18-2
 - mid-rate hotels, summary
 - table of chain franchise fees, Exh. 18-4
 - other miscellaneous fees, 18.07[2][d]
 - reservation fee, 18.07[2][c]
 - royalty fee, 18.07[2][a]
 - summary revenue
 - percentages over past five years, Exh. 18-6
 - franchise agreement
 - provisions, 18.09[7]
 - initially, 18.07[1]
 - franchisor services, 18.06
 - development assistance, 18.06[3]
 - evaluation and inspection of property, 18.06[11]
 - financing assistance, 18.06[4]
 - market analysis, 18.06[1]
 - marketing offices, 18.06[10]
 - operations, proven systems and procedures, 18.06[9]
 - plans and specifications provided, 18.06[2]
 - property inspection and evaluation, 18.06[11]
 - publicity and promotion assistance, 18.06[5]
 - purchasing, centralized, 18.06[6]
 - referrals between properties, 18.06[7]
 - reservation systems, centralized, 18.06[8]
 - site selection and market analysis, 18.06[1]
 - FTC authority, 18.03[7]
 - growth and expansion, 3.02[1][g]
 - asset sales, 2.04[2]
 - historically, 2.02
 - history, 2.02[2][d], 18.01
 - Holiday Inns, 5.05, 18.01
 - Howard Johnson's Motor Lodges, 18.01
 - inspections, franchise agreement provisions, 18.09[8]
 - marketing
 - See also this heading:*
 - advertising
 - brands. *See this heading:*
 - brands
 - fees, 18.07[2][b]
 - offices, franchisor services, 18.06[10]
 - training and support advantages for franchisees, 18.04[3]
 - nontransferability factor, 18.05[3]
 - product diversification and segmentation, 2.02[2][e]
 - quality
 - franchisee control problems, 18.05[7]
 - franchisor control problems, 18.03[4]
 - Ramada Inns, 5.05
 - rankings, Exh. 18-1
 - REITs and development of, 18.01
 - reports, franchise agreement provisions, 18.09[8]
 - revocation and contract termination, 20.08[3]
 - selection process, 18.08
 - chain affiliation analysis, 18.08[2]
 - final terms, negotiation strategies, 18.08[3]
 - market study and appraisal, 18.08[1]
 - systems and procedures, maturation of, 2.04[1]
 - Travelodge, 5.05
 - Uniform Franchise Offering Circular (UFOC), 18.03[7]
 - Fraud and termination of management contract, 20.08[7]
 - Frequent flyer programs, 4.01, Exh. 3-7
 - Fuel, automotive, 4.01
 - Furniture, fixtures, and equipment (FF&E)
 - operator investment commitment, 20.09, Exh. 20-6
 - replacement cost estimates, 13.02[1]
 - reserve for replacement expense, 12.13
 - useful lives of FF&E components, Exh. 20-7
- ### G
- Gambling. *See* Casino gaming analysis
 - Germany. *See* International markets
 - Grand hotels, 2.01[1]
 - Gross national product and demand, 4.03[2], 4.05
 - Guestroom sizes and layouts, Exh. 3-6
- ### H
- Hampton Inn, 2.06[7]
 - Health spas, 3.02[1][1]
 - Henderson, Ernest, founder of Sheraton chain, 2.01[4][b]
 - Highways
 - intersections as demand generators, Exh. 9-1

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

Highways (*cont'd*)

location and classification factors, 3.02[3][b]
traffic data analysis, 7.03[2][f], Exh. 7-18
Hilton, Conrad, 2.01[4][b]
Hilton hotels, 2.01[4][b]
Historical attractions as demand generators, Exh. 9-1
History of lodging industry. *See* Lodging industry, history and dynamics
Holiday Inn Express, 2.06[7]
Holiday Inns, 5.05, 18.01
Holland. *See* International markets
Home office
location close to, desirability, 1.02[1]
operator expenses, 20.10[1]
Hospitals as demand generators, Exh. 9-1
Host Study, 3.01
Hotel and Motel Management, 2.01[3]
Hotel brokers, 1.03, 17.01
capital sources, 17.01[3]
creating a sales story, 17.01[1]
disruptions, prevention of, 17.01[5]
marketing package, 17.01[4]
negotiating from strength, 17.01[2]
Hotel chains. *See* Franchises
Hotels. *See* Lodging products
casino. *See* Casino gaming analysis
classification. *See* Classification, lodging facilities
commercial. *See* Commercial hotels
history. *See* Lodging industry, history and dynamics
purchasing of. *See* Sales and purchasing strategies
sales of. *See* Sales and purchasing strategies
Howard Johnson's Motor Lodges, 18.01
Hubbart Formula, 10.06[2][b]
Hungary. *See* International markets

I

IGRA. *See* Indian Gaming Regulatory Act
Illinois, riverboat gaming, 23.02[1]
Image, 4.06[4]
Income. *See* Revenue
Income capitalization approach, property valuation, 13.04 mortgage and equity component valuation, 13.04[1], 13.04[2], 13.04[4]
cash flow to equity calculation, Exh. 13-7
equity component, Exh. 13-10
investor interviews, 13.04[2][b], Exh. 13-5
mortgage component, Exh. 13-9
past appraisals, 13.04[2][a]
summary of derived rates and yields, Exh. 13-4
total property value, Exh. 13-8
typical hotel and motel mortgage rates, Exh. 13-3
terminal capitalization rate, 13.04[3]
overall capitalization rate calculations, Exh. 13-6
Indemnification provisions of management contracts, 20.16
Independent properties, 2.06[7]
Indiana, riverboat gaming, 23.02[6]
Indian Gaming Regulatory Act (IGRA), 23.03, 23.03[1]
See also Casino gaming analysis, *subheading*: Native American gaming
Induced demand, 9.03[2][b]
Industries, market area analysis, 7.03[2][d]
Inflation, hotel investment as hedge, 14.02[4]
Inns, 2.01[1]
Inspections, franchise agreement provisions, 18.09[8]

Insurance

See also Life insurance companies
casualty loss, 20.08[4], 20.12

Interest

earnings before interest, taxes, depreciation, and amortization (EBITDA), 14.03[8]
rates, property valuation, 13.04[1]

Internal rate of return, 10 year, 13.04[3], 13.04[4]

International markets

Bahrain, 22.05[1]
Belgium, 22.03[2]
economic data projections, Exh. 22-2
Central and Eastern Europe, 22.03[9]
Czech Republic. *See this heading*: Czech Republic
hotel chains in Eastern Europe, Exh. 22-8
Hungary. *See this heading*: Hungary
cultural differences, Europe, 22.02[2]
affective vs. neutral, 22.02[2][b]
sequential vs. synchronic time orientation, 22.02[2][c]
universalism vs. particularism, 22.02[2][a]
Czech Republic, 22.03[9][a]
economic data projections, Exh. 22-9
developed vs. developing countries, 22.01
Egypt, 22.05[2]
England. *See this heading*: United Kingdom
European background data, 22.02
cultural differences, 22.02[2]
affective vs. neutral, 22.02[2][b]
sequential vs. synchronic time orientation, 22.02[2][c]

INDEX

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).

References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- universalism vs.
 - particularism, 22.02[2][a]
 - legal framework, 22.02[1]
- European countries. *See this heading*: specific countries
- France, 22.03[3]
 - economic data projections, Exh. 22-3
- Germany, 22.03[4]
 - economic data projections, Exh. 22-4
- Hungary, 22.03[9][b]
 - economic data projections, Exh. 22-10
- Ireland. *See this heading*: United Kingdom
- Israel, 22.05[3]
- Italy, 22.03[5]
 - economic data projections, Exh. 22-5
- Jordan, 22.05[4]
- Kuwait, 22.05[5]
- Lebanon, 22.05[6]
- Middle East and North Africa, 22.04
 - Bahrain, 22.05[1]
 - Egypt, 22.05[2]
 - hotel statistics, 22.04[3]
 - average daily room rate, 22.04[3][b], Exh. 22-14
 - existing representation, 22.04[3][c]
 - future supply, 22.04[3][d]
 - Middle East occupancy rates, Exh. 22-13
 - occupancy rates, 22.04[3][a]
 - Israel, 22.05[3]
 - Jordan, 22.05[4]
 - Kuwait, 22.05[5]
 - Lebanon, 22.05[6]
 - Morocco, 22.05[7]
 - Oman, 22.05[8]
 - overview, 22.04[1]
 - Palestinian areas, 22.05[9]
 - Qatar, 22.05[10]
 - Saudi Arabia, 22.05[11]
 - Syria, 22.05[12]
 - tourism
 - data, 22.04, 22.04[1]
 - obstacles to, 22.04[2]
 - Tunisia, 22.05[13]
 - United Arab Emirates, 22.05[14]
 - Yemen, 22.05[15]
- Morocco, 22.05[7]
- Netherlands, 22.03[6]
 - economic data projections, Exh. 22-6
- North Africa. *See this heading*: Middle East and North Africa
- Oman, 22.05[8]
- Palestinian areas, 22.05[9]
- Poland, 22.03[9][c]
 - economic data projections, Exh. 22-11
- Portugal, 22.03[7]
- Qatar, 22.05[10]
- Russia, 22.03[9][d]
 - economic data projections, Exh. 22-12
- Saudi Arabia, 22.05[11]
- Spain, economic data projections, Exh. 22-7
- Syria, 22.05[12]
- Tunisia, 22.05[13]
- United Arab Emirates, 22.05[14]
- United Kingdom, 22.03[1]
 - economic data projections, Exh. 22-1
- Yemen, 22.05[15]
- International travel, 4.04[3]
- Interviews
 - booker, demand interview, 9.02[3]
 - competitors, as supply analysis tool, 8.05
 - demand generator build-up approach, 9.02
 - demand generator survey, sample, Exh. 9-3
 - demand interviews and surveys, 9.02[3]
 - interview form, Exh. 9-2
- Investment
 - amenity creep, effect, 5.04
 - planning. *See* Investment planning
 - reasons for, 14.01
 - strategies. *See* Investment strategies
 - trends, 4.04[4], 5.01
- Investment bankers and commercial mortgage-backed securities (CMBS), 16.08[2]
- Investment planning, 1.02
 - market area selection, 5.03, 5.04
 - property and site evaluation, 5.07
 - site selection, 5.07
- Investment strategies, 14.04
 - appreciation maximization, 14.04[3]
 - barriers to entry, 14.04[11][b]
 - brand creation and critical mass, 14.04[11][b]
 - broker relations, 14.04[11][a]
 - capital availability as value driver, 14.03
 - consolidation, 14.06
 - distressed properties, 14.04[4]
 - diversification, 14.04[10]
 - due diligence, 14.08
 - financial analysis, 14.08[5]
 - market factors, 14.08[1]
 - other analyses, 14.08[6]
 - site and neighborhood analysis, 14.08[2]
 - subject property analysis, 14.08[3]
 - supply and demand analysis, 14.08[4]
 - equity leveraging, 14.04[9]
 - “fixer-uppers,” 14.04[4]
 - hotel management company, alignment with, 14.05
 - congruent interests, 14.05[1]
 - selection of company, 14.05[2]
 - hotel management issues
 - alignment with management company, 14.05[1]
 - congruent interests, 14.05[2]
 - market cycle timing, 14.04[1]
 - mezzanine financing, 14.07
 - miscellaneous strategies, 14.04[11]
 - public vs. private ownership, 14.04[8]
 - purchase below replacement cost, 14.04[5]
 - risk avoidance, 14.04[2]
 - sale, timing of, 14.04[7]
 - short-term holding periods, 14.04[6]
 - value drivers: industry fundamentals vs. capital markets, 14.03
- Iowa, riverboat gaming, 23.02[3]

[This index is alphabetized letter-by-letter (e.g., *Travelers precedes Travel industry*).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

Ireland. *See* International markets
Israel, 22.05[3]

J

Joint tenancy, 15.03[2]
Jordan, 22.05[4]

K

Kuwait, 22.05[5]

L

Land
See also Property; Site analysis, market study, and appraisal
vacant or excess, 6.05
Lead time, meetings and conventions, 4.06[2], Exh. 4-11
Leases
default or foreclosure, and termination of management contract, 20.08[10]
ground leases, 13.02[2][a], Exh. 13-2
sample, App. 5
lease of land only, selected provisions, App. 6
total property leases, 19.02
Lebanon, 22.05[6]
Leisure travelers, 3.02, 4.02, 4.03[1]
customer preferences, Exh. 4-15
demand, 4.06[3]
demographics of, 4.06[3], Exh. 4-14
Lenders
See also Banks
Uniform Rule on Real Estate Lending, 16.02
Lenders of last resort. *See* Credit companies
Liability
franchisors, disadvantages for, 18.03[3]
Licensing. *See* Franchises
Life insurance companies
financing, role in, 16.03

Like-kind exchanges, 17.03
advantages, 17.03[1]
deferred exchanges, 17.03[4]
determining basis, 17.03[6]
foreign property, 17.03[3]
real estate qualifications, 17.03[3]
related party transfers, 17.03[5]
requirements, 17.03[2]
Limited liability companies (LLC), 15.01[1], 15.06
Limited partnerships. *See* Partnerships
Liquor. *See* Beverages; Cocktail lounges
LLC. *See* Limited liability companies
Loan-to-value ratio
lending guideline, 16.02
property valuation, 13.04[3]
Location, 3.02[3], 5.06
See also Land; Site analysis, market study, and appraisal
access and visibility, 6.02, Exh. 6-1
airports, 3.02[3][a]
classification. *See* Classification, lodging facilities
convention centers, 3.02[3][e]
highway, 3.02[3][b]
market share, 3.01, Exh. 3-2
meetings and conventions, 3.02[3][c]
motels, 3.02[3], Exh. 3-2
property development strategies, 21.02
See also Site analysis, market study, and appraisal
financial factors, 21.02[3]
segment and brand importance, 21.02[1]
siting process, 21.02[1]
resort, 3.02[3][f]
site selection, 1.02, 1.02[2], 5.06
suburban, 3.02[3][d]
Lodging
See also Lodging product; Motels

activity build-up approach, 9.03
See also Lodging activity build-up approach
demand analysis. *See* Demand history. *See* Lodging industry, history and dynamics
supply analysis. *See* Supply
Lodging activity build-up approach, 9.03
accommodated room-night demand, current, 9.03[1], 10.03[2][a]
competitive index method, 10.03[2][a], Exh. 10-8
future demand, 9.03[2]
latent demand
accommodatable, 9.03[3]
total current and projected final determination of, 9.03[2][c]
induced demand, 9.03[2][b]
usable total, 9.03[5]
occupancy, overall, 9.03[7]
room-night demand
accommodated, 9.03[4]
total room-nights available, 9.03[6]
total latent demand, current and projected, 9.03[2]
Lodging industry, history and dynamics, 1.01, Ch. 2
airlines, marketing advantages of integration with, 2.02[2][b]
all-suite hotels, 2.05[4]
casino gaming, 23.01
Colonial times to World War II, 2.01
commercial hotels, origins of, 2.01[2][a]
construction boom of the early 1970s, 2.03
convention hotels, evolution of, 2.02[2][c]
depression years, 2.01[4]
acquisition opportunities, 2.01[4][a]
Conrad Hilton, 2.01[4][b]
early valuation theory, 2.01[4][c]
Ernest Henderson, founder of Sheraton chain, 2.01[4][b]

INDEX

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- major hotel chains, origins of, 2.01[4][b]
 - downward economic cycle of the early 1970s, 2.03
 - economic recovery in the 1940s, 2.01[5]
 - economic recovery of late 1970s, 2.04
 - eighties, 2.05
 - all-suite hotels, 2.05[4]
 - non-economic real estate transactions, 2.05[1]
 - savings and loan crisis, 2.05[2]
 - stock market performance, 2.05[6]
 - energy crisis of the early 1970s, 2.03
 - expansion, 2.06[7]
 - franchises, 2.02[2][d], 18.01
 - future trends, 2.06[7]
 - See also* Trends
 - gambling, casinos, 23.01
 - grand hotels, 2.01[1]
 - Holiday Inns, 18.01
 - Hotel and Motel Management*, 2.01[3]
 - Howard Johnson's Motor Lodges, 18.01
 - inns, 2.01[1]
 - international expansion, 2.02[2][a]
 - investment strategies, 14.02
 - current environment, 14.02[5]
 - developers, syndicators, and architects, 14.02[2]
 - highs and lows, 14.02[4]
 - hotel chains and management companies, 14.02[1]
 - lenders, 14.02[3]
 - luxury hotels, origins of, 2.01[2][b]
 - modern-era hotel, origins of, 2.01[2]
 - 1950s and 1960s, 2.02[2]
 - 1990s
 - demand increases, 2.06[6]
 - increased occupancy rates, 2.06[5]
 - industry improvement, 2.06[2]
 - markets showing greatest increases, 2.06[7]
 - nonperforming loans, 2.06[1]
 - Persian Gulf War, 2.06
 - REIT rebirth, 2.06[3]
 - overdevelopment in the 1920s, 2.01[3]
 - Persian Gulf War, 2.06
 - post-World War II era:
 - controlled growth and chain expansion, 2.02
 - motels, 2.02[1]
 - product diversification and segmentation, 2.02[2][e]
 - product segmentation, development of, 2.05[3]
 - Ramada Inns, 18.01
 - recession of the 1970s, 2.03[1]
 - involuntary owners, 2.03[2]
 - REITs in the 1990s, 2.06[3]
 - Ritz, Caesar and franchises, 18.01
 - rooming houses, 2.01[1]
 - savings and loan crisis of the 1980s, 2.05[2]
 - seventies
 - construction boom, energy crisis, and downward cycle, 2.03
 - economic recovery, 2.04
 - chain expansion through asset sales, 2.04[2]
 - systems and procedures, maturation of, 2.04[1]
 - Statler, Ellsworth M., founder of first commercial hotel, 2.01[2][a]
 - World War II, 2.01[5]
 - Lodging Outlook*, 3.01
 - Lodging products
 - all-suite hotels, 2.05[3]
 - amenity creep, 5.05
 - casinos. *See* Casino gaming analysis
 - census of facilities, Exh. 3-1
 - classification of, 3.02
 - class, 3.02[2], Exh. 3-3
 - location, 3.02[3]
 - type, 3.02[1]
 - creation of, 5.04[2]
 - extended stay hotels, 2.05[3]
 - market segmentation, 2.05[3]
 - motels. *See* Motels
 - new hotel products, 5.05[1]
 - operating statistics by type, Exh. 3-9
 - price-value relationship, 5.05[2]
 - product-to-market match, 5.06
 - riverboats. *See* Casino gaming analysis
 - selection, 5.05
 - Louisiana, riverboat gaming, 23.02[4]
 - LTV. *See* Loan-to-value ratio
 - Luxury hotels
 - classification of, 3.02[2]
 - floor plan, 3.03, Exh. 3-6
 - historical origins, 2.01[2][b]
- M**
- Ma and Pa motels, 3.02[1][j]
 - Malls as demand generators, Exh. 9-1
 - Management, 1.04[1]
 - annual plan
 - capital expenditure budget, 20.05[2]
 - commercial space leasing plan, 20.05[4]
 - engineering status report, 20.05[4]
 - income and expense forecast, 20.05[1]
 - marketing plan, 20.05[3]
 - repair and maintenance budget, 20.05[2]
 - staffing and salary report, 20.05[4]
 - budgets. *See* Budget approval process
 - centralized management
 - operating philosophy, 19.08[1]
 - companies, 19.07
 - Note: A directory of hotel management companies and owners follows the appendixes.*
 - alignment with as investment strategy, 14.02[1], 14.05
 - contracts. *See this heading:* contracts
 - expertise, 19.01[2]
 - first-tier, 19.05[1]
 - See also this heading:* first-tier companies

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- Management (*cont'd*)
 companies (*cont'd*)
 individual managers,
 contrasted with, 19.01
 operating philosophies,
 19.08
 centralized management,
 19.08[1]
 decentralized
 management,
 19.08[2]
 past performance, 19.01[3]
 proven methods and
 procedures, 19.01[4]
 second-tier. *See this*
 heading: second-tier
 companies
 selection process. *See this*
 heading: selection
 process for management
 companies
 services provided, 19.09
 supervision, 19.01[1]
 total property leases,
 19.02
 advantages and
 disadvantages,
 19.02[3]
 REIT structures, 19.02[2]
 rental formulas, 19.02[1]
 25, 10, and 5 leases, Exh.
 19-1
 types of, 19.05
 first-tier and second-tier,
 19.05[1]
 pre-opening and technical
 services, 19.05[2]
 condemnation of property,
 20.08[4], 20.12
 contracts, 1.04[2], 19.06,
 21.01
 advantages for owner,
 19.06[3]
 immediate name
 recognition,
 19.06[3][b]
 operational expertise,
 acquisition of,
 19.06[3][a]
 quality management,
 19.06[3][c]
 advantages to operator,
 19.06[1]
 critical mass, 19.06[1][c]
 depreciation expenses
 avoided, 19.06[1][e]
 expansion, rapid and
 inexpensive,
 19.06[1][a]
 low downside risk,
 19.06[1][b]
 quality control,
 19.06[1][d]
 area restrictions for
 operators, 20.15
 breach of, 20.08[2]
 clauses, sample, App. 3
 condemnation proceeds,
 20.12
 conflict of interest,
 19.06[4][g]
 disadvantages for owner,
 19.06[4]
 conflict of interest,
 19.06[4][g]
 costs of management,
 19.06[4][e]
 high downside risk,
 19.06[4][f]
 ongoing expenses, liability
 for, 19.06[4][b]
 operational control, loss
 of, 19.06[4][a]
 sale of property,
 19.06[4][d]
 termination of operator,
 19.06[4][c]
 disadvantages to operator,
 19.06[2]
 financial dependence on
 owner, 19.06[2][c]
 minimal input in
 ownership decisions,
 19.06[2][b]
 residual benefits
 eliminated,
 19.06[2][a]
 termination or cancellation
 provisions,
 19.06[2][d]
 employee issues, 20.13
 fees. *See this heading*: fees
 furniture, fixtures, and
 equipment. *See*
 Furniture, fixtures, and
 equipment
 historical development of,
 19.03
 indemnification provisions,
 20.16
 insurance casualty proceeds,
 20.12
 material breach of contract,
 20.08[2]
 Negotiation and
 Administration of Hotel
 and Restaurant
 Management Contracts,
 21.02
 operator expenses, 20.10
 home office expenses,
 20.10[1]
 payment of expenses and
 charges, 20.10[3]
 system reimbursable
 charges, 20.10[2]
 operator investment
 commitment, 20.09
 costs for pre-opening
 services, Exh. 20-4
 furniture, fixtures, and
 equipment costs, Exh.
 20-6
 working capital costs,
 Exh. 20-5
 owner approvals, 20.07
 ownership transfer, 20.11
 pre-opening management
 services, 20.17
 property leases compared
 with. *See this heading*:
 property leases vs.
 management contracts
 reporting requirements,
 financial data, 20.03[4]
 comparing operating
 statistics of two
 properties, Exh. 20-3
 technical service assistance,
 20.18
 termination of agreement,
 20.08
 bankruptcy, 20.08[1]
 casualty loss, 20.08[4]
 cessation of operator
 activity in hotel
 business, 20.08[8]
 condemnation, 20.08[4]
 default, 20.08[10]
 foreclosure, 20.08[10]
 fraud or misconduct,
 20.08[7]
 funding, owner's failure to
 provide, 20.08[9]
 license or franchise
 revocation, 20.08[3]
 material breach of
 contract, 20.08[2]

INDEX

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- operator buy-out, 20.08[6]
- performance levels, failure to achieve, 20.08[5]
- termination of operator, 19.06[4][c]
- termination or cancellation provisions in, 19.06[2][d]
- term of contract, 21.02
- terms, App. 4
- transfer of ownership, 20.11
- decentralized management
 - operating philosophy, 19.08[2]
- default and termination of agreement, 20.08[10]
- eminent domain,
 - condemnation of property, 20.08[4], 20.12
- employee issues, contract negotiations, 20.13
- fees, 12.07, 20.03, Exh. 12-8
 - basic fee, 20.03[1]
 - incentive fee, 20.03[2]
 - hotel income statement, Exh. 20-1
 - percentages required to yield management fee, Exh. 20-2
- owner and operator requirements, 20.03[3]
- first-tier companies
 - advantages of, 19.07[1]
 - convention sales capabilities, 19.07[1][d]
 - corporate identity, 19.07[1][b]
 - cost, 19.07[1][a]
 - efficiency of operation, 19.07[1][c]
 - financing ease, 19.07[1][e]
 - group sales capabilities, 19.07[1][d]
 - classification, 19.05[1]
 - disadvantages of, 19.07[2]
 - contract term restrictions, 19.07[2][c]
 - financial conditions, restrictions on, 19.07[2][a]
 - negotiation difficulties, 19.07[2][e], 19.07[2][f]
 - operating data restrictions, 19.07[2][g]
 - property size restrictions, 19.07[2][a]
 - termination restrictions, 19.07[2][d]
 - selection process, 19.10[2], 19.10[3]
- foreclosure and termination of agreement, 20.08[10]
- fraud or misconduct and termination of agreement, 20.08[7]
- funding, owner's failure to provide, 20.08[9]
- furniture, fixtures, and equipment (FF&E)
 - operator investment commitment, 20.09, Exh. 20-6
 - replacement cost estimates, 13.02[1]
 - reserve for replacement expense, 12.13, 20.14
 - useful lives of FF&E components, Exh. 20-7
- Hotel and Motel Management*, 2.01[3]
- individual managers vs. management companies, 19.01
- insurance casualty proceeds, 20.08[4]
- leases
 - leases compared with contracts. *See this heading*: property leases vs. management contracts
 - total property leases advantages and disadvantages, 19.02[3]
 - REIT structures, 19.02[2]
 - rental formulas, 19.02[1] 25, 10, and 5 leases, Exh. 19-1
- marketing, annual management plan, 20.05[3]
- market study analysis, selection process, 19.10[1]
- operating philosophies
 - centralized management, 19.08[1]
 - decentralized management, 19.08[2]
- operator buy-out and termination of agreement, 20.08[6]
- performance levels, failure to achieve, 20.08[5]
- personnel qualifications, 19.10[6][c]
- pre-opening services
 - costs, operator investment commitment, Exh. 20-4
 - management company issues, 19.05[2]
 - management contracts, 20.17
- project team consultation, selection process for management companies, 19.10[5]
- property leases vs.
 - management contracts, 19.04, Exh. 19-8, Exh. 19-9, Exh. 19-11
 - assumed occupancy and average room rates, Exh. 19-2
 - income and expense projection, Exh. 19-3, Exh. 19-4
 - net income, division of, Exh. 19-6, Exh. 19-7, Exh. 19-10
 - rent projections, Exh. 19-5
- quality control
 - contracts, operator advantages, 19.06[1][d]
 - owner management advantage, 19.06[3][c]
- real estate investment trusts, management participation issues, 14.05[2]
- reporting requirements
 - annual plan, 20.05
 - capital expenditure budget, 20.05[2]
 - commercial space leasing plan, 20.05[4]
 - engineering status report, 20.05[4]
 - income and expense forecast, 20.05[1]
 - marketing plan, 20.05[3]
 - repair and maintenance budget, 20.05[2]
 - staffing and salary report, 20.05[4]

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- Management (*cont'd*)
 reporting requirements
 (*cont'd*)
 financial operating results,
 20.03[4], Exh. 20-3
 second-tier companies
 advantages of, 19.07[3]
 individual attention factor,
 19.07[3][b]
 negotiation flexibility,
 19.07[3][a]
 classification, 19.05[1]
 disadvantages of, 19.07[4]
 financial weakness,
 19.07[4][d]
 financing more difficult to
 obtain, 19.07[4][a]
 high costs possible,
 19.07[4][c]
 perceived risk, 19.07[4][b]
 selection process, 19.10[2],
 19.10[4]
 selection process for
 management companies,
 19.10
 bargaining positions,
 19.10[8]
 central services, 19.10[6][d]
 company profile, 19.10[6][a]
 first- or second-tier, 19.10[2]
 first-tier choice procedure,
 19.10[3]
 market study analysis,
 19.10[1]
 miscellaneous information,
 19.10[6][h]
 negotiation issues, 19.10[9]
 operating performance,
 19.10[6][b]
 operating projections,
 19.10[6][g]
 personnel qualifications,
 19.10[6][c]
 project team consultation,
 19.10[5]
 rating system, 19.10[7]
 hotel management
 company initial
 selection rating
 system, Exh. 19-12
 reimbursable expenses,
 19.10[6][e]
 sales and marketing,
 19.10[6][f]
 second-tier choice
 procedure, 19.10[4]
 technical services
 assistance provisions in
 management contracts,
 20.18
 management company
 issues, 19.05[2]
 Market area
 analysis. *See* Market area
 analysis; Neighborhood
 and market area analysis
 appraisals. *See* Appraisal;
 Market study and
 appraisal
 area restrictions in
 management contracts,
 20.15
 barriers to entry, 5.03
 commercial, 3.02, 4.02,
 4.06[1]
 data. *See* Data; Data sources
 demand, 4.02
 distribution of, 4.03[1]
 evaluation of, 5.03, 5.04
 foreign. *See* International
 markets
 identification, 8.01
 international. *See* International
 markets
 leisure, 3.02, 4.02, 4.06[3]
 meetings and conventions,
 3.02, 4.02, 4.06[2]
 neighborhood. *See*
 Neighborhood and market
 area analysis
 overnight travel, 4.03[1], 5.01
 penetration. *See* Market
 penetration; Market
 penetration method
 potential, 5.03
 product-to-market match, 5.06
 segmentation, 4.03, 4.04,
 4.06[4], 5.03, 5.04. *See*
 Market segmentation;
 Market segmentation
 method
 share. *See* Market share
 statistics. *See* Statistics
 Market area analysis, 1.02[1]
See also Market study and
 appraisal; Neighborhood
 and market area analysis
 data, 7.03
 demand generators, 9.02,
 9.02[2]
 franchisor services, 18.06[1]
 neighborhood. *See*
 Neighborhood and market
 area analysis
 Marketing
See also Advertising; Brands
 airline integration with
 lodging industry,
 2.02[2][b]
 annual management plan,
 20.05[3]
 expenses, 12.08, Exh. 12-9
 franchisees, training and
 support for, 18.04[3]
 franchises. *See* Franchises
 hotel brokers, 17.02[4]
 management companies, sales
 and marketing services,
 19.10[6][f]
 market segmentation, 2.05[3]
See also Market
 segmentation
 offices, franchisor services,
 18.06[10]
 Market penetration, 3.02
 casino gaming analysis,
 23.05[3], Exh. 23-11
 Market penetration method,
 10.02
 actual market share,
 determination of, Exh.
 10-1
 competitive index method,
 comparison with, Exh.
 10-5
 defined, 10.02
 fair market share,
 determination of, Exh.
 10-2
 Market segmentation, 4.03, 4.04,
 5.02, 5.03
 commercial, 3.02, 3.02[1][a],
 4.06[1]
 franchise attraction factor,
 18.04[2]
 leisure, 3.02, 4.05, 4.06[3]
 meetings and conventions,
 3.02, 4.05, 4.06[2]
 property development,
 importance to, 21.02[2]
 Market segmentation method,
 10.06[2][d]
 Market share, 10.01
 actual market share,
 determination of, Exh. 10-1

INDEX

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendices (App.).]

- by class, 3.01, Exh. 3-3
 - by location, 3.01, Exh. 3-2
 - competitive index method
 - advantages of, 10.03[1], Exh. 10-5
 - calculation of, 10.03, Exh. 10-3
 - penetration method, comparison with, Exh. 10-5
 - competitive index method, calculation of, Exh. 10-4
 - competitive index method, projected market share, 10.03[2][b], Exh. 10-9
 - fair market share, determination of, Exh. 10-2
 - market penetration method, 10.02
 - market share projections using competitive index method, Exh. 10-9
 - projected market share using competitive index method, 10.03[2][b]
 - room-night demand, 10.01, 10.03[2]
 - supply, 3.01
 - trends, 4.03[1], 5.01
 - Market study and appraisal, 1.02[3], 5.03, 5.04
 - See also* Market area analysis; Neighborhood and market area analysis
 - area evaluation, 5.03, 5.04
 - average room rate, Exh. 3-4
 - See also* Average room rate development, 5.03, 5.04, 5.05
 - due diligence, 14.08[2]
 - franchise selection process, 18.08[1]
 - management company selection process, 19.10[1]
 - market selection, 5.03, 5.04
 - product selection, 5.05
 - site selection, 5.07
 - Meetings and conventions
 - association meeting
 - characteristics, Exh. 4-12
 - booking arrangements, 4.06[2]
 - characteristics of, 4.06[2]
 - corporate meeting
 - characteristics, Exh. 4-10
 - demand, 4.05, 4.06[2]
 - facility, 3.02, 3.02[1][b]
 - lead time for booking
 - arrangements, 4.06[2], Exh. 4-11
 - location, 3.02[3][c]
 - market area, 3.02, 4.02, 4.06[2]
 - patronage factors, 4.06[2]
 - statistical distribution by month, Exh. 4-13
 - supply, 3.02, 3.02[1][b], 3.02[3][c], 3.02[3][e]
 - Meetings and Conventions* magazine, 4.06[2]
 - Meetings Market*, 4.06[2]
 - Mega-resort, 5.05[1]
 - Merger as investment strategy, 14.06
 - Metropolitan Statistical Area (MSA), 7.03[3]
 - Microbudget hotel, classification of, 3.02[2]
 - Microtel, 3.02, 3.02[1][g]
 - floor plan, Exh. 3-5
 - Middle Eastern markets. *See* International markets
 - Military installations as demand generators, Exh. 9-1
 - Mississippi, riverboat gaming, 23.02[2]
 - Missouri, riverboat gaming, 23.02[5]
 - Mom-and-Pop motels, 3.02[1][j]
 - Morocco, 22.05[7]
 - Mortgages
 - See also* Financing
 - default, and termination of management contract, 20.08[10]
 - financing issues, 2.06[3], 16.09
 - accrual loans, 16.09[5]
 - bullet loans, 16.09[4]
 - construction loans, 16.09[1], 16.09[2]
 - mini-permanent loans, 16.09[2]
 - obtaining of. *See this heading*: obtaining a hotel mortgage
 - permanent loans, 16.09[3]
 - term loans, 16.09[4]
 - zero coupon financing, 16.09[5]
 - foreclosure, and termination of management contract, 20.08[10]
 - hotel loan performance, Exh. 2-1
 - nonperforming loans, 2.06[1]
 - property valuation, 13.04[1], 13.04[4]
 - income capitalization
 - approach, 13.04, 13.04[1], 13.04[2], 13.04[4], Exh. 13-9
 - investor interviews, 13.04[2][b], Exh. 13-5
 - typical hotel and motel mortgage rates, Exh. 13-3
 - real estate investment trusts (REITs), 15.08[5][b]
 - real estate mortgage investment conduits (REMICs), 2.06[4]
- ## Motels
- See also* Lodging product
 - census of facilities, Exh. 3-1
 - commercial, 3.02[1][a]
 - floor plans, 3.03, Exh. 3-5
 - growth and expansion following World War II, 2.02[1]
 - location, 3.02[3], Exh. 3-2
 - microtel, 3.02, 3.02[1][g]
 - Mom-and-Pop, 3.02[1][j]
- ## MSA (Metropolitan Statistical Area), 7.03[3]
- ## Museums as demand generators, Exh. 9-1
- ## N
- ## NAFTA (North American Free Trade Agreement), 4.04[3]
- ## National demand. *See* Demand
- ## National Indian Gaming Commission (NIGC), 23.03[2]
- See also* Casino gaming analysis, *subheading*: Native American gaming
- ## National supply, 1.01[2], 3.02-3.04

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- Native American gaming. *See*
Casino gaming analysis
- Neighborhood and market area
analysis, 1.02[3], 7.01
See also Market area analysis
due diligence issues, 14.08[2]
market area analysis, 7.03
boundary definition process,
7.03[1]
data analysis methods, 7.03[4]
Consumer Price Index
(CPI), Exh. 7-5
state thruway traffic
counts, Exh. 7-3
data collection, sources and
methods, 7.03[3]
Consolidated Metropolitan
Statistical Area
(CMSA), 7.03[3]
Metropolitan Statistical
Area (MSA), 7.03[3]
other sources of economic
and demographic data,
Exh. 7-2
published sources of
economic and
demographic data,
Exh. 7-1
demographic data. *See this
heading: economic and
demographic data*
economic and demographic
data, 7.03[2]
airport statistics,
7.03[2][g]
businesses and industry,
7.03[2][d]
highway traffic, 7.03[2][f]
industries, 7.03[2][d]
office space, 7.03[2][e]
population age
distribution,
7.03[2][a]
retail sales trends,
7.03[2][b]
work force characteristics,
7.03[2][c]
transient demand, future
estimates, 7.03[5], Exh.
7-6
commercial market
segment, 7.03[5][a]
conclusions, 7.03[5][d]
leisure market segment,
7.03[5][c]
meeting and convention
market segment,
7.03[5][b]
neighborhood analysis, 7.02
boundaries, 7.02
economic trends, 7.02[2]
observation, 7.02[1]
neighborhood defined, 7.02
sample case study, Ch. 7
age distribution, Exh. 7-8
airport traffic counts, Exh.
7-19
building permits, residential,
Exh. 7-13
commercial visitation data,
Exh. 7-25
conventions, Exh. 7-20,
Exh. 7-26
employers, Exh. 7-16
employment, historical and
projected, Exh. 7-12
highway traffic counts, Exh.
7-18
manufacturing firms, Exh.
7-15
market demand
segmentation, Exh. 7-24
market segment growth
rates, Exh. 7-27
meetings and convention
visitation data, Exh.
7-26
monthly visitation counts,
Exh. 7-22
office space inventory, Exh.
7-17
out-of-state tourist
visitation, Exh. 7-21
personal income, projected
and historical, Exh. 7-
10, Exh. 7-11
population trends, historical
and projected, Exh. 7-7
property assessments,
nonresidential, Exh.
7-14
retail sales trends, Exh.
7-9
West Point visitation trends,
Exh. 7-23
- Netherlands. *See* International
markets
- Net income, 3.05
- NIGC. *See* National Indian
Gaming Commission
- North African markets. *See*
International markets
- North American Free Trade
Agreement (NAFTA),
4.04[3]
- O**
- Occupancy levels
average room rate. *See*
Average room rate
by class, Exh. 3-4
changes in national hotel
supply and demand levels,
Exh. 2-2
demand analysis, 9.03[7]
estimated, 3.01
historically, 2.06[5]
paid rooms, 10.05
room rates. *See* Average room
rate
stabilized, 10.04
stabilized occupancy, 10.04
occupancy statistics, Exh.
10-11
twenty-year occupancy cycle
for three cities, Exh.
10-12
supply and demand levels
plotted against occupancy,
Exh. 2-3
- Offices and industrial parks as
demand generators, Exh.
9-1
- Oil embargo of the 1970s,
2.03
- Oman, 22.05[8]
- Opening costs, 13.02[1]
- Operating expenses, 3.05
See also Costs; Expenses
Host Study, data source,
3.01
lodging facilities by type, Exh.
3-9
operating statistics by hotel
type, Exh. 3-9
- Operating statistics by hotel
type, Exh. 3-9
- Other income, 11.05
- Oversupply (overbuilding),
2.01[3]
supply and demand imbalance,
2.05[5]

INDEX

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (¶), exhibits (Exh.), and appendixes (App.).]

Ownership

Note: A directory of hotel management companies and owners follows the appendixes.

business and legal

considerations, 15.01[2]

C corporations. *See this*

heading: corporations

concurrent ownership, 15.03

joint tenancy, 15.03[2]

tax considerations, 15.01[1]

tenancy by the entirety,

15.03[3]

tenancy in common,

15.03[1]

corporations, 15.05

C corporations, 15.05[1]

S corporations, 15.05[2]

election and termination

of status, 15.05[2][b]

eligibility requirements,

15.05[2][a]

limited partnerships,

compared with,

15.05[2][c]

tax considerations, 15.01[1]

entities, defined, 15.01

franchisors, difficulties with,

18.03[2]

individual ownership. *See this*

heading: sole

proprietorship

involuntary owners, 2.03[2]

joint tenancy, 15.03[2]

legal considerations, 15.01[2]

limited liability company

(LLC), 15.06

tax considerations, 15.01[1]

partnerships, 15.04

See also Partnerships; Real

estate limited

partnerships

agreements checklist,

15.04[2]

disposition of interests,

15.04[8]

general partnerships,

15.04[3]

joint venture, contrasted

with, 15.04

legal characteristics,

15.04[1]

limited partnerships,

15.04[4]

creation of, 15.04[4][a]

liability, limitation of,

15.04[4][b]

Revised Uniform Limited

Partnership Act

(RULPA), 15.04[4][b]

S corporations, compared

with, 15.05[2][c]

status of partners,

15.04[4][b]

Uniform Limited

Partnership Act

(ULPA), 15.04[4][b]

organization fees, 15.04[7]

real estate limited

partnerships (RELPs),

16.06

basic syndication

structures, 16.06[1]

blind-pool syndicates

(specified-property),

16.06[2]

master limited

partnerships, 16.06[3]

specified-property or

blind-pool syndicates,

16.06[2]

Tax Reform Act of 1986

(TRA), effects of,

16.06

real estate mortgage

investment conduits,

2.06[4]

Revised Uniform

Partnership Act (RUPA),

15.04[3]

syndicate, contrasted with,

15.04

syndication fees, 15.04[7]

tax considerations, 15.01[1]

income, gain, or loss of

partner, 15.04[6]

qualification requirements,

15.04[5]

Uniform Partnership Act

(UPA), 15.04[3]

public vs. private ownership,

14.04[8]

real estate investment trusts

(REITs), 15.08

asset requirements, 15.08[3]

dividend distributions and

taxation, 15.08[4]

financing capabilities,

16.07

debt leverage, 16.07[1]

equity leverage, 16.07[2]

income requirements,

15.08[2]

organizational requirements,

15.08[1]

tax considerations, 15.01[1]

types by asset holdings,

15.08[5]

equity REITs, 15.08[5][a]

hybrid REITs, 15.08[5][c]

mortgage REITs,

15.08[5][b]

real estate limited partnerships

(RELPs). *See this*

heading: partnerships

sale of to further expansion,

2.04[2]

S corporations. *See this*

heading: corporations

sole proprietorship, 15.02

tax considerations, 15.01[1]

tax considerations, 15.01[1]

concurrent ownership,

15.01[1]

limited liability company

(LLC), 15.01[1]

partnerships, 15.01[1]

income, gain, or loss of

partner, 15.04[6]

qualification requirements,

15.04[5]

real estate investment trusts

(REITs), dividend

distributions, 15.08[4]

sole proprietorship, 15.01[1]

trusts, 15.01[1]

tenancy by the entirety,

15.03[3]

tenancy in common, 15.03[1]

transfer, and management

contracts, 20.11

trusts, 15.07

tax considerations, 15.01[1]

types of ownership entities,

15.01

P

Palestinian areas, 22.05[9]

Parking restrictions, site analysis

factors, 6.01

Parks as demand generators,

Exh. 9-1

Partnerships, 15.04

agreements checklist, 15.04[2]

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (¶), exhibits (Exh.), and appendixes (App.).]

- Partnerships (*cont'd*)
 disposition of interests,
 15.04[8]
 general partnerships, 15.04[3]
 joint venture, contrasted with,
 15.04
 legal characteristics, 15.04[1]
 limited partnerships, 15.04[4]
 creation of, 15.04[4][a]
 liability, limitation of,
 15.04[4][b]
 Revised Uniform Limited
 Partnership Act
 (RULPA), 15.04[4][b]
 S corporations, compared
 with, 15.05[2][c]
 status of partners,
 15.04[4][b]
 Uniform Limited Partnership
 Act (ULPA), 15.04[4][b]
 organization fees, 15.04[7]
 Revised Uniform Partnership
 Act (RUPA), 15.04[3]
 syndicate, contrasted with,
 15.04
 syndication fees, 15.04[7]
 taxation, 15.01[1]
 income, gain, or loss of
 partner, 15.04[6]
 qualification requirements,
 15.04[5]
 Uniform Partnership Act
 (UPA), 15.04[3]
 Pension funds, 16.05
 Persian Gulf War, 2.06
 Person-trip, 4.03[1], 4.06
 Planning. *See* Investment
 planning
 Poland. *See* International
 markets
 Population
 age distribution data,
 7.03[2][a]
 trends, historical and
 projected, Exh. 7-7
 Portugal. *See* International
 markets
 Pre-opening
 process, 21.07
 services
 costs, operator investment
 commitment, Exh. 20-4
 management company
 issues, 19.05[2]
 management contracts,
 20.17
 Price sensitivity, 4.06[1]
 Price-value relationship, 5.04[2]
 Pricing
 See also Room rates
 franchisors, lack of control,
 18.03[5]
 Private credit companies, 16.04
 Property
 acquisition. *See* Acquisition of
 property; Financing
 casino. *See* Casino gaming
 analysis
 condemnation of, 20.08[4]
 deferred exchanges, 17.02[4]
 development. *See*
 Development of
 property
 economic life of, 5.03
 evaluation, competitive index
 method, 10.03[2][b],
 10.03[2][c], Exh. 10-10
 expenses. *See* Expenses
 financing of. *See* Financing
 foreign, like-kind exchanges,
 17.02[3]
 gaming. *See* Casino gaming
 analysis
 management. *See*
 Management
 market potential, 5.02
 nonresidential, taxes, Exh.
 7-14
 operation and maintenance
 expense, 12.09
 ownership. *See* Ownership
 personal, taxes, 12.11[2]
 purchasing of. *See* Sales and
 purchasing strategies
 real, taxes, 12.11[1]
 sales of. *See* Sales and
 purchasing strategies
 site. *See* Site analysis, market
 study, and appraisal
 taxes, 12.11[1], 12.11[2], Exh.
 7-14
 valuation. *See* Valuation
 Publications
 See also Data sources
 economic and demographic
 data sources, Exh. 7-1
 Host Study, 3.01
 Hotel and Motel Management,
 early history, 2.01[3]
 *International Gaming and
 Wagering Business*, Exh.
 23-2
 Lodging Hospitality Magazine,
 8.04
 Lodging Outlook, 3.01
 *Meetings and Conventions
 magazine*, 4.06[2]
 Meetings Market magazine,
 4.06[2]
 *Negotiation and
 Administration of Hotel
 and Restaurant
 Management Contracts*,
 21.02
 Restaurant Business magazine,
 11.03[1][a]
 Smith Travel Research (STR),
 8.04
 Published room rate, defined,
 10.06[1][a]
 Purchasing. *See* Sales and
 purchasing strategies
- Q**
- Qatar, 22.05[10]
 Quality, 4.06
 franchisees, lack of control
 over chain standards,
 18.05[7]
 franchisors, lack of control,
 18.03[4]
 management contracts
 operator advantages,
 19.06[1][d]
 owner advantages,
 19.06[3][c]
- R**
- Racetracks as demand
 generators, Exh. 9-1
 Rack room rate, defined,
 10.06[1][a]
 RAI (Restaurant activity index),
 11.03[1][a]
 Ramada Inns, 5.05, 18.01
 Real estate
 See also Financing; Land;
 Property
 limited partnerships. *See* Real
 estate limited partnerships

INDEX

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- non-economic real estate transactions, 2.05[1]
- REITs. *See* Real estate investment trusts
- REMICs. *See* Real estate mortgage investment conduits
- syndicates. *See* Real estate limited partnerships
- Uniform Rule on Real Estate Lending, 16.02
- Real estate brokers, role, 1.02[2]
- Real estate investment trusts (REITs), 15.08
 - asset requirements, 15.08[3]
 - congruent interests, management and investors, 14.05[2]
 - dividend distributions and taxation, 15.08[4]
 - financing capabilities, 16.07
 - debt leverage, 16.07[1]
 - equity leverage, 16.07[2]
 - franchise development history, 18.01
 - income requirements, 15.08[2]
 - management issues, 19.02[2]
 - organizational requirements, 15.08[1]
 - rebirth in the 1990s, 2.06[3]
 - structuring hotel REITs, 15.08[6]
 - tax considerations, 15.01[1]
 - types by asset holdings, 15.08[5]
 - equity REITs, 15.08[5][a]
 - hybrid REITs, 15.08[5][c]
 - mortgage REITs, 15.08[5][b]
- Real estate limited partnerships (RELPs)
 - basic syndication structures, 16.06[1]
 - financing, role in, 16.06
 - master limited partnerships, 16.06[3]
 - specified-property or blind-pool syndicates, 16.06[2]
 - Tax Reform Act of 1986 (TRA), effects of, 16.06
- Real estate mortgage investment conduits (REMICs), 2.06[4]
- Receipts, 4.03[2]
- REITs. *See* Real estate investment trusts
- RELPs. *See* Real estate limited partnerships
- REMICs. *See* Real estate mortgage investment conduits
- Reporting requirements
 - annual management plan, 20.05
 - capital expenditure budget, 20.05[2]
 - commercial space leasing plan, 20.05[4]
 - engineering status report, 20.05[4]
 - income and expense forecast, 20.05[1]
 - marketing plan, 20.05[3]
 - repair and maintenance budget, 20.05[2]
 - staffing and salary report, 20.05[4]
 - financial data, 20.03[4], Exh. 20-3
 - franchise agreement provisions, 18.09[8]
- Reservation systems
 - centralized systems, 18.06[8]
 - franchise agreements, 18.09[6]
 - franchise fees, 18.07[2][c]
- Resolution Trust Corporation (RTC) and commercial mortgage-backed securities (CMBS), 16.08[1]
- Resort areas as demand generators, Exh. 9-1
- Resort hotels and national supply, 3.02, 3.02[1][c], 3.02[3][f]
- Restaurants, 3.02, 3.04, 3.05
 - See also* Amenities; Beverages; Food; Services
 - demand
 - banquet, 11.03[1][a][iv]
 - in-house capture, 11.03[1][a][ii]
 - out-of-house, 11.03[1][a][iii]
 - house count, 11.03[1][a][i]
 - restaurant activity index (RAI), 11.03[1][a]
 - restaurant growth index (RGI), 11.03[1][b]
 - revenue forecasting. *See* Food
 - zoning restrictions on service of alcoholic beverages, 6.04
- Retail sales
 - economic and demographic data, 7.03[2][b]
 - market area data analysis methods, Exh. 7-4
 - trends, Exh. 7-4, Exh. 7-9
- Revenue
 - beverages
 - alcoholic beverages, zoning restrictions, 6.04
 - forecasting, 11.03[2]
 - build-up cover approach, 11.03[2][a]
 - fixed and variable component approach, 11.03[2][b]
 - build-up cover approach
 - beverage revenue forecasting, 11.03[2][a]
 - food revenue forecasting, 11.03[1]
 - casinos. *See* Casino gaming analysis
 - definition, total revenue, 11.06
 - due diligence issues, analysis, 14.08[5]
 - food revenue forecasting, 11.03[1], Exh. 11-1
 - build-up cover approach, 11.03[1][a]
 - banquet demand, 11.03[1][a][iv]
 - house count, 11.03[1][a][i]
 - in-house capture, 11.03[1][a][ii]
 - out-of-house restaurant demand, 11.03[1][a][iii], Exh. 11-2
 - restaurant activity index (RAI), 11.03[1][a]
 - Restaurant Business* magazine, data source, 11.03[1][a]
 - restaurant growth index (RGI), 11.03[1][a]
- definitions
 - banquet demand, 11.03[1][a][iv]
 - house count, 11.03[1][a][i]
 - in-house capture, 11.03[1][a][ii]
 - out-of-house restaurant demand, 11.03[1][a][iii]

[This index is alphabetized letter-by-letter (e.g., *Travelers precedes Travel industry*).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- Revenue (*cont'd*)
 food revenue forecasting
 (*cont'd*)
 fixed and variable
 component approach,
 11.03[1][b], Exh. 11-3
 reasonableness, test for,
 11.03[1][c]
 primary units of
 comparison, Exh. 11-4
 restaurant activity index
 (RAI), 11.03[1][a]
 forecasting, 11.01–11.06
 annual management plan,
 20.05[1]
 beverages. *See this heading:*
 beverages
 food revenue. *See this*
 heading: food revenue
 forecasting
 other income, 11.05
 room revenue, 11.02
 telephone revenue
 forecasting, 11.04, Exh.
 11-5
Uniform System of Accounts
for Hotels, 11.01
 restaurants. *See this heading:*
 food revenue forecasting
 telephone revenue forecasting,
 11.04, Exh. 11-5
 total revenue, 11.06
- Revised Uniform Limited
 Partnership Act (RULPA),
 15.04[4][b]
- Revised Uniform Partnership
 Act (RUPA), 15.04[3]
- RGI (Restaurant growth index),
 11.03[1][b]
- Risk
 avoidance, as investment
 strategy, 14.04[2]
 management contracts,
 19.06[1][b], 19.06[4][f]
 second-tier management
 companies, 19.07[4][b]
- Ritz, Caesar, 18.01
- Riverboat gaming. *See* Casino
 gaming analysis
- Rooming houses, 2.01[1]
- Room-night analysis
 captured, 10.03[2][b], Exh.
 10-10
 competitor interviews, 8.05
- demand, 9.02
 accommodated room-night
 demand, 9.03[1]
 competitive index method,
 10.03[2][a], Exh. 10-8,
 Exh. 10-10
 total room-nights available,
 9.03[6]
 market share, 10.02,
 10.03[2][a]
See also Market share
- Room-night demand,
 10.03[2][a], Exh. 10-8
- Room rates
 amenities, cost of, 3.02, 3.04,
 3.05
 average, 3.01
 average room rate, 10.05
 bottom-up method,
 forecasting procedure
 for proposed hotels,
 10.06[2][b]
 class, by, Exh. 3-4
 comparison with occupancy,
 10.06[1][b]
 competitive positioning
 method, forecasting
 procedure for proposed
 hotels, 10.06[2][b]
 forecasting procedure,
 10.06
 existing and proposed
 hotels. *See* Average
 room rates
 Hubbart Formula (bottom-up
 method), 10.06[2][b]
 market segmentation
 method, forecasting
 procedure for proposed
 hotels, 10.06[2][d]
 rule of thumb method,
 forecasting procedure
 for proposed hotels,
 10.06[2][c]
Uniform System of Accounts
for Hotels, 10.05
 commercial, 10.06[1][a]
 contract, 10.06[1][a]
 demand, 4.06[4]
 rack, 10.06[1][a]
 revenue forecasting, 11.02
- Room sales, Exh. 4-3
- Room service, 3.02, 3.04, 3.05
 revenues, 11.03
- Room sizes, Exh. 3-6
- RULPA (Revised Uniform
 Limited Partnership Act),
 15.04[4][b]
- RUPA (Revised Uniform
 Partnership Act), 15.04[3]
- Russia. *See* International
 markets
- S**
- Sales and purchasing strategies
 centralized purchasing
 advantages, 18.06[6]
 closings, 17.01[2][j]
 contracts, 17.01[2]
 generally, 17.01
 hotel brokers, 17.02
 capital sources, 17.02[3]
 creating a sales story,
 17.02[1]
 disruptions, prevention of,
 17.02[5]
 marketing package, 17.02[4]
 negotiating from strength,
 17.02[2]
 like-kind exchanges, 17.03
 advantages, 17.03[1]
 deferred exchanges, 17.03[4]
 determining basis, 17.03[6]
 foreign property, 17.03[3]
 real estate qualifications,
 17.03[3]
 related party transfers,
 17.03[5]
 requirements, 17.03[2]
 sample form, App. 1A
 timing of as investment
 strategy, 14.04[7]
- Sales comparison approach,
 property valuation, 13.03
- Saudi Arabia, 22.05[11]
- Savings and loan crisis, 2.05[2]
- S corporations, 15.05[2]
 election and termination of
 status, 15.05[2][b]
 eligibility requirements,
 15.05[2][a]
 limited partnerships, compared
 with, 15.05[2][c]
- Scotland. *See* International
 markets
- Senior citizens' impact on
 demand, 5.01

INDEX

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (¶), exhibits (Exh.), and appendixes (App.).]

- Services
 See also Amenities
 costs, 3.05
 expected, 3.04, Exh. 3-7
 franchisor control problems, 18.03[4]
 supply, 3.02
 usage, Exh. 3-8
- Sewer utility service, 6.03
- Sheraton hotels, 2.01[4][b]
- Shopping centers and malls as demand generators, Exh. 9-1
- Short-term holding periods as investment strategies, 14.04[6]
- Signs and signage, restrictions and permits, site analysis factors, 6.04
- Site analysis, market study, and appraisal, 1.02[2]
 access and visibility, 6.02, Exh. 6-1
 barriers to entry, 5.02
 case study, site feasibility, Exh.6-1
 environmental concerns, 5.02
 excess land, 6.05
 floor/area ratio (FAR), 6.01
 franchisor services, 18.06[1]
 height limitations, 6.01
 market selection, 5.03
 parking restrictions, 6.01
 physical suitability, 6.01
 product selection, 5.04
 sample case analysis, Exh. 6-1
 signage restrictions and permits, 6.04
 transient visitation generators, Exh. 6-2
 utilities and services, 6.01, 6.03, Exh. 6-3
 vacant land, 6.05
 zoning codes, 5.02, 6.04
- Site selection. *See* Site analysis, market study, and appraisal
- Smith Travel Research (STR), 3.01
- Spain, economic data projections, Exh. 22-7
- Sports stadiums as demand generators, Exh. 9-1
- Standard (mid-rate) hotels
 classification of, 3.02[2]
 floor plan, 3.03, Exh. 3-6
 franchise fees, Exh. 18-4
- State capitals as demand generators, Exh. 9-1
- Statistical Abstract of the United States*, 4.04[1], 4.04[2]
- Statistics
 See also Data sources; Publications
 association meeting characteristics, Exh. 4-12
 business travelers, demographics, Exh. 4-7
 business trips
 monthly, Exh. 4-9
 yearly, Exh. 4-5
 conventions, distribution by month, Exh. 4-13
 corporate meeting characteristics, Exh. 4-10
 customer preferences, Exh. 4-15
 industry demand, 4.04-4.04[5]
 lead time required to book meetings, Exh. 4-11
 leisure travelers, demographics, Exh. 4-14
 nights spent per business trip, Exh. 4-6
 operating expenses of lodging facilities by type, Exh. 3-8
 Statistical Abstract of the United States, 4.04[1]
 transportation used by commercial travelers, Exh. 4-8
- Statler, Ellsworth M., 2.01[2][a]
- Stock market
 crash of 1929, 2.01[4]
 lodging industry performance in the 1980s, 2.05[6]
- Subleases
 selected provisions, App. 7
- Suite hotels. *See* All-suite hotels
- Supply
 amenities, 3.04
 analysis, 8.01
 benchmark information; data sources, 8.04
 competition evaluation, 8.02
 competitor interviews, 8.05
 fieldwork techniques, 8.03
 market area identification, 8.01
 market position of subject property, Exh. 8-1
 previous studies on existing hotels, 8.04
 capital availability, 14.03
 casino gaming. *See* Casino gaming analysis
 classification of, 3.02, Exh. 3-2
 class, 3.02[2], Exh. 3-3
 location, 3.02[3], Exh. 3-2
 type, 3.02[1]
 design, 3.03, Exh. 3-5
 due diligence issues, 14.08[4]
 financial operating data, 3.05
 future trends, 2.06[7]
 market area evaluation, 5.03
 occupancy levels, 10.06[1][b]
 See also Occupancy levels
 operating statistics by type, Exh. 3-8
 overdevelopment, 2.05[5]
 qualification data sources, 3.01
 quantification, 3.01
 supply and demand levels plotted against occupancy, Exh. 2-3
 trends, 5.01
- Surveys, demand interviews. *See* Interviews
- Swimming pool, 3.02, 3.04, 3.05, 5.04
 See also Amenities
- Syndicates
 financing, method of, 2.04[2]
 investment strategy, 14.02[2]
 partnerships, contrasted with, 15.04
 partnership syndication fees, 15.04[7]
- Syria, 22.05[12]
- T**
- Taxes
 concurrent ownership, 15.01[1]
 earnings before interest, taxes, depreciation, and amortization (EBITDA), 14.03[8]
 like-kind exchanges, advantages of, 17.03[1]
 limited liability company (LLC), 15.01[1]
 ownership entities, 15.01[1]

[This index is alphabetized letter-by-letter (e.g., Travelers precedes Travel industry).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- Taxes (*cont'd*)
 partnerships, 15.01[1],
 15.04[5], 15.04[6]
 income, gain, or loss of
 partner, 15.04[6]
 qualification requirements,
 15.04[5]
 property tax assessments, 13.07
 improvement value
 valuation process,
 13.07[2]
 market value estimate,
 13.07[1]
 property tax expense, 12.11
 personal property
 assessment, 12.11[2]
 real property assessment,
 12.11[1]
 real estate investment trusts
 (REITs), 15.01[1]
 dividend distributions and
 taxation, 15.08[4]
 rooms tax collector as data
 source for supply analysis,
 8.04
 sole proprietorship, 15.01[1]
 Tax Reform Act of 1986,
 effect on real estate
 limited partnerships, 16.06
 trusts, 15.01[1]
 write-offs as investment
 strategy, 14.02[2]
 Tax Reform Act of 1986 (TRA),
 16.06
 TCPU. *See* Transportation,
 communications, and public
 utilities sectors
 Technical services
 assistance provisions in
 management contracts,
 20.18
 management company issues,
 19.05[2]
 Telecommunications, effect on
 demand, 4.01
 Telephone revenue forecasting,
 11.04, Exh. 11-5
 Tenancy by the entirety, 15.03[3]
 Tenancy in common, 15.03[1]
 Theaters as demand generators,
 Exh. 9-1
 Timing strategies, 21.03
 Tourist attractions as demand
 generators, Exh. 9-1
 Tourist courts, 2.02[1]
See also Motels
 Trademarks, franchisor income
 from, 18.02[4]
 Traffic analysis
 airports, Exh. 7-19
 highways, 7.03[2][f], Exh. 7-18
 state thruway traffic counts,
 Exh. 7-3
 Training
 franchise agreement
 provisions, 18.09[5]
 franchise support, 18.04[3]
 Transient lodging
 determination of, 3.01
 site selection factors, 5.06,
 Exh. 6-2
 use of, 4.03
 Transient visitation generators.
See Demand generators
 Transportation, communications,
 and public utilities (TCPU)
 sectors, 7.03[2][c]
 Travelers
 business. *See* Business travelers
 domestic, 4.04[2]
 frequent, amenities expected
 by, Exh. 3-6
 international, 4.04[3]
 leisure, 3.02, 4.02, 4.03[1]
See also Leisure travelers
 Travel industry
 airline costs, 5.01
See also Airline industry;
 Airports
 demand analysis, 4.04, 4.06,
 4.06[4]
 future trends, 5.01
 growth rates, Exh. 4-2
 international, 4.04[3]
 motels, historical origins, 2.02[1]
 patterns
 passenger miles, 4.04[2]
 supply and demand, 3.02[2]
 transportation used by
 commercial travelers,
 Exh. 4-8
 trends, 5.01
 reservations. *See* Reservation
 systems
 statistics, 4.04
 transportation used by
 commercial travelers,
 Exh. 4-8
 travel price index, 4.04[3]
 trends, 4.05, 5.01
 volume, hotel travel, Exh. 4-1
 TraveLodge, 5.04
 Trends
 demand, 4.03[1], 5.01
 economic, 4.05, 5.01
 investment, 4.06[4], 5.01
 market share, 4.03[1], 5.01
 neighborhood economic
 analysis, 7.02[2]
 travel patterns, 4.05, 5.01
 Trusts
 ownership entity, 15.07
 tax considerations, 15.01[1]
 Tunisia, 22.05[13]
- U**
- Unaccommodated demand,
 9.03[2][a]
 Uniform Franchise Offering
 Circular (UFOC), 18.03[7]
 Uniform Limited Partnership Act
 (ULPA), 15.04[4][b]
 Uniform Partnership Act (UPA),
 15.04[3]
 Uniform Rule on Real Estate
 Lending, 16.02
*Uniform System of Accounts for
 Hotels*, 10.05, 11.01, 12.01
 United Arab Emirates, 22.05[14]
See also International markets
 United Kingdom. *See*
 International markets
 U.S. Bureau of the Census, 3.01
 U.S. Travel Data Center, 4.03,
 4.03[1], 4.06[1]
 Utilities and services, 6.01, 6.03,
 Exh. 6-3
- V**
- Vacant land, site analysis
 factors, 6.05
 Valuation, 1.02[3], 13.01
 appraisal, 13.01
 break-even analysis, 13.05
 cost approach, 13.02
 replacement cost. *See this
 heading: replacement
 cost*

INDEX

[This index is alphabetized letter-by-letter (e.g., *Travelers* precedes *Travel industry*).
References are to chapters (Ch.), paragraphs (§), exhibits (Exh.), and appendixes (App.).]

- due diligence issues, 14.08[3]
- feasibility analysis, 13.06
- historical perspective, 2.03[3]
- income capitalization
 - approach, 13.04
 - mortgage and equity
 - component valuation,
13.04[1], 13.04[2],
13.04[4]
 - cash flow to equity
 - calculation, Exh. 13-7
 - equity component, Exh.
13-10
 - investor interviews,
13.04[2][b], Exh. 13-5
 - mortgage component, Exh.
13-9
 - past appraisals,
13.04[2][a]
 - summary of derived rates
and yields, Exh. 13-4
 - total property value, Exh.
13-8
 - typical hotel and motel
 - mortgage rates, Exh.
13-3
 - terminal capitalization rate,
13.04[3]
 - overall capitalization rate
 - calculations, Exh. 13-6
 - price-value relationship, 5.05[2]
 - property tax assessments, 13.07
 - improvement value
 - evaluation process,
13.07[2]
 - market value estimate,
13.07[1]
 - replacement cost
 - cost analysis services,
13.02[1]
 - estimated construction cost
of proposed property,
Exh. 13-1
 - land value, 13.02[2]
 - ground lease approach,
13.02[2][a], Exh. 13-2
 - land residual approach,
13.02[2][b]
 - sales comparison approach,
13.03
 - theory, early history of,
2.01[4][c]
 - Videoconferencing, effect on
demand, 5.01
 - Visibility and site analysis
factors, 6.02, Exh. 6-1

W

 - Waste removal services, 6.03
 - Water utility service, 6.03
 - Wharton Economic Forecasting
Associates Group, 14.01
 - Win. *See* Casino gaming
analysis
 - Work force characteristics,
7.03[2][c]
 - World War II and lodging
industry history, 2.01[5]

Y

 - Yemen, 22.05[15]

Z

 - Zoning
 - alcoholic beverages,
 - restrictions affecting site
selection, 6.04
 - site analysis, market study,
and appraisal, 5.03, 6.04

Data Collection Checklist

SUBJECT PROPERTY _____
 MAILING ADDRESS _____
 MUNICIPALITY _____
 COUNTY _____
 TELEPHONE NUMBER _____
 REFERENCE NUMBER _____

DATE OF STUDY _____
 OPENING DATE
 OF PROJECT _____

1. CLIENT DATA

Company Name _____
 Business Address _____

 Telephone Number _____

Financial Records

- Balance sheets (last three years)
- Profit and loss statements with supporting statements (last three years)
- Occupancy and average rate, by month (last three years)
- Operating budgets and projections
- All contracts or agreements entered into by client:
 - Union contracts
 - Leases (ground)
 - Management contracts
 - Franchise agreements
 - Title reports
 - Stock agreements
 - Partnership agreements
- Franchise Reports
 - Occupancy
 - Inspection
 - Reservation

- Turnaway
- Denials
- Capital expenditures (last three years)
- Capital budget (cost) projections (next three years)
- Personal and real property tax bills
- Comparable assessments
- Cost of furniture, fixtures, and equipment (last three years)
- Marketing plans
- Impact study
- Name of legal owner

Property Records

- Architectural plans
- Floor plans (as built)
- Plot plans
- Survey and legal description of property
- Engineering reports
- Original purchase data (price, date, terms, contract, closing statement)
- Agreement of sale, option, or listing
- Financing documents (mortgage)
- Past appraisals of subject property
- Market and feasibility studies of subject property
- Prospectuses

Miscellaneous Records

- Credit card user surveys
- Meeting planners brochure—rate card
- Maps

2. IN-HOUSE DATA BASE

- Client proposal for valuation
- Past studies performed in market area
- Contacts with local hoteliers
- American Hotel and Motel Association Construction Report
- Directories
 - Official Hotel and Resort Guide
 - Hotel Travel Index
 - Red Book
 - AAA
 - Mobil Travel Guide
 - American Institute of Real Estate Appraisers Directory
 - Hospitality Market Data Exchange
 - American Society of Real Estate Counselors Directory
 - Society of Real Estate Appraisers Directory
- Rate and occupancy data collections
- College alumni listing (e.g., Cornell Society of Hotelmen Directory)
- Mailing list of clients
- Telephone listings—hotels, motels, real estate, apartments
- National Real Estate Investor—city data, atlas, encyclopedia
- Sales and Marketing Management
- Survey of Buying Power
- Restaurant Business RAI and RGI
- FAA terminal forecasts

3. FIELD DATA

Contacts (Name and telephone number)

General Manager _____

 Assistant Resident Manager _____

 Director of Marketing _____

Director of Sales _____

 Director of Engineering _____

 Front Desk Manager _____

 Controller/Accountant _____

Introductions (Name and telephone number)

Other general managers in area _____

 Chamber of Commerce _____

 Convention and Visitors Bureau _____

 Hotel Association _____

Marketing

- Demand generator analysis
 - Major businesses and industries in area
 - Primary market area in geographic terms (provide map)
 - Top twenty major users of subject property
 - Major contract business, including term, rate, and number of room-nights
- Competition analysis
 - Competitive hotels, including occupancy, average rate, and market segmentation
 - Market segmentation, by month
 - Average length of stay
 - Seasonality
 - weekly
 - monthly
 - by segment
 - Unaccommodated demand, by segment
 - Double occupancy percentage
 - Rate resistance by segment
 - Rack rate pricing strategy
 - Points of origin (feeder markets)
 - Mode of arrival (indicate shuttle availability applicable)
 - Percentage of reservations from franchise

DATA COLLECTION CHECKLIST

- Amount of travel agent commissions
- Hotel or extended-stay association

Subject Property Analysis

- Size, topography, and shape
 - Land area
 - Excess land (indicate if salable, highest and best use)
 - Plot survey
 - Optimum frontage-to-depth ratio (corner location)
 - Frontages
 - Adjoining uses:
 - North
 - East
 - South
 - West
 - Grade, compared to surrounding roads/uses
 - Contours, slope, drainage
 - Identification of flood zones, if any, and need for flood insurance
 - Soil tests
 - Water table
 - Percolation tests
 - Other
 - Air rights
 - Subsurface rights
 - Water rights
 - Landscaping
 - Easements/restrictions
 - Current condition
- Access
 - North/south roads
 - East/west roads
 - Direct access pattern (i.e., number of lanes in approach roads, presence of median division, turn restrictions, traffic signals, one-way, curb cuts, limited access)
 - Time and distance to:
 - Airport
 - Highways and interchanges
 - Mass transportation
 - Convention center
 - Demand generators
 - Competition
- Visibility
 - North-south roadways
 - East-west roadways
 - From demand generators, airport, convention center

- Height and depth
- Slope of land
- Obstructing buildings (all sides)
- Signage
 - Location
 - Visibility
 - Condition
- Views from subject (all sides) including:
 - Guestrooms
 - Food and beverage outlets
- Effect of climate, if any
- Utilities
 - Location
 - Capacity
 - Provider
 - Electricity:
 - Price/KWH
 - Normal demand charges
 - Quantity discounts
 - Seasonal adjustments
 - Natural gas:
 - Price/therm
 - Quantity discounts
 - Seasonal adjustments
 - Oil:
 - Tank size
 - Price/gallon
 - Quantity discounts
 - Steam
 - Water source
 - Telephone service
 - Sewage
 - LPG
 - Trash removal
 - Storm drainage
- Photographic documentation
 - Visibility of subject property
 - Access to subject property
 - Entrance, with signage
 - View of subject property—four sides
 - View from subject property—four sides
 - Approach roads
 - Surrounding land use

Neighborhood

- Boundaries, as indicated by:
 - Land use changes
 - Transportation arteries

- Bodies of water
- Changes in elevation/topography
- Characteristics
 - Residential
 - Commercial
 - Retail
 - Industrial
 - Rural
 - Suburban
 - Urban
- Buildings
 - Style
 - Size
 - Density
 - Vacancy levels
 - Rental rates
 - Effective age
 - Condition
- New construction/development
- Street patterns/widths
- Nearby parks and recreation areas
- Noise or other nuisances
- Future trends or potential changes in neighborhood as indicated by uniformity/variance in land uses

4. IMPROVEMENTS

Hotel Description

- Architectural plans and description
- Year opened
- Year of expansion/renovation
- Description of expansion/renovation
- Number of structures
- Location of structures on site
- Number of stories in each building
- Configuration of each building (e.g., H, L, U)
- Total gross building square footage
- Total net building square footage
- Landscaping and sidewalks
- Exterior facade
 - Architectural style
 - Materials
 - Balconies
- Future development plans
 - Project description
 - Costs
- Current engineering reports

Building Layout

- Lobby
 - Layout and circulation
 - Decor
 - Size
 - Condition
 - Ceiling height
 - Porte cochere
 - Valet stand
 - Shuttle bus
 - Doors (i.e., automatic, airlock vestibule)
 - Bell stand
 - Luggage storage
 - Concierge desk
 - Restrooms
 - Phones
- Front Desk
 - Published rates
 - Visibility to incoming guests
 - Elevator visibility
 - Reservation and registration system

Other Floors

- Layout
- Circulation

Guestrooms (broken down by type)

- Total number
- Number of connecting rooms
- Walking distance
- Size
- Ceiling height
- Number of terraces
- Furnishings
 - Age
 - Last replacement date
 - Present condition
 - Refurbishment schedule
 - Amenities (e.g., extra phone, shoe shine, movies, VCR)
- Doors
 - Material
 - Peephole
 - Lock brand
 - Type (e.g., 1-key, 2-key, card)
- Closets
- Wall material (e.g., plaster, drywall, concrete)

DATA COLLECTION CHECKLIST

- Windows
 - Type
 - Condition
- Sprinklers
- Smoke detectors
- Accessibility to and equipment for the handi-capped
- No-smoking rooms
- Bathrooms
 - Condition
 - Lighting
 - Amenities (e.g., heat lamp, clothesline, heated towel bar)

Guest Corridors and Elevator Lobbies

- Type (double, single-loaded)
- Location (interior or exterior)
- Direction
- Width
- Lighting
- Ceiling height
- Wallcovering
- Floorcovering
- Condition
- Elevator lobby furnishings
- Ice machines
- Vending machines
- Maid/linen closets

Food, Beverage, and Room Service Facilities

- Seating capacities
- Meals served
- Hours of operation (including room service)
- Menus (obtain copies)
- Decors
- Furnishings
 - Style
 - Quality
 - Age and condition
- Bar
- Buffet
- Back-of-the-house access from kitchens
- Room service facilities
- Separate outside access (describe visibility of entrance)
- Access to restrooms
- Entertainment policy
- Point of sale system

- Average turnover by meal period
- Average check by meal period
- Percentage of in-house capture by meal period
- Estimate of in-house capture and outside capture
- Annual covers
 - Breakfast
 - Lunch
 - Dinner
- Room service
- Lounge
- Banquet room
 - Square footage
 - Room rental revenue
- Food and beverage financial statement (broken down by meal period and outlet)
 - Cost of sales
 - Total payroll expense
 - Total other expenses

Kitchen(s)

- Locations
- Access (floors, distance)
 - Receiving areas
 - Storage areas
 - Meeting rooms
 - Outlets
- Equipment
 - Description
 - Quality
 - Quantity
 - Configuration
 - Condition
- Adequacy of size and layout

Meeting and Banquet Facilities

- Individual rooms
 - Name
 - Size
 - Capacity
- Adequacy of mix and breakout rooms
- Decor
- Condition
- Separate entrance/porte cochere
- Separate service and public corridors
- Proximity to kitchen
- Adequacy of meeting support amenities (e.g., furniture, audio-visual equipment)

- Furniture storage area
- HVAC/zone control

Recreational Facilities

- Swimming pool
 - Shape
 - Indoor/outdoor
- Tennis courts
 - Lighted
 - Indoor/outdoor
- Golf course
 - Number of holes
 - Yards per hole
 - Annual rounds played
 - Fees
- Jogging trails
- Health/exercise club
 - Sauna
 - Steambath
 - Whirlpool
 - Massage
 - Exercise classes
 - Exercise apparatus
 - Type
 - Number
- Other facilities (e.g., horseback riding, ice skating, boating, skiing)
- Spa
- Game room

Back-of-the-House Layout

- Employee entrance (access pattern)
- Employee facilities
 - Lockers
 - Lounge area
 - Cafeteria
- Security
- Timekeeping
- Personnel
- Purchasing offices
- Receiving
 - Loading dock
 - Guest view
 - Lift
- Storerooms
- Engineering
 - Shops
 - Storage

- Electrician
- Locksmith
- Carpenter

Building Systems

- Structural
 - Foundation
 - Framing (e.g., steel, precast concrete, reinforced concrete)
 - Walls
 - Roof
 - Age
 - Condition
 - Sloped or flat
 - Material (e.g., asphalt shingle, built-up felt and tar, slate)
- Parking
 - Number of spaces
 - Indoor/outdoor
 - Valet
 - Cost to guest
 - Percentage of non-guest use
 - Condition of pavement and striping

Heating, Ventilation, and Air Conditioning

- Heating system
 - Type (i.e., hot water, steam, electric)
 - Fuel
 - Delivery (2-, 3-, 4-pipe, forced air)
 - Heat/cool simultaneously
 - Boilers
 - Brand
 - Model number
 - Age/condition
 - Burners
 - Brand
 - Model number
 - Age/condition
 - Water heater
 - Brand
 - Model number
 - Tank size
 - Age/condition
 - Resistance
 - Brand
 - Model/capacity
 - Age/condition

DATA COLLECTION CHECKLIST

- Heat exchanger
 - Brand
 - Model/capacity
 - Age/condition
- Heat pump
 - Brand
 - Model number
 - Capacity
 - Age/condition
- Cooling system
 - Type (e.g., central/chilled water, heat pumps)
 - Chiller
 - Brand
 - Model number
 - Age/condition
 - Cooling tower
 - Brand
 - Model number
 - Age/condition
 - Zones
 - Guestrooms
 - Meeting rooms
 - Public space control

Energy Management System

- Description
- Brand and model number
- Guestrooms (type of control, e.g., individual)
- Meeting/public space (type of control, e.g., individual)

Housekeeping

- Offices
- Storage areas
- Sorting areas
- Trash chute
- Linen chute
- Exhaust fan
- Washer
 - Brand
 - Model number
 - Quantity
- Dryer
 - Brand
 - Model number
 - Quantity
 - Fuel

- Guest laundry
 - Outside contract
 - Self-service

Fire

- Smoke detectors
 - Local
 - Wired
- Heat detectors
 - Local
 - Wired
- Sprinkler system
- Fire extinguishers
- Pull stations
 - Control/communication system
 - Brand
 - Model number
- Annunciator panel
- Emergency lighting and battery backup
- Exit signage and battery backup
- Fire hoses
 - Brand
 - Model number
- Standpipes
- Kitchen range hood
 - Brand
 - Model number
 - CO₂ system
- Public address system
- Emergency generator
 - Brand
 - Model number

Vertical Transportation

- Passenger elevators
 - Number
 - Floors served
 - Brand
 - Cable or hydraulic
 - Cab condition
 - Capacity
 - Feet per minute
 - Automatic/manned
 - Control system
 - Mechanical or electrical relays
 - Computerized load system
- Service elevators
 - Number

- Floors served
- Brand
- Cable or hydraulic
- Capacity
- Feet per minute
- Control system
- Mechanical or electrical relays
- Computerized load system
- Escalators
 - Number
 - Floors served
- Dumbwaiters
 - Number
 - Floors served
- Stairs
 - Number
 - Location

Security

- Electronic surveillance equipment
 - Number
 - Location
- Alarm systems

Telephone System

- Brand
- Model number
- Type of call accounting
- Least cost routing
- Other special functions

Lighting

- Exterior
 - Type (e.g., sodium, fluorescent, incandescent)
 - Building signage
- Interior

Miscellaneous

- Asbestos construction
- Urea-formaldehyde foam insulation
- Building inspection reports
- Health inspection reports
- Total deferred maintenance
- Total functional obsolescence

5. ECONOMIC AND DEMOGRAPHIC DATA**Market Area**

- Hotels
 - Room counts
 - Rates
 - Occupancy
- SIC employment
- Population
 - Migration vs. births
 - Peak vs. annual
 - Age distribution
 - Income levels (effective buying income)
- Retail sales
- Eating and drinking place sales
- Office space and occupancy survey/directory (i.e., absorption trends)
- Major businesses
 - By employment sector
 - National
 - Number of employees
- Industrial space and occupancy survey/directory (i.e., absorption trends)
- Unemployment percentages
- Housing starts
- Building permits
 - Number
 - Dollar value
- Area maps
- Major universities
 - Enrollments
 - Faculty
 - Staff
- Major military bases
 - Civilian employment
 - Type/function
- Room/bed tax data
- Visitor statistics to area attractions

Assessed Valuation and Taxes

- Assessor
 - Name
 - Address
 - Telephone number
- Purchase tax map
 - Size of parcel (acreage, square feet)
 - Length of boundaries
 - Lot and block number
 - Tax ID number

DATA COLLECTION CHECKLIST

- Subject property's assessed value
 - Date of assessment
 - Value of land
 - Value of building
- Assessment basis
 - Income, cost, market
 - Change on sale
- Date and frequency of assessment
- Tax history
 - Past five years
 - Current
 - Future trends
 - Equalization rate
 - Assessed values
 - Mill rates
- Comparable hotel parcels
 - Number
 - Assessments
 - Land
 - Buildings
- Land sales
- Hotel sales
- Hotel rates and occupancies
- Special and/or future assessments
- Tax abatements
- Personal property
 - Subject property's assessed value
 - Comparable hotel assessed value
 - Mill rates

Chamber of Commerce/Economic Development Administration

- Primary contact
 - Name
 - Address
 - Telephone number
- Area economic status (e.g., cyclical, growing, declining, high-tech, industrial)
- Businesses entering/leaving area
- Area attractions
 - Historical visitation
 - Projected visitation
- Area hotels
 - Occupancy rates
 - Rates
- Proposed hotels
- Prominent area officials
 - Name

- Address
- Telephone number
- Area business associations

Airport Authority

- Passenger traffic
 - Past five years
 - Projected for five years
- Cargo traffic
 - Past five years
 - Projected for five years
- Airlines and number of flights
- Physical description of airport
- Expansion plans, if any
- Cities served (originations)
- Restrictions on aircraft size
- Number of days closed annually

Hotel Association

- Primary contact
 - Name
 - Address
 - Telephone number
- List of area hotels
 - Market segmentation
 - Rates
 - Occupancies
- Total room count
 - Current
 - Historical
- Room/bed tax information
- Hotels recently opened or closed
- Proposed hotels

Convention Center and Visitors Bureau

- Primary contact
 - Name
 - Address
 - Telephone number
- Physical description
 - Size
 - Capacity
 - Age
 - Facilities
- Number of conventions
 - Historic
 - Projected
 - Seasonality

- Number of conventioners
 - Historic
 - Projected
 - Seasonality
- Average expenditure of conventioner
- Average conventioner length of stay
- Average convention size
- Future convention calendar/number of events
- Marketing plan
- Promotion budget
 - Past five years
 - Next five years
 - Deficits funding
- Nature and types of events (local, state, regional)
- Visitor statistics

Room/Bed/Occupancy Tax

- Historical taxes by month
 - Past five years
 - Next five years
- Identification of tax by property (occupancy and rate)
- Tax rate
 - Historical rates
 - Rate changes
- Definition of taxable property
- Change in number of taxable hotel rooms

Zoning/Building/Planning Department

- Primary contact
 - Name
 - Address
 - Telephone number
- Proposed hotel development
 - Plans
 - Related facilities
 - Name of developer, hotel company
 - Estimated completion date
- Hotels under construction
 - Status of each project
 - Approval process
- Zoning of subject property
 - Current
 - Historical
 - Zoning map
 - Zoning regulations

- Conforming use
- Height restrictions
- Lot coverage
- Size restrictions
- Floor area ratio
- Setback restrictions
- Parking requirements
- Sign restrictions
- Moratoriums on building and utilities usage
- Environmental impact study requirements
- Zoning for surrounding land
 - Present
 - Future
- Flood plain areas
- Zoning trends for area
- Potential for/probability of zoning changes
- Building permits
 - Five-year history
 - Number
 - Dollar value

Economic Development Administration or Planning Department: City, County, and Surrounding Area

- Contacts
 - Name
 - Address
 - Telephone number
- Existing hotels
 - Occupancy
 - Rate
- New construction
 - Hotels
 - Expansions
 - Renovations
- County (of subject property)
- City (of subject property)
- Surrounding municipalities
- Master (renewal) plan for development
- Pertinent studies
 - Land use map
 - Economic/demographic data
 - Transportation
- Directions of growth (e.g., industrial, commercial, redevelopment)
- Availability of public funds/tax incentives for hotels

DATA COLLECTION CHECKLIST

Highway/Transportation Department

- Primary contact
 - Name
 - Address
 - Telephone number
- Origination and destination maps
- Traffic flow/count maps
- Future changes
 - Road improvements
 - Traffic rerouting roadway changes (e.g., left turn lanes, lights, curb cuts, medians, turn restrictions, additional lanes)
- Traffic counts
 - Historic
 - Current
 - Toll receipts

Commercial Real Estate Firm/Board/ Brokers/Developers/Relocation Services

- Apartments that accommodate extended stay demand (less than six months)
- Relocation director/coordinator
- Retail space inventory
 - Commercial
 - Office
 - Industrial
 - Retail
- Historic absorption/anticipated growth
- New projects/expansions/renovations
 - Developer
 - Location
 - Size (square feet)
 - Opening date
 - Major committed tenants
 - Projected occupancy
 - Projected tenant mix
- Geographic patterns of growth
 - Office space
 - Industrial
 - Retail
 - Residential
 - Source of tenants

Land Appraisers, Counselors, Bankers

- Land and hotel sales
- Occupancy and average rate/market segmentation

- Proposed hotels
 - Additions
 - Expansions
- Economic and demographic data
- Land use
- Land value
- Property tax rate trends

Newspapers

- Advertising/research department
 - Demographic data
 - Economic data
- Real estate department
 - Articles concerning recently announced commercial/hotel properties
 - Articles concerning recent hotel or land sales

Rental Car Agencies

- Number of cars rented
 - Monthly
 - Annually
- Average length of rentals
- Renters' points of origin
- Major companies renting cars

Generators of Visitation

- Major companies
- Office and industrial parks
- Scenic areas
- Hospitals
 - Local
 - Regional
 - National specialty
- Military installations
- Colleges and universities
- Amusement parks
- Resort facilities
- Governmental offices
- Residential developments
- Racetracks
- Sports stadiums
- Historic attractions
- Retail shopping
- Theaters
- Museums
- World and state fairs
- Sporting events
- Historic events

- National and state parks
- Courts of law
- County seats and state capitals

Generators of Visitation (specifics by type)

- Description
- Proximity to subject property
- Types of visitors (i.e., commercial, meeting/convention, leisure)
- Visitor counts
 - Admission charge
 - Recent changes
- Origin of visitors
 - Percentage local (from within 200-mile radius)
 - Percentage requiring accommodations
- Seasonality of visitation

Competitive Restaurants and Lounges

- Name and address
- Photograph
- Capacity
- Year opened
- Meals served
- Hours of operation
- Affiliation
- Owner
- Renovation/expansion plans
- Seasonality
 - Weekly
 - Monthly
- Type of menu
- Type of service
- Types of patrons
 - Age group
 - Income
- Decor/theme
- Entertainment policy
- Competitors
- Average check
- Covers/turnover
- Annual sales
- Reputation
- Location/proximity to subject property

Competitive Hotels

- Name/address
- Photograph (entrance with sign)

- Brochure/meeting planner/sales or business card
- Number of rooms/room square footage
- Building configuration
- Year opened
- Franchise/management company/owner
- Unionized
- Property for sale
- Percentage of reservations from system
- Renovation/expansion plans
- Seasonality
 - Weekly
 - Monthly
 - By segment
- Segmentation
- Competitors
- Occupancy
 - Historical
 - Current trends
- Average rate
 - Historical
 - Current trends
- Market segmentation
 - Historical
 - Current trends
- Published rates
- Proposed hotels
- Additions
- Renovations
- Major customers
- Amenities—description
- Current property condition
- Location/distance from:
 - Subject property
 - Demand generators
- Access and visibility
- Corridors
 - Exterior
 - Interior
 - Both
- Neighborhood
 - Food
 - Beverage
 - Entertainment
- Frequent traveler program
- Actual number of extended-stay room-nights
- Relocation and corporate rates
- Rooms or suites with kitchen facilities and types of facilities

DATA COLLECTION CHECKLIST

Extended Stay Competition

- Name/address
- Photograph (entrance with sign)
- Brochure/sales or business card
- Number of rooms/square footage
- Building configuration
- Year opened
- Management/ownership
- Minimum stay (six months or less)
- Furnished
 - Furniture
 - Linen
 - China
 - Utensils
- Full kitchen
- Number of units
- Breakdown of units
 - Studio
 - One-bedroom
 - Multiple bedroom
- Rates by unit size
 - 1–6 days
 - 7–29 days
 - 30–60 days
 - Over 60 days
- Maid service
 - Daily
 - Weekly
- Telephone service
 - 24-hour switchboard
 - Wake-up calls
 - Messages
 - Free local calls
- Utilities included
- Amenities
 - Pool
 - Meeting space
 - Other
- Renovation/expansion plans
- Seasonality
- Occupancy/average rate
 - Historic (past five years)
 - Future (next five years)
 - Segmentation
- Competition
 - Occupancy
 - Average rate
 - Trend
 - Segmentation
- Proposed direct competition
- Major customers
- Condition of property
- Location/distance from:
 - Subject property
 - Demand generators
- Neighborhood
 - Food
 - Beverage
 - Entertainment
- Access/visibility

Liquor License Laws

- Application process
 - Location
 - Time
 - Cost
 - Limitations
- Restrictions
 - Ratio of liquor to food
 - Open to public
 - Required unit of sale
- Types of licenses

APPENDIX **1A**

Sample Form: Purchase of a Hotel

This Purchase Agreement is entered into on the date hereinafter set forth by and between (the "Purchaser"), and (the "Seller").

WITNESSETH:

ARTICLE 1

1.1 Property Subject to the terms and provisions hereof, the Seller covenants and agrees to sell to the Purchaser, and the Purchaser covenants and agrees to purchase from the Seller that property described on the attached Exhibit A (the "Subject Properties") and commonly known as ("Hotel").

1.2 Other Interests Contemporaneously with the conveyance of the Subject Properties, and subject to the terms hereof, the Seller covenants and agrees to transfer to the Purchaser, and the Purchaser covenants and agrees to accept from the Seller (and to assume the obligations of the Seller) all right, title, and interest of the Seller in and to the following:

- (a) All commercial leases providing for rights of possession in or to the Subject Properties (the "Commercial Leases");
- (b) All third-party contracts covering the management or operation of the Subject Properties (except the existing management arrangements with) and all furniture, fixtures, and equipment leases to Seller and used in the operation of the Subject Properties, to the extent transferable ("Third Party Contracts").

Purchaser shall have the opportunity to review and approve or disapprove of the Commercial Leases and Third-Party Contracts, copies of which shall be supplied to Purchaser within (.....) days of this date. Such review period shall extend for (.....) days after receipt thereof by Purchaser. In the event any Commercial Leases or Third-Party Contracts are objectionable to Purchaser, this Agreement shall be terminable by Purchaser by written notice to such effect provided to Seller prior to the expiration of such -day period, otherwise Purchaser shall be deemed to have approved such Commercial Leases and Third-Party Contracts.

ARTICLE 2

2.1 Purchase Price The total consideration for the conveyance of the Subject Properties by the Seller to the Purchaser shall be as follows:

- (a) dollars shall be payable in cash at closing, subject however to Sections 2.1(b) and 2.1 (c) of this Agreement:

- (b)** The assumption and promise to pay the unpaid principal balance and accrued interest, according to the terms of that certain dollar-promissory note dated, 19, payable to the order of [lender] (the "First Mortgage") together with all instruments evidencing or securing the payment thereof, including without limitation, the Mortgage, Security Agreement, and Assignment of Leases and Rents dated, 19..... between Seller and [lender]. Copies of the First Mortgage and the Mortgage securing the payment thereof have been provided to Purchaser prior to the date hereof, the receipt of which is hereby acknowledged by Purchaser and are hereby approved as acceptable to Purchaser. Purchaser agrees to take all action required by the holder of the First Mortgage as a condition of obtaining consent to the transaction contemplated by this Agreement (if required), provided that Purchaser shall not be required to pay any fee as a condition of obtaining such consent, other than as set forth in Section 2.1(c). In the event Purchaser fails or refuses to comply with or supply such information as required by the holder of the First Mortgage within (.....) days after the date such request is made in writing to Purchaser, Purchaser shall be deemed to be in default of this Agreement. Purchaser agrees to indemnify and hold Seller harmless from and against all claims, demands, and liabilities arising out of the First Mortgage, to the extent Seller is liable for any amounts due thereon; and
- (c)** Purchaser shall deliver to Wells Fargo Realty Advisors, Inc. (the "First Mortgagee") a letter of credit in the amount of dollars (the "Letter of Credit") as additional security for the First Mortgage, and Seller shall be released from all liability on the First Mortgage at Closing. Failure of Purchaser to provide to Seller proof satisfactory to Seller of the availability of such Letter of Credit on or before the expiration of (.....) days after the date hereof shall constitute a default of this Agreement and entitle Seller to terminate this Agreement and retain the Earnest Money.

The Purchase Price shall be allocated prior to Closing between the various components of the Subject Properties in a manner mutually acceptable to Seller and Purchaser.

ARTICLE 3

3.1 Seller's Agreements Within (.....) days following the date hereof Seller shall furnish the following to the Purchaser, which shall be returned to Seller in the event Closing does not occur.

- (a)** Any plans and specifications regarding the Subject Properties which Seller may have in its possession;
- (b)** Any surveys, field notes, and plats Seller may have in its possession regarding the Subject Properties, which survey shall be updated if required by Purchaser at its sole cost and expense;
- (c)** A current Commitment for Title Insurance (the "Commitment") covering the Subject Properties in the standard ALTA form issued by a title insurance underwriter mutually acceptable to Seller and Purchaser (the "Title Company").

3.2 Operating Agreements Purchaser shall assume and agree to honor all agreements and contracts which are provided to Purchaser for review in accordance with Section 1.2 and any other agreements and contracts entered into in the ordinary course of business regarding the operation and maintenance of the Subject Properties which are terminable without penalty upon notice of (.....) days or less.

3.3 Sale or Modification Between the date hereof and the date of Closing or termination of this Agreement, the Seller covenants and agrees that without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld, it will not:

- (a) Make any structural modifications to the Subject Properties, except to the extent required to comply with this Agreement and except as reasonably required in connection with any emergency or casualty; or
- (b) Sell or otherwise dispose of any portion of the Subject Properties (except in the ordinary course of business), unless replaced with items of equal or better quality.

3.4 Remedies In the event of a breach by the Seller of its covenants or agreements contained in this Article, the sole right or remedy of the Purchaser for such breach shall be the recovery of actual damages therefor, and in no event shall the Purchaser be entitled to rescission or to exemplary or punitive damages, nor shall the Purchaser be entitled to delay Closing or terminate this Agreement by virtue thereof.

ARTICLE 4

4.1 Seller's Obligations At Closing, the Seller covenants and agrees to deliver the following instruments and documents to the Purchaser:

- (a) A duly executed and acknowledged deed with warranties limited only to the grantors acts, conveying good and indefeasible title to the Subject Properties to the Purchaser, subject only to those matters permitted herein, the liens securing the First Mortgage and the liens securing the promissory note described in Section 8.2(c);
- (b) A Bill of Sale transferring all personal property constituting the Subject Properties to Purchaser;
- (c) An Assignment of Leases and Third-Party Contracts, transferring all Commercial Leases and Third-Party Contracts regarding the Subject Properties (to the extent transferable);
- (d) Such other documents as may reasonably be required by the Title Company in order to evidence the authority of those executing the various documents on behalf of the Seller;
- (e) The proceeds of any insurance policies paid for unrepaired damages;
- (f) A certificate of the Secretary of State of that the Certificate of Articles of Limited Partnership is on file and has not been revoked or terminated; and
- (g) A complete schedule of all accounts receivable and accounts payable as of the Closing Date.

4.2 Purchaser's Obligations The Purchaser covenants and agrees to pay to the Seller, at Closing, the cash consideration (together with or net of any adjustments as provided in Article 10 hereof) and to execute, acknowledge, and deliver to Seller counterparts of the Bill of Sale, the Assignment of Leases and Third-Party Contracts and the Letter of Credit. Purchaser shall also deliver to Seller an opinion of counsel for Purchaser that Purchaser is a validly formed corporation according to the laws of its state of incorporation, is in good standing, has the full power and authority to perform and act as required by this Agreement and the person(s) executing the closing documents on behalf of the Purchaser has the full power and authority to so act. A certificate of the applicable public official to the good standing of the Purchaser shall be delivered to Seller at the Closing.

4.3 Documents On the date of Closing, and following Closing, the Seller shall deliver to the Purchaser, on the site of the Subject Properties, the following:

- (a) executed originals of all Commercial Leases in the possession of the Seller pertaining to leases with such tenants;
- (b) executed originals (or copies if originals are not in the possession of Seller) of all Third-Party Contracts assigned to the Purchaser;

- (c) to the extent in possession of Seller; keys to each room, and all guest records relating to present and future guests;
- (d) possession of the Subject Properties, subject to rights of tenants under Commercial Leases, hotel guests and other matters permitted herein; and
- (e) all marketing, personnel records, and any other files and records used in the operation of and located on the Subject Properties, other than as otherwise provided in this Agreement.

ARTICLE 5

5.1 Representations Seller makes the following representations:

- (a) This Agreement has been duly and validly authorized, executed, and delivered by Seller and no other action is requisite to the valid and binding execution, delivery, and performance of this Agreement by Seller. This representation shall survive for a period of (.....) days after the Closing.
- (b) Except as otherwise disclosed on the attached Exhibit B, to Seller's knowledge and belief, there are no actions, suits, or proceedings pending against, threatened, or affecting the Property or the Hotel operating on the Subject Properties in law or equity.
- (c) During the period Seller operated the Hotel, all required licenses and permits necessary for the operation of the Hotel by Seller were in full force and effect on the date of the Closing (except Buyer will be responsible for procuring its own liquor license and transfer of such licenses and permits);
- (d) The financial information furnished and to be furnished to Purchaser by Seller relating to the Subject Properties fairly presents those facts and circumstances reflected therein as of the effective date of such financial information;
- (e) Seller is the owner of good and indefeasible fee simple title to the Subject Properties, subject only to those matters described or permitted herein;
- (f) There are no union contracts covering any of the employees employed at the Subject Properties; and
- (g) As of the date Seller acquired the Subject Properties, its use was permitted under applicable zoning laws and, to the best of Seller's knowledge, there has been no change in the applicable zoning classification; and
- (h) Seller has not entered into any Commercial Leases or Third-Party Contracts except those delivered to Purchaser under Section 1.2 herein or except those terminable without penalty on notice of..... (.....) days or less.

ARTICLE 6

6.1 Earnest Money Contemporaneously with the execution and delivery of this Agreement, the Purchaser has deposited with Title Insurance Company [address], [city], [state], the sum of dollars. Closing shall be held on or before (.....) days after the date hereof or such earlier date as is mutually agreed upon. Upon Closing, all Earnest Money shall be applied toward part payment of the cash portion of consideration specified herein. In the event this Agreement is not closed for any reason, then the Earnest Money shall be disbursed in the manner provided in Article 7.

ARTICLE 7

7.1 Seller's Remedies In the event that all covenants and agreements to be performed by the Seller prior to Closing are fully performed by the Seller or if such performance is not completed due to

the default or failure by the Purchaser, and all conditions precedent set forth in Article 8 hereof have been satisfied or waived, and the transaction contracted for in this Agreement is not consummated due to default on the part of the Purchaser on or before the date of Closing, then the Seller shall retain the Earnest Money as liquidated damages for the Purchaser's default hereunder. The foregoing provisions of this Section shall not affect the indemnity and confidentiality obligations of Purchaser (or any liability to Seller for any breach by Purchaser of any of such obligations) contained herein.

7.2 Title Objections Purchaser shall have (.....) days after receipt of a copy of the Title Commitment in which to notify Seller of any objection to the title of Seller to the Subject Properties disclosed therein. Standard exceptions contained in the Title Commitment, any exceptions which do not have a material adverse effect on the operation of the Subject Property as a hotel and all liens against the Subject Properties which are to be assumed by Purchaser, which may be discharged out of the cash payable to the Seller at Closing or are otherwise permitted herein, shall not constitute objections to title. Purchaser shall be deemed to have waived any objections to title disclosed in the Title Commitment for which no such notice is given to Seller with such-day period. In the event the Purchaser timely objects to the title to the Subject Properties, then the Seller shall have the right, but not the obligation, for a period of (.....) days hereafter, to cure such objections and to show title herein required in the Seller, and if the Closing would otherwise occur within such-day period, the date of Closing shall be extended until the end of such-day period. If the Seller elects not to cure such objections, or fails to cure such objections within such-day period, then

- (a) the Purchaser may, at its election, waive any objections to title and proceed with the Closing of the transaction contracted for herein (in which event such objections to title shall be deemed approved), all with prejudice to the Purchaser's rights against the Seller for damages by reason of such default or breach; or
- (b) the Purchaser, as its sole exclusive remedy (Purchaser hereby waiving all other rights and remedies in connection with such failure of title, including any right to specific performance hereof), may terminate this Agreement, and shall then be entitled to the return of the Purchaser's Earnest Money, in which event this Agreement shall be thereafter terminated. The obligations of the Seller to deliver good and indefeasible title shall be satisfied upon delivery of the Deed and the Title Policy.

7.3 Purchaser's Remedies In the event that the transaction contracted for in this Agreement is not consummated on the date of Closing due to default on the part of the Seller, excepting only a default as provided in Section 7.2, then the Purchaser may elect as its sole and exclusive remedies:

- (a) to terminate this Agreement, in which event the Purchaser's Earnest Money shall be refunded; or
- (b) in the event Seller intentionally defaults in its obligations to perform, and Purchaser is ready, willing, and able to perform and has waived all conditions to Closing, enforce specific performance.

ARTICLE 8

8.1 Purchaser's Conditions The obligation of Purchaser to consummate the transaction contemplated hereby is subject to the satisfaction (or waiver in writing by Purchaser) or each of the following conditions precedent:

- (a) Within (.....) days after the date hereof, Purchaser shall have received from Hotel Company a commitment to issue a new franchise or transfer the existing franchise to operate the Subject Properties as a Hotel, subject to such requirements and conditions as Hotel Company may impose. Purchaser shall apply for a new franchise or transfer of the existing franchise within (.....) days of the date hereof and shall be responsible for all costs incurred in connection with ob-

taining such franchise. Seller agrees to assist and cooperate with Purchaser in obtaining such franchise, at the sole cost and expense of Purchaser.

- (b) Within (....) days from the date hereof, Purchaser shall make an application with the First Mortgagee for consent to the transfer and conveyance of the Subject Properties subject to the First Mortgage upon such terms as may be acceptable to Purchaser. That the First Mortgage may require Purchaser to deliver a letter of credit in an amount not to exceeddollars shall not be a requirement unacceptable to Purchaser. In the event Purchaser has not obtained such consent from the First Mortgagee within (.....) days after the date hereof, this Agreement shall automatically terminate without any further action by Seller unless Seller elects otherwise. Should Seller elect not to terminate this Agreement and Buyer has not terminated this Agreement on or before the expiration of (....) days after the date hereof, Buyer's Earnest Money shall be deemed to be "at risk" and shall be non-refundable (except in the event of default by Seller).
- (c) Purchaser shall have had the opportunity to review and approve the Commercial Lease and Third-Party Contracts as provided in Section 1.2(b).
- (d) Notwithstanding anything in this Agreement to the contrary, Purchaser shall have no right to obtain a refund of the Earnest Money after the expiration of (.....) days after the date hereof except in the event of a default by Seller and, after the expiration of such-day period, Purchaser shall be deemed to have waived any conditions to Closing (except failure by Seller to perform).

8.2 Seller's Conditions Seller's obligations to consummate the transaction contemplated hereby are subject to the satisfaction (or waiver in writing by Seller) of each of the following conditions precedent:

- (a) On or before the Closing Date, Seller shall have received from Hotel Company a full release, effective as of the Closing Date, of all of Seller's obligations and liabilities under the terms of the existing franchise agreement between Seller and Hotel Company.
- (b) On or before the Closing Date, Seller shall have obtained consent from the First Mortgagee for the transfer and conveyance of the Subject Properties to Purchaser subject to the First Mortgage without cost to Seller and without change in the terms of the First Mortgage, unless otherwise agreed by Seller. The First Mortgagee shall release Seller and [name] and liability under the First Mortgage, any other indebtedness secured by the Subject Properties and release any property other than the Subject Properties from security for the First Mortgage. Seller shall apply to the First Mortgage for said consent and release withindays after the date hereof.
- (c) Purchaser shall accept the Subject Properties subject to the liens and security interests securing that certain dollar-promissory note dated, 19, payable to the order of Hotel Company and Purchaser shall indemnify and hold Seller harmless from and against any and all claims and damages in connection with such indebtedness [name] and Seller shall be released from all liability in connection with said indebtedness or Purchaser shall provide adequate security to Seller to protect against any loss.
- (d) Purchaser shall supply to Seller satisfactory evidence of a commitment for the Letter of Credit to be delivered as provided in Section 2.1(c) within (.....) days after the date hereof. Failure to do so shall constitute a default in this Agreement by Purchaser and entitle Seller to retain the Earnest Money.

ARTICLE 9

9.1 Inspection The Seller agrees that, prior to Closing, the Purchaser, personally or through its authorized agent or representatives, shall be entitled to enter upon the Subject Properties at all reasonable times with notice to Seller and only in the presence of a duly authorized representative of Seller. Purchaser agrees that this right shall not be exercised in such a manner as to interfere with the normal business or operations of Seller. All information, plans, and specifications shall be made available on the site of the Subject Properties and shall be kept confidential by the Purchaser.

ARTICLE 10

10.1 Adjustments The Seller shall pay all expenses incurred or accrued in connection with the operation of the Subject Properties through A.M. on the date of Closing. The Purchaser shall pay all expenses incurred in connection with the ownership or operation of the Subject Properties from and after A.M. on the date of Closing. The parties shall use reasonable efforts to obtain final bills from all utility companies, and to terminate all expenses, as of A.M. on the date of Closing. To the extent that any such item cannot be terminated at such time and on such date, the item shall be prorated between the Seller and the Purchaser at such time as a final bill is received. Notwithstanding anything contained in this Section, however, all hazards against which insurance is provided shall be the responsibility of the Seller until 12:01 A.M. on the date of Closing, and the responsibility of the Purchaser from and after 12:01 A.M. on the date of Closing.

10.2 Closing Costs The Purchaser shall pay the escrow fee charged by the Title Company, all charges and fees relating to filing of documents or instruments executed and delivered pursuant to this Agreement (including transfer taxes and documentary or stamp taxes), the premium for the Title Policy, and all costs and expenses contracted for by the Purchaser. The Seller shall pay all costs and expenses contracted for by the Seller. All items to be prorated between the Purchaser and the Seller, as well as all other charges and credits reflected on the closing statements of the parties, shall be based on the best information available to the parties at the time of Closing. In the event, following Closing, either party discovers that any item paid, prorated, charged, or credited, pursuant to the provisions of this Article (including, without limitations, ad valorem taxes) was erroneous, or was based on an inaccurate estimate, then such party shall notify the other party of such error and an appropriate adjustment shall be made between the parties so that any such item will have been correctly and accurately prorated, charged, or credited between the parties. Any such amount shall be due and payable (.....) days following demand for payment thereof accompanied by such documents as may be reasonably required to establish the accuracy of such adjustment. In the event of any dispute as to amounts owed, the matter may be settled by resorting to arbitration under the rules of the American Arbitration Association upon (.....) days prior written notice by one party to the other. The costs of such proceeding shall be borne by the losing party.

10.3 Payment of Liabilities Attached hereto as an exhibit is a schedule of the current assets and current liabilities of the Seller as of, 19... Seller will transfer to Purchaser at closing the current assets as of the Closing Date. Purchaser agrees to assume the current liabilities as of the Closing Date. If, as of the Closing Date, the excess of the current liabilities over current assets is more than the excess of current liabilities over current assets as of the above date, then any change in the excess shall be a credit to Purchaser and a charge to Seller. If, as of the Closing Date, the excess of the current liabilities over current assets is less than the excess of current liabilities over current assets as of the above date then any reduction shall be a credit to Seller and a charge to Purchaser. Any amounts due under this Section shall be payable at Closing.

Purchaser hereby agrees to pay at Closing that portion of the current liabilities which include accrued employee wages and salaries, and accrued federal, state, and local payroll taxes. Purchaser further agrees to guarantee to Seller the full and complete payment of the current liabilities, and to the extent such current liabilities are not paid in full at Closing, Purchaser shall deliver to Seller adequate security to insure Purchaser's performance, which security shall be in the form of a letter of credit or escrow deposit in such form and amount as may be reasonably accepted by Seller.

10.4 Employees Seller shall not solicit for employment any of the employees at the Subject Properties after the date of Closing without first providing Purchaser with notice and obtaining its prior consent.

ARTICLE 11

11.1 Insurance The Seller covenants and agrees to maintain in full force and effect until 12:01 A.M. on the date of Closing all insurance policies currently in effect. For purposes of transfer of title, Closing shall be considered to occur at 12:01 A.M. on the date of Closing, even though actual execution, delivery, and exchange of documents of Closing shall occur at a different time.

11.2 Casualty The Purchaser shall assume the responsibility for all insurance coverage on the improvements at 12:01 A.M. on the date of Closing. In the event the Subject Properties should be damaged by any casualty prior to the above time on the date of Closing, then notice of such damage shall be given to the Purchaser by the Seller, and if the cost of repairing such damage, as estimated by an architect retained by Seller and Purchaser, the cost of which shall be shared equally between Seller and Purchaser, is:

- (a) Less than dollars, then the Seller shall repair such damage as promptly as is reasonably possible, restoring the damaged property at least to its condition immediately prior to such damage.
- (b) More than dollars but less than dollars, and if such casualty is covered by insurance carried by Seller, then (i) the Purchaser shall be obligated to close in accordance with the provisions hereof; (ii) the Seller shall assign to the Purchaser, at Closing (or pay to the Purchaser if such proceeds have been collected) all insurance proceeds payable for such damage, which insurance proceeds together with the amount of the deductible, shall not be less than the cost to repair such damage, as determined by an architect retained by Seller for such purpose; (iii) the consideration set forth in Section 2.1 hereof shall be reduced by the amount of the deductible under Seller's insurance policies applicable to such casualty; and (iv) the Purchaser shall have the entire right and authority to negotiate for and agree to any adjustments for such damage with insurance carriers;
- (c) More than dollars, then the Purchaser may elect to terminate this Agreement upon notice given to the Seller within (.....) days following receipt by the Purchaser from the Seller of notice of such damage; and if the Purchaser does not elect to terminate this Agreement, the Seller shall assign to the Purchaser (or pay to the Purchaser if such proceeds have been collected), at Closing, all insurance proceeds payable for such damage and the sale shall be closed without the Seller's repairing such damage.
- (d) Seller agrees to carry business interruption insurance in the event of loss of revenue caused by Casualty and, in the event of assignment of insurance proceeds to Purchaser pursuant to (b) or (c) above, any business interruption insurance proceeds applicable to the period after Closing shall be paid to Purchaser.

ARTICLE 12

12.1 Commissions In the event any claim or demand is made by any real estate agent claiming by, through, or under an agreement with any party hereto, the contracting party shall indemnify and hold the other harmless from and against any such claim or demand and all expenses related thereto, including, without limitation, court costs and attorney fees.

12.2 Seller's Indemnity Subject to the provisions of Section 12.3 hereof, the Seller agrees to indemnify and hold the Purchaser harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature (except those items which by this Agreement specifically become the obligation of the Purchaser) arising or accruing prior toA.M. on the date of Closing and which are related to the Seller's ownership, maintenance, or operation of the Subject Properties and all expenses related thereto.

12.3 Purchaser's Indemnity The Purchaser agrees to indemnify and hold the Seller harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature (except those items which by this Agreement specifically remain the obligation of the Seller) arising or accruing subsequent toA.M. on the date of Closing and which are in any way related to the ownership, maintenance, or operation of the Subject Properties, and all expenses related thereto; including, without limitation, court costs and attorney fees. The Purchaser also agrees to indemnify and hold the Seller harmless from and against any and all liabilities, claims, demands, and expenses of any kind or nature, for any damage to property, or any injury to or death of persons, resulting from any entry onto the Subject Properties by Purchaser or any of its agents, architects, engineers, auditors, planners, or other representatives, or any inspections, surveys, audits, or tests conducted by any of the foregoing, and all expenses related thereto; including, without limitation, court costs and attorney fees.

12.4 Survival It is expressly stipulated, covenanted, and agreed that the provisions of this Article shall survive Closing.

ARTICLE 13

13.1 Notices All notices, demands, or other communications of any type given by the Seller to the Purchaser or by the Purchaser to the Seller, whether required by this Agreement or in any way related to the transaction contracted for herein, shall be given in accordance with the provisions of this Article. All notices shall be in writing and delivered to the person to whom the notice is directed by personal delivery, commercial messenger service, or by U.S. Mail, as a Registered or Certified item, Return Receipt Requested. Notices shall be effective on the earlier to occur of (i) actual receipt by the party to whom such notice is addressed or (ii), in the case of notices sent by U.S. Mail, (.....) days after deposited in a Post Office or other official depository under the care or custody of the U.S. Postal Service. All notices shall be enclosed in a wrapper prepaid or with proper postage affixed, addressed, if to the Purchaser, to its address in the United States as indicated on the signature page hereof. Either party hereto may change the address for notice specified above to any other address within the continental United States by giving the other party (.....) days advance written notice of such changes of address.

ARTICLE 14

14.1 Continuing Liability Any covenant or agreement herein of either party to this Agreement which contemplates performance after the time of Closing, shall not be deemed to be merged into or waived by the instruments of Closing, but shall expressly survive Closing and shall be binding upon the party obligated thereby.

14.2 Assignment This Agreement may not be assigned by the Purchaser, except with the prior written consent of the Seller, which prior written consent shall not be unreasonably withheld. Consent to assignment to an affiliate, subsidiary, or related entity of Purchaser shall not be withheld. Any representations or warranties of Seller shall be personal to Purchaser and nontransferable or available for reliance by any third-party beneficiary. Such representations and warranties shall survive for a period of (.....) months after the date of Closing.

14.3 Construction and Interpretation This Agreement shall be construed and interpreted in accordance with the laws of the State of and the English language. Where required for proper interpretation, words in the singular shall include the plural, the masculine gender shall include the neuter and the feminine, and vice versa. The terms "heirs, executors, administrators, and assigns" shall include successors, legal representatives, and assigns. The descriptive headings of the several Articles and Sections contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

14.4 Amendment and Waiver This Agreement may not be modified or amended, except by an agreement in writing signed by the Seller and the Purchaser. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

14.5 Attorney Fees In the event it becomes necessary for either party hereto to file a suite to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages provided for herein, reasonable attorney fees.

14.6 Consent to Jurisdiction For purposes of enforcing the obligations of Purchaser under this Agreement only, Purchaser hereby consents to the jurisdiction of the courts of the State of and of the United States, and agrees that any suit against Purchaser arising out of this Agreement may be brought in any appropriate [state] or United States court.

14.7 Notices and Press Releases Purchaser and Seller covenant and agree with each other not to make public or give notice of the execution of this Agreement or of the transaction contemplated herein prior to the Closing except for disclosure to parties necessary in connection with the Closing or in connection with post-Closing work to be done by the Purchaser and unless any such notice or publicly be in writing and be approved in writing by both Seller and Purchaser. Recognizing that Seller may suffer damages arising out of the loss of business or the loss of employees should any notice or publicity be given with respect to this Agreement or the transactions contemplated herein, and in the event Purchaser violates the covenants herein, Purchaser agrees to indemnify and hold Seller harmless from any such loss or damage. In the event the Purchaser deals with work to be performed after Closing, the Purchaser shall use his best efforts to prevent any such disclosures by said third parties.

14.8 Licenses and Permits Purchaser shall be solely responsible for obtaining such governmental permits, licenses, certificates, and approvals as shall be necessary for Purchaser's use of the Subject Properties (including, without limitation, any liquor licenses), and the failure of Purchaser to obtain any such item prior to Closing shall not delay the Closing or affect the obligation of the Purchaser hereunder to purchase the Subject Properties from the Seller at the Closing. Seller shall not be required to perform any obligations under this Agreement which would be in violation of applicable law, including without limitation, transfer of liquor licenses in violation of applicable licensing laws, provided however Seller agrees to cooperate with and assist Purchaser in obtaining such licenses and permits (at no cost to Seller).

14.9 Approvals Purchaser shall be solely responsible for obtaining any approvals required for the assignment of any contracts, leases, or other agreements which affect the Subject Properties from all such parties who may have reserved the right of prior approval to such assignment and assumption.

14.10 Effective Date All references in the Agreement to the terms "Effective Date," "date hereof" or similar references shall be deemed to refer to the earliest date upon which all of the following have occurred: (a) execution of this Agreement by Purchaser; (b) execution of this Agreement by Seller; and (c) receipt by Title Insurance Company of the Earnest Money.

14.11 Multiple Originals Numerous copies of this Agreement have been executed by the parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument.

IN WITNESS WHEREOF, etc.

Courtesy of D.J. Brats, Mississippi Grand, Tunica, Miss.

APPENDIX 2

Sample Clauses for Hotel Purchase and Sale Agreement

This appendix is a compilation of clauses from a number of actual purchase and sale agreements, which have been selected to cover a broad range of subjects. To facilitate their use, they have been

arranged topically in 17 different categories. In many instances, the clauses are supplemented with alternative or optional language.

Category 1 Real and Personal Property Being Sold	A2-3	6.1.2 Engineering Study	A2-8
1.1 Land	A2-3	6.1.3 Examine Records	A2-9
1.2 Improvements	A2-3	6.2 Confidentiality	A2-9
1.3 Personal Property	A2-3	6.3 Seller Held Harmless	A2-9
Category 2 Business Assets Being Sold	A2-4	6.4 Termination of Agreement	A2-9
2.1 Governmental Permits	A2-4	6.5 Affirmation of Agreement	A2-9
2.2 Operating Contracts	A2-4	Category 7 Terms of Purchase Financing	A2-10
2.3 Other Miscellaneous and Intangible Personal Property	A2-5	7.1 Agreement Not Contingent on Loan Commitment	A2-10
2.4 Franchise Agreement	A2-5	7.2 Agreement Contingent on Loan Commitment	A2-10
Category 3 Closing	A2-5	7.3 Failure to Procure Loan Commitment	A2-10
Category 4 Purchase Price	A2-6	Category 8 Title Commitment and Survey	A2-11
4.1 General Terms	A2-6	8.1 Title Commitment	A2-11
4.2 Mortgage Assumption	A2-6	8.1.1 Title to Real Property	A2-11
4.3 Purchase Money Financing	A2-6	8.1.2 Title to Site	A2-11
4.4 Allocation of Purchase Price	A2-6	8.1.3 Title to Personal Property	A2-11
Category 5 Earnest Money	A2-7	8.1.4 Contract Rights	A2-11
5.1 General Terms	A2-7	8.1.5 Defects of Title—Cure	A2-12
5.2 Purchaser's Default	A2-7	8.1.6 Defects of Title—Termination	A2-12
5.3 Seller's Default	A2-7	8.2 UCC Search	A2-12
5.3.1 Termination of Agreement	A2-8	8.3 As-Built Survey	A2-12
Category 6 Due Diligence	A2-8	8.4 Site Survey	A2-13
6.1 Inspection Period	A2-8	8.5 Review of Title Commitment and Survey	A2-13
6.1.1 Physical Inspection	A2-8	Category 9 Seller's Deliveries	A2-13

9.1 Financial Statements	A2-13	10.28 Survival of Contract	A2-24
9.2 Plans	A2-14	10.29 Default and Termination	A2-24
9.3 Taxes	A2-14		
9.4 Contracts	A2-14	Category 11 Representations and Warranties of Purchaser	A2-25
9.5 Licenses	A2-14	11.1 General Terms	A2-25
9.6 Leases	A2-14	11.2 Due Organization	A2-25
9.7 Insurance Policy	A2-15	11.3 No Conflict	A2-26
9.8 Historical Capital Expenditure Budgets	A2-15	11.4 No Pending Litigation	A2-26
9.9 Franchise Reports	A2-15	11.5 Purchaser Authorizations	A2-26
9.10 Miscellaneous Hotel Assets	A2-15	11.6 Truth of Representations	A2-26
9.11 Reduction Certificate	A2-15		
9.12 Rent Roll	A2-15	Category 12 Prorations and Adjustments	A2-27
9.13 Payroll Summary	A2-15	12.1 General Accounts Receivable and Accounts Payable	A2-27
9.14 Inventory of Personal Property	A2-16	12.2 Liabilities Not Assumed	A2-27
9.15 Affidavit From Partners of Sellers	A2-16	12.3 Utilities	A2-27
Category 10 Seller's Representations, Warranties, and Covenants	A2-16	12.4 Real Estate and Personal Property	A2-27
10.1 Due Authorization	A2-16	12.5 Sales Taxes	A2-28
10.2 Authority and Capacity	A2-16	12.6 Payroll	A2-28
10.3 Foreign Entity Status	A2-16	12.7 Interest	A2-28
10.4 No Conflicts by Consummation of Agreement	A2-17	12.8 Association Dues	A2-28
10.5 No Undisclosed Interest	A2-17	12.9 Telephone Charges	A2-29
10.6 No Untrue Statement	A2-17	12.10 Room Rents	A2-29
10.7 Further Assurances	A2-17	12.11 Prepaid Rent and Deposits	A2-29
10.8 Actual Knowledge	A2-18	12.12 Vending Machines	A2-29
10.9 No Further Entrance Into Binding Agreements	A2-18	12.13 Inventory	A2-29
10.10 Continued Operation	A2-18	12.14 Working Capital	A2-30
10.10.1 Repairs and Maintenance	A2-19	12.15 Other Adjustments	A2-30
10.10.2 Marketing	A2-19	12.16 Disputes	A2-30
10.10.3 Business Relationships	A2-19		
10.10.4 Inventory	A2-19	Category 13 Closing Documents and Procedure	A2-30
10.10.5 No Sale of Hotel	A2-19	13.1 Title Deed	A2-30
10.10.6 Taxes	A2-19	13.2 Bill of Sale	A2-31
10.10.7 Insurance	A2-19	13.3 Assignment of Governmental Permits	A2-31
10.11 Licenses and Permits	A2-19	13.3.1 Liquor Permit	A2-31
10.12 Contracts	A2-21	13.4 Assignment of Intangible Personal Property	A2-31
10.13 Franchise Agreement	A2-21	13.5 Assignment of Operating Contracts	A2-31
10.14 Employee-Related Representations	A2-21	13.6 Original Documents	A2-32
10.15 No Outstanding Litigation or Outstanding Conflicts	A2-22	13.7 Keys	A2-32
10.16 Eminent Domain/Condemnation Actions	A2-22	13.8 Title Policy	A2-32
10.17 Title Matters	A2-22	13.9 Resolutions	A2-32
10.18 General Encumbrance	A2-23	13.10 Closing Statement	A2-32
10.19 Mortgage	A2-23	13.11 Records	A2-32
10.20 Zoning	A2-23	13.12 Certificate of Non-Foreign Status	A2-32
10.21 Operating Liabilities	A2-23	13.13 Affidavits	A2-32
10.22 Asbestos	A2-23	13.13.1 No-Lien Affidavit	A2-32
10.23 Payment for Labor, Goods, and Services	A2-23	13.14 Tenant Notice	A2-33
10.24 Hotel Names	A2-23	13.15 Warranty Assignment	A2-33
10.25 Break-Even Guarantee	A2-24	13.16 Lease Assignment	A2-33
10.26 Completion of Hotel	A2-24	13.17 Rent Roll	A2-33
10.27 Limitations on Seller's Representations, Warranties, and Covenants	A2-24	13.18 Hotel Name	A2-33
		13.19 Other Documents	A2-33
		13.20 Purchase Price	A2-33
		13.21 Assumption of Ground Lease	A2-33
		13.22 Closing Statement	A2-33

13.23 Assumption of Operating Contracts	A2-34	17.1 Benefit	A2-36
13.24 Resolutions	A2-34	17.2 Binding Agreement	A2-37
13.25 Affidavits	A2-34	17.3 Business Day	A2-37
13.26 Franchise Transfer	A2-34	17.4 Confidentiality	A2-37
13.27 Other Documents	A2-34	17.5 Controlling Law	A2-37
13.28 Seller's Escrowee Instructions	A2-34	17.6 Entire Agreement	A2-37
13.29 Purchaser's Escrowee Instructions	A2-34	17.6.1 Waiver	A2-37
13.30 Escrowee Actions	A2-34	17.7 Escrow Agent	A2-38
Category 14 Closing Expenses	A2-35	17.7.1 Escrow Fund	A2-38
14.1 Closing Expenses	A2-35	17.8 Headings	A2-38
14.2 Real Estate Brokerage Fees	A2-35	17.9 Hold Harmless	A2-38
Category 15 Eminent Domain and Risk of Loss	A2-35	17.10 Litigation	A2-38
15.1 Eminent Domain	A2-35	17.11 Notices	A2-39
15.2 Risk of Loss	A2-36	17.11.1 Notice Deemed Served	A2-39
Category 16 Assignment, Successors, and Heirs	A2-36	17.12 Recording	A2-39
Category 17 General Clauses	A2-36	17.13 Reference	A2-39
		17.14 Severability	A2-39
		17.15 Time of the Essence	A2-39
		17.16 Time of Termination of Offer	A2-39
		17.17 Currency	A2-39

Category 1 REAL AND PERSONAL PROPERTY BEING SOLD

Seller agrees to sell and convey the Hotel to Purchaser and Purchaser agrees to purchase the Hotel from Seller, for the Purchase price and upon the terms and conditions herein set forth, which Hotel consists of the following property:

1.1 Land

The approximately 5.1-acre tract of land described in Exhibit A [omitted] attached hereto and made a part hereof together with all rights, easements, and interests appurtenant thereto, including, but not limited to, any streets or other public ways adjacent to said real property and any water or mineral rights owned by or leased to Seller (all of such property being hereinafter referred to as the "Land").

1.2 Improvements

All improvements located on the land, including eighteen (18) two-story buildings, each of which contains six (6) studio suites (one-bedroom) and two (2) penthouse suites (two bedrooms on two levels), together with parking spaces for approximately 149 cars, and any and all amenities and other improvements located on the land, including, without limitation, the administrative building (which houses the guest lobby and registration area, administrative areas, meeting area and complimentary service area, swimming pool, whirlpool, and other recreational facilities (all such improvements being hereinafter referred to as the "Improvements"). The land and all of the Improvements thereon are hereinafter sometimes referred to collectively as the "Real Property."

1.3 Personal Property

All personal property presently owned by Seller and located on or in the Real Property or used in connection with the operation and maintenance of the Hotel, including, without

limitation, all of Seller's fixtures, furniture, machinery, vehicles, equipment, linens, kitchen and bar equipment and supplies (including cleaning supplies and materials, whether in sealed or broken packages), building materials, supplies, merchandise inventories, hardware, carpeting, draperies, wall coverings, guest supplies, signs, and all other personal property used in connection with the operation of the Hotel (all of such personal property being hereinafter referred to as the "Personal Property"); provided, however, that the Personal Property does not include Seller's food and beverage inventories. To the extent any items of Personal Property are subject to operating leases or executory contracts that are assignable, Seller shall convey such property subject to such operating leases or executory contracts. Within fifteen (15) days after the Contract Date, Seller's most recent inventory (the "Personal Property Inventory") of all of the Personal Property (and executory contracts and operating leases relating thereto) shall be delivered to Purchaser. On the Closing Date, such Personal Property Inventory shall be supplemented in accordance with the terms and provisions hereof. Such Personal Property Inventory and the supplement thereto shall, upon delivery to Purchaser as aforesaid, be and constitute a part of this Agreement, to the same extent as if fully set forth herein.

[Alternate Clause] All china, glassware, and silverware; uniforms; engineering, maintenance, and house-keeping supplies, including soap, cleaning materials, and matches; draperies, material, and carpeting; stationery and printing; and other supplies of all kinds with a use, and including such resupplies as shall occur and be made in a normal course of business.

The quantities of Personal Property and Inventory in the Property shall permit the Property to be operated at a normal level.

[Alternate Clause] Exhibit H [omitted] hereto sets forth a true and complete list of all furniture and equipment located in, at, or about the Property or otherwise used in connection with the operation thereof. All Personal Property to be transferred to Purchaser pursuant hereto is or at Closing will be owned by Seller free and clear of any and all liens, encumbrances, security interests, or hypothecations.

Category 2 BUSINESS ASSETS BEING SOLD

In recognition of the fact that the value of the business as specified herein is dependent upon the business being a going concern, Seller hereby agrees to transfer to Purchaser at the Closing the following items:

2.1 Governmental Permits

All of the Seller's right, title, and interest in and to all hotel licenses and other governmental permits, approvals, and licenses used in the operation of the Hotel, but only if such assignment is permitted by the terms thereof.

[Alternate Clause] All licenses, franchises, and permits used in or related to the ownership, occupancy, or operation of any part of the Real Property.

[Alternate Clause] All rights of the Partnership and all licenses and permits to the extent assignable, including, but without limitation, the license or licenses to sell alcoholic beverages on or in connection with the conduct of any business on the Real Property.

2.2 Operating Contracts

All operating leases, executory contracts, service contracts, and repair agreements with respect to the Real Property and the Personal Property, but only if assignment is permitted

by the terms thereof. Seller hereby represents and warrants to Purchaser that true and correct copies of each of the governmental permits and operating contracts are set forth in Exhibit B [omitted].

[*Alternate Clause*] All service, maintenance, union, employment, and other contracts respecting the maintenance or operation of the property.

2.3 Other Miscellaneous and Intangible Personal Property

All other contract rights, leases, concessions, receipts, trademarks, logos, copyrights, and other items of intangible personal property relating to the operation of the Property.

[*Alternate Clause*] Seller shall grant to Purchaser the right to use the existing name of _____ at the subject property only and subject to reasonable and customary conditions for a period of five (5) years, for a payment of Ten Dollars (\$10.00) per year.

[*Alternate Clause*] To the extent owned by Seller and permitted to be transferred under the Franchise Agreement or otherwise, the trade name of _____ and goodwill relating thereto, together with the telephone exchange numbers.

[*Optional Clause*] All customer lists and records owned or possessed by Seller pertaining to the transaction of business at the Hotel, together with the architectural plans.

[*Optional Clause*] All other intangible property not described above owned by Seller and used or useful in connection with the ownership and operation of the Hotel, including, without limitation, contract rights, guarantees, warranties, and goodwill, but only to the extent that such are assignable by their own terms or under law.

[*Optional Clause*] All current sales records and information with respect to the hotel, including, without restriction, all sales files and all sales "leads" that would be used in the normal course of business of the hotel.

2.4 Franchise Agreement

Purchaser shall have determined that the Partnership has entered into a Franchise Agreement with the Franchisor, and such Franchise Agreement can be transferred to Purchaser at closing.

Category 3 CLOSING

The consummation of the Purchase and sale of the Hotel as contemplated herein shall take place at the escrow offices of the Title Insurer at _____, _____, on _____, 19____, on or before the close of business, or at such other time as the parties may agree upon in writing. The Closing shall be effected through a closing escrow with the Title Insurer in accordance with the terms and provisions of this Agreement. Seller shall deliver possession of the Hotel to Purchaser at closing.

[*Alternate Clause*] The closing of title hereunder in respect of the Hotels and payment of the consideration thereof shall occur on or before sixty (60) days after the signing of this Agreement, subject only to the provisions relating to the extension of time to close. The Closing shall occur in _____, _____, at a place to be mutually agreed upon by the parties hereto.

[*Alternate Clause*] At Closing, the balance of the purchase proceeds shall be delivered to Seller in the manner provided and title to the Property, together with all other documents to be delivered by Seller to Buyer, shall be delivered and conveyed to Buyer. Legal possession and physical occupancy of the Premises shall be given to Buyer at 12:01 P.M. on the date of Closing.

Category 4 PURCHASE PRICE

4.1 General Terms

The purchase price ("Purchase Price") for the Property, subject to the adjustments as provided in this Agreement, shall be Ten Million, Nine Hundred Twenty-five Thousand Dollars (\$10,925,000) and shall be payable in the manner set forth herein.

[Alternate Clause] The Purchase Price shall be paid in cash at Closing by wire transfer, with credit for the Deposit specified above and subject to the Prorations and Adjustments referred to herein.

[Alternate Clause] Purchaser shall pay to Seller or, if the closing be an escrow closing, to the Escrow Agent on behalf of the Seller the sum of \$_____, which sum shall be paid by certified check or bank draft to the order of the Seller (or the Escrow Agent, as the case may be) at the closing.

4.2 Mortgage Assumption

Seven Million, Eight Hundred Fifty-five Thousand Dollars (\$7,855,000) shall be paid by the assumption by Purchaser of the First Mortgage Notes currently encumbering part of the Property.

4.3 Purchase Money Financing

Seller will provide purchase money financing in the amount of One Million, Three Hundred Thousand Dollars (\$1,300,000). Such loan will bear interest at the rate of eleven percent (11%) per annum and will require payment of interest and principal based on a thirty (30) year amortization period, with a balloon payment of remaining principal and interest at the end of the 15th year. Seller agrees that such purchase money financing shall be subordinate to First Mortgage financing obtained by Purchaser in an amount not to exceed Three Million, Five Hundred Thousand Dollars (\$3,500,000). It is provided, however, that the lender will agree to promptly notify Seller of any default or late payment by Purchaser and will further agree to allow a reasonable time for Seller to make such payments and to assume the loan. It is further provided that such default on the first mortgage shall be deemed a default in Purchaser's second mortgage to Seller, and Purchaser shall quietly surrender possession of the properties to Seller.

4.4 Allocation of Purchase Price

The Purchase Price shall be allocated among the assets acquired by the Purchaser as follows:

Land	\$ 800,000
Building	6,080,000
Personal Property	1,670,000
Inventory	50,000
Hotel Names	50,000
Permits	50,000
Hotel Contracts	50,000
Miscellaneous Hotel Assets	<u>50,000</u>
Total	\$8,800,000

[Alternate Clause] Prior to the closing date, Purchaser shall determine the allocation of purchase price as among Land, Building, fixtures, machinery, equipment, furniture, inventory, and goodwill and shall deliver to Seller notice as to such allocation at least five (5) days prior to the Closing Date. At Closing, Purchaser and Seller shall execute an agreement in form and

terms mutually satisfactory whereby Purchaser and Seller confirm such allocation of purchase price.

Category 5 EARNEST MONEY

5.1 General Terms

An earnest money deposit in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) by wire transfer shall be deposited with Purchaser's Title Insurer upon execution of this Agreement. If the transaction contemplated hereby is consummated in accordance with the terms and provisions of this Agreement, the Deposit shall be applied to the cash payment at Closing. The Deposit shall be promptly returned to Purchaser in the event that Seller defaults on any of the terms, covenants, or conditions of this Agreement.

[Alternate Clause] Upon the execution and delivery of this agreement, Purchaser shall pay to _____ (the "Escrowee Agent"), \$_____ (the "Deposit"); which Deposit shall be held by the Escrowee Agent until closing. All interest on the Deposit shall be payable to Purchaser. Upon closing of the transaction contemplated herein, the Deposit together with all interest thereon shall be paid by the Escrow Agent to the Purchaser. In the event that this transaction shall fail to close, the disposition of the Deposit shall be governed by the provisions of Section 19 hereof.

[Alternate Clause] An Earnest Money Deposit in the amount of One Hundred Thousand Dollars (\$100,000) by wire transfer shall be deposited with Escrow Agent by Purchaser upon execution hereof and receipt by Purchaser of a fully executed copy of this Agreement. Following the expiration of the Inspection Period, an additional Earnest Money Deposit in the amount of One Hundred Fifty Thousand Dollars (\$150,000) by wire transfer shall be deposited with Escrow Agent by Purchaser. Such Earnest Money Deposit shall be refundable in the event that Seller defaults in any of the terms, covenants, or conditions of this agreement.

5.2 Purchaser's Default

In the event the Closing fails to occur due to the default of Purchaser, Seller shall deliver a written notice of termination to Purchaser and shall retain the Earnest Money Deposit as liquidated damages, it being understood that Seller's actual damages in the event of such default are difficult to ascertain, owing to changing economic and market conditions and the amount of time that the Hotel may be off the market, and that the Earnest Money represents the parties' best current estimate of such damages. Seller shall have no other remedy for any default by Purchaser.

[Alternate Clause] If the Transaction is not consummated, and Seller is not in default under the terms of this Agreement, the Earnest Money Deposit shall be retained by the Seller.

[Alternate Clause] If Purchaser fails to perform its obligations under this Agreement within the times specified, the deposits paid by Purchaser aforesaid may be retained by and for the account of Seller as liquidated damages, as full settlement of any claims; whereupon all parties shall be relieved of all obligations under this Agreement; or Seller, at its option, may proceed at law or in equity to enforce its legal rights under this Agreement, including specific performance.

5.3 Seller's Default

In the event the Closing fails to occur due to the default of Seller, Purchaser, as its sole and exclusive remedy, may elect to obtain specific performance of the express terms and

conditions set forth in this Agreement (so long as such specific performance does not involve seeking judgment for money against Seller or any partner of Seller).

[Alternate Clause] If Seller fails, neglects, or refuses to perform this Agreement, other than rendering title marketable (unless Seller has no obligation to correct any title defect or matter unacceptable to Purchaser), the Purchaser may seek specific performance or elect to receive the return of its deposits, in which event this Agreement shall be terminated and the parties released of any further obligation hereunder.

5.3.1 Termination of Agreement. Purchaser may terminate this Agreement by written notice to Seller, in which event Seller shall return the Earnest Money, so long as Purchaser's written notice terminates all of the Purchaser's interest in the Hotel and this Agreement; provided, however, that failure of the Purchaser to give the Seller such notice shall not be constructed to expand the Purchaser's remedies in any manner.

[Alternate Clause] Purchaser may terminate this Agreement by written notice delivered to Seller on or before the Closing Date, in which event Purchaser shall be entitled to the return of the Earnest Money Deposit.

Category 6 DUE DILIGENCE

6.1 Inspection Period

For a period of sixty (60) days from and after the Seller Authorization, Purchaser and its employees, agents, and representatives shall be entitled to physically inspect and conduct an engineering study of the Premises and examine records of the Hotel as described hereunder.

6.1.1 Physical Inspection. Purchaser may enter upon the Real Property, on at least 24 hours' notice to Seller's resident manager at the Hotel, to perform such inspections and tests of the Hotel including, without limitation, all leased areas and structural and mechanical systems within the Improvements, as Purchaser shall, in its sole discretion, deem appropriate.

6.1.2 Engineering Study. Purchaser, within the time period provided herein, may obtain an independent engineering firm to conduct a thorough review of the Premises. If such engineering firm determines that the Premises have any major structural, electrical, or mechanical deficiencies (including those deficiencies that violate local building codes), Purchaser shall immediately notify Seller and Seller may correct such deficiencies prior to Closing. If such major deficiencies are found to exist, Purchaser shall have the right to either cancel this Agreement and immediately receive back all amounts paid by it or proceed to Closing and accept the property "as is," Purchaser waiving any adjustment of purchase price.

If the Seller fails to perform the above conditions or if any of the above conditions are not satisfied, then Purchaser shall have the right to terminate this Agreement and the Earnest Money Deposit shall promptly be returned to Purchaser and hereafter neither party shall have any liability or be under any obligation to the other.

Purchaser shall obtain an independent engineering firm to conduct a thorough review of the premises. Seller will correct any major structural, electrical, and mechanical deficiencies (including those deficiencies that violate local building codes) found on the premises prior to closing, or the Purchase Price will be adjusted to cover such costs.

6.1.3 Examine Records. Purchaser may examine and copy any and all books and records maintained by Seller or its agents relating to receipts and expenditures pertaining to the ownership and operation of the Hotel for the three (3) most recent full calendar years and the current calendar year.

[Alternate Clause] Purchaser's auditors may examine the books, records, and financial statements relating to the operation of the Hotel for the past three years, and such books, records, and financial statements must be in auditable condition and acceptable to Purchaser's auditors.

6.2 Confidentiality

Purchaser hereby expressly agrees that neither it nor its agents or representatives shall discuss any aspect of the physical or financial condition of the Hotel or any aspect of Hotel operations with anyone employed at the Hotel except in the presence of and with the approval of Seller's resident manager.

6.3 Seller Held Harmless

Purchaser shall hold Seller harmless and shall indemnify and defend Seller and its successors and assigns against any loss, damage, claim, cost, liability, or expense, including reasonable attorney fees, resulting from (a) any intentional act of Purchaser or its agents, representatives, or assigns during or in connection with its inspection of the Real Property, the Hotel, the Records, and other matters that adversely affect Seller's relations with the employees at the Hotel or business operation at the Hotel, or (b) any physical damage caused by Purchaser or its agents, representatives, or assigns during or in connection with its inspection of the Real Property, the Hotel, the Records, and other matters. Purchaser's indemnity in the preceding sentence shall survive termination of this Agreement or Closing of the sale contemplated herein.

6.4 Termination of Agreement

On or before the expiration of the Inspection Period, if Purchaser, in its sole discretion, determines that the results of any inspection, test, or examination are unacceptable or unsatisfactory for purchase or operation of the Hotel in the Manner contemplated by Purchaser, Purchaser may terminate this Agreement by written notice to Seller specifying the reason(s) for the termination. Upon receipt of such notice, this Agreement shall automatically terminate, Seller shall return the Earnest Money to Purchaser, and neither party shall have any further rights, obligations, or liability to the other hereunder.

[Alternate Clause] Should Purchaser not be satisfied for any reason with respect to any aspect of the Real Property, Personal Property, or any other matter whatsoever, Purchaser shall have the unconditional right to cancel this Agreement by written notice to Seller prior to 12:00 A.M. (midnight) on the sixtieth (60th) day following the effective date of this Agreement. In the event that Purchaser cancels this Agreement pursuant to this paragraph, then Purchaser shall be entitled to an immediate return of Purchaser's deposit, whereupon this Agreement shall be deemed cancelled and the parties released of all further obligations hereunder.

5.5 Affirmation of Agreement

Failure of Purchaser to send any notice to Seller within the required time period shall be conclusively deemed to constitute affirmance of this Agreement and waiver of the right to terminate.

Category 7 TERMS OF PURCHASE FINANCING

The purchaser will often include the condition that the completion of the purchase agreement is contingent on the procurement of financing.

7.1 Agreement Not Contingent on Loan Commitment

Simultaneously with the Closing, but not as a condition to the Closing and not as a condition to Purchaser's obligations under this Agreement, Purchaser shall have the right, if Purchaser so desires, to obtain, at its sole cost and expense, a loan, to be secured by a first lien against the Real Property and Personal Property.

[Alternate Clause] 7.2 Agreement Contingent on Loan Commitment

For a period of ninety (90) days from and after the Seller Authorization, Purchaser shall use reasonable efforts to procure a firm written commitment from a lender to make a fully nonrecourse acquisition loan to Purchaser, the proceeds of which loan shall be utilized by Purchaser in order to consummate its acquisition of the Hotel, on the following terms:

1. *Principal amount*—No less than Seven Million, Seven Hundred Sixty-Five Thousand and no/100ths Dollars;
2. *Interest rate*—No greater than ten and one-half percent (10½) per annum;
3. *Amortization schedule*—thirty (30) years; and
4. *Other terms*—Any other terms that Purchaser deems acceptable.

7.3 Failure to Procure Loan Commitment

In the event that Purchaser fails to procure the Loan Commitment, Purchaser shall have the right to terminate this Agreement by delivering notice of such election that shall specify the reason(s) for the termination to Seller. Upon receipt of such notice, this Agreement shall automatically terminate, Seller shall retain the Earnest Money as Liquidated damages (it being understood that Seller's actual damages in such event are difficult to ascertain owing to changing economic and market conditions and the amount of time the Hotel may be off the market), and neither party shall have any further rights, obligations, or liability to the other hereunder.

[Alternate Clause] Seller agrees that if said commitment is not obtained by Purchaser as described above, then, at Purchaser's election, it may terminate this Agreement, which shall then be void and without recourse to either party, and the Earnest Money Deposit shall be returned to Purchaser, or Purchaser may elect to proceed to close the purchase of the Property, such election to be made by written notice to Seller not later than sixty (60) days from execution and delivery of this document.

[Alternate Clause] If Purchaser is unable to obtain the first mortgage funding by the Closing, Purchaser shall have the right to extend the Closing for 30 days for a maximum of two times. Each time Purchaser wishes to extend Closing, Purchaser will (a) send written notice to Seller stating such intention five (5) days prior to the scheduled Closing, and (b) deposit with the Escrow Agent an additional deposit in the amount of One Hundred Thousand Dollars (\$100,000). Any deposits made under this paragraph will be considered part of the Deposit and credited toward the Purchase Price.

Category 8 TITLE COMMITMENT AND SURVEY**8.1 Title Commitment**

Purchaser, at Purchaser's sole expense, shall be responsible for obtaining a title insurance commitment for a title insurance policy from a title insurance company (hereinafter "Purchaser's Title Insurer") in such amount and in favor of such persons as Purchaser desires. Purchaser shall have a period of ten (10) days from the date of this Agreement in which to conduct a title search of Property encumbrances or defects of title rendering title of the Property unmarketable. Marketability of title hereunder shall be determined in accordance with the standards of title of the Local Bar. Seller shall have an additional twenty (20) days (but not later than the date of Closing) from the date of receipt of such written notice to remove the specified encumbrances or defects. If, at the expiration of such twenty (20)-day period or the day of Closing, Seller is able to convey good and marketable title, transfer of title shall occur at the Closing. If, at the expiration of said twenty (20)-day period or the day of Closing period, Seller shall then be unable to convey good and marketable title free and clear of all such encumbrances and defects, then Purchaser shall have the option either of accepting such title as Seller can convey or of rescinding this Agreement; and if Purchaser shall elect to rescind, Seller shall refund the Earnest Money Deposit to Purchaser, whereupon all rights and liabilities of the parties hereto by reason of this Agreement shall be deemed at an end.

8.1.1 Title to Real Property. No later than fifteen (15) days after the Contract Date, Seller will deliver to Purchaser, at Seller's sole cost and expense, a title commitment, dated on or after the Contract Date, issued by the Title Insurance Company committing to issue to Purchaser an American Land Title Association (ALTA) owner's policy of title insurance in the amount of the Purchase Price, showing fee simple title to the Real Property in Seller, subject only to the exceptions listed on Exhibit D [omitted] and true and correct copies of all documents, whether recorded or unrecorded, referred to in the Title Commitment.

8.1.2 Title to Site. Promptly after the effective Date, Purchaser shall obtain evidence of title to the Site, at Purchaser's cost and expense, by the issuance of a title insurance binder or commitment through a major national title insurance company selected by Purchaser. The Title Commitment shall set forth the state of title to the Site together with all exceptions or conditions to such title, including, but without limitation to, all easements, restrictions, rights-of-way, covenants, reservations, and all other encumbrances affecting the Site that would appear in an owner's title policy.

8.1.3 Title to Personal Property. At Closing, Seller shall warrant that the Partnership has good and sufficient title to the Personal Property, subject to the encumbrances created by Security Agreements in the Loan Documents.

8.1.4 Contract Rights. Purchaser shall have determined that the Partnership has good title to the Contract Rights in accordance with the requirements hereof.

[Alternate Clause] At Closing, Seller shall warrant to Purchaser that the Partnership has good sufficient title to the Contract Rights and Accounts, that Seller has no knowledge of any defect or unmerchantable title thereto, and that Seller has not created or suffered any lien, encumbrances, attachment, security interest, or other outstanding interest or right that would diminish, affect, or reduce title thereto subject to the encumbrance created by Security Agreements in the Loan Documents.

8.1.5 Defects of Title—Cure. Seller shall have an additional thirty (30) days from the date of receipt of such written notice to remove the specified encumbrances or defects. If, at the expiration of such thirty (30) -day period, Seller is able to convey good and marketable title, transfer of title shall occur at the Closing as provided for in this Agreement.

[Alternate Clause] Seller shall, at its sole cost, cause the standard printed exceptions contained in the Title Commitment to be removed or insured over as of the Closing. Seller shall, at its sole cost, cause the title policy to be issued in accordance with the Title Commitment to be issued, as of the Closing Date, to cover the recording of the Deed.

[Alternate Clause] In the event Purchaser objects to any matters of records as disclosed by the Abstract of Title, Purchaser shall notify Seller of the items of which Purchaser disapproves. Seller then shall have the right for a period of thirty (30) days to cure or remove such matters of records that have been objected to by Purchaser, provided, however, that Seller shall have no obligation to do so.

8.1.6 Defects of Title—Termination. If, at the expiration of said thirty (30) -day period, Seller shall then be unable to convey good or marketable title free and clear of all such encumbrances and defects, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey, with a credit against the monies payable at the Closing equal to the reasonably estimated costs to cure the same up to Twenty Thousand Dollars (\$20,000), but without any other credit or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this Agreement and Seller will immediately refund the Deposit.

[Alternate Clause] In the event Seller fails or refuses to cure or remove all of such items as hereinbefore provided within said thirty (30) -day cure period, Purchaser's only remedy will be to terminate this Agreement, whereupon the Title Company is hereby authorized to return to Purchaser all deposits that have been theretofore paid or deposited by Purchaser in connection with this Agreement, and the parties hereto shall be released from all further obligations hereunder. In the alternative, if Purchaser shall fail to cancel this Agreement as provided, Purchaser shall accept title in its existing condition, and Purchaser shall be deemed to have waived any objections to such title that have not been cured or removed, except as to warranties contained in the documents of conveyance.

8.2 UCC Search

Purchaser, at Purchaser's sole expense, shall be responsible for obtaining a UCC search of the records of _____ County, State of _____ and the Secretary of State of _____ pertaining to Seller and Property. The results of this search shall not disclose any lien or encumbrance that cannot be discharged at the Closing. Seller warrants to discharge any other such lien or encumbrance at Closing.

8.3 As-Built Survey

No later than fifteen (15) days after the Contract Date, Seller will deliver to Purchaser, at Seller's sole cost and expense, a print of an as-built survey of the Hotel (the "Survey"), prepared by the planners and engineers. Prior to Closing, the Survey will be updated, will be certified by said surveyor to have been prepared in accordance with minimum detail requirements of the ALTA land survey standards, and will be recertified to Purchaser and Purchaser's lender(s). In the event the Survey shows any encroachment over a lot line, a prohibited encroachment over any easement, or any other matter that, in Purchaser's reasonable opinion, does (or could, in the future) materially interfere with the use, operation, or financing of the Real Property, such matter shall be considered a "Defect" hereunder.

8.4 Site Survey

Promptly after the Effective Date, Seller shall cause a boundary survey of the Site to be made by a licensed land surveyor selected by Seller. The Survey shall provide a legal description of the boundaries of the Site and shall identify all easements, restrictions, and rights-of-way benefiting or burdening the Site by reference to the applicable recorded documents creating same. The costs and expenses of the Survey shall be paid by Purchaser.

8.5 Review of Title Commitment and Survey

Purchaser shall have thirty (30) days after receipt of the latter of (a) the Title Commitment and (b) the Survey to deliver, in writing to Seller, Purchaser's objections to title. Purchaser's failure to object to any item on the Title Commitment or Survey within the thirty (30) -day time limitation imposed hereby shall be deemed to be approval of same by Purchaser.

[Alternate Clause] In the event that any or all of the Title Commitment, Survey, or Lien Searches disclose any claim, lien, encumbrance, encroachment, or other matter that is objectionable to Purchaser, then Purchaser shall, within fifteen (15) days of receipt of the instrument containing the Defect, notify Seller in writing of any objections. Failure of Purchaser to so notify Seller in writing within such time period shall be conclusively deemed to be approval by Purchaser of all items in the Title Commitment, Survey, or Lien Searches, as applicable. If Purchaser timely notifies Seller of any objections, Seller may, but shall not be obligated to, prior to Closing, cause such Defects to be removed or insured over prior to Closing; Purchaser may, at its sole option, either (a) terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser, and neither party shall have any further liability to the other, or (b) proceed to close and accept title to the Hotel subject to such objectionable items, in which event the obligations of the parties hereunder shall not be affected by reason of such matters, the sale contemplated hereunder shall be consummated without reduction of the Purchase Price, and Purchaser shall have no further right to terminate this Agreement because of such Defects. If Seller causes the Defects to be removed or insured over, Purchaser shall be obligated to proceed with Closing.

Category 9 SELLER'S DELIVERIES

9.1 Financial Statements

Seller will provide the Purchaser with copies of year-end financial statements for the Hotel (the "Operating Statements") for the three (3) most recent full calendar years prior to Closing and, to the extent available, the current year. The year-end statements shall be certified by an independent certified public accountant as having been prepared in accordance with generally accepted accounting principles.

[Alternate Clause] Seller will provide Purchaser with copies of monthly operating statements for the Property for each month for the last two (2) years, each statement to include the occupied rooms for that period, accompanied by a written statement signed by the President of the Seller certifying that such statements are true and correct to the best of his/her knowledge after reasonable investigation.

[Alternate Clause] The Seller will provide to Purchaser, on or before the twentieth (20th) day of each month, a Profit and Loss Statement with detailed departmental schedules, actual occupancy per-

centage, and average room rate for the preceding month from the date hereto until the Closing.

9.2 Plans

Seller will provide Purchaser with copies of all engineering and architectural plans and specifications, drawings, soil reports, studies, and surveys relating to the construction of the Hotel in Seller's possession or control.

9.3 Taxes

Seller will provide Purchaser with copies of the bill or bills issued for the three (3) most recent years for which bills have been issued for all real estate taxes and personal property taxes and with copies of any and all notices pertaining to real estate taxes or assessments applicable to the Hotel.

9.4 Contracts

Seller will provide Purchaser with copies of all brokerage, commission, management, leasing, maintenance, repair, service, pest control, and supply contracts (including without limitation janitorial, elevator, scavenger, laundry, and landscaping agreements) and any other contracts or agreements relating to or affecting the Hotel that will be binding upon the Hotel or Purchaser subsequent to Closing, all as amended.

Contemporaneously with the execution hereof, Seller shall provide Purchaser with copies of all notes, mortgages, leases, contracts, licenses, commitments, trademarks, trade names, copyrights, and engagements of Seller with respect to the Property and the business conducted thereon or any part thereof and, within ten (10) days after receipt of such documents, Purchaser shall advise Seller in writing of which of such Contracts Purchaser at its sole discretion will agree to assume and perform from and after Closing, providing, however, that if Purchaser shall not agree to assume any one of the Contracts that shall be material in nature, Seller shall have the right to cancel this Agreement within five (5) days after such notification from Purchaser, and in such event Purchaser's deposit shall be returned to Purchaser with all interest earned thereon. At Closing, Seller shall furnish to Purchaser assignments, in form and content satisfactory to Purchaser's counsel, conveying and assigning such of the Contracts as Purchaser has agreed to assume and perform. Such assignments of Contracts shall contain all third party consents as may be required in order to validly assign same to Purchaser and shall require Purchaser to assume all obligations under such Contracts that may arise thereunder from and after the Closing (except as otherwise herein provided) and to indemnify Seller with respect thereto.

9.5 Licenses

Seller shall provide Purchaser with copies of all licenses of Seller for the benefit of the Hotel or of third parties burdening the Hotel.

9.6 Leases

Seller shall provide Purchaser with copies of all contracts, leases, and agreements for the Property.

9.7 Insurance Policy

Seller shall provide Purchaser with copies of existing insurance policies covering the Property.

[Alternate Clause] Seller shall, contemporaneously with the execution hereof, provide Purchaser with a schedule setting forth all the insurance policies owned by Seller with respect to the Property and indicating the carrier or carriers of such insurance, the type of coverage afforded by each such policy, the annual premium, and the duration of the policy. Purchaser acknowledges that it will cause its own insurance to be placed on the Property at Closing.

9.8 Historical Capital Expenditure Budgets

Seller shall provide Purchaser with a summary of all capital expenditures made by Seller during last three (3) years, which summary may be delivered up to thirty (30) days after the execution of this agreement.

9.9 Franchise Reports

Seller shall provide Purchaser with copies of all inspection reports, deficiency letters, improvement requirements, and similar communications received by Seller from the Franchisor under the Franchise Agreement during the past twenty-four (24) calendar months.

9.10 Miscellaneous Hotel Assets

Seller shall provide Purchaser with a complete listing of all miscellaneous Hotel assets.

9.11 Reduction Certificate

Seller shall provide Purchaser with any estoppel letters from any mortgagees as to mortgages encumbering the Real Property and/or Personal Property, to be furnished not less than twenty (20) days prior to closing.

9.12 Rent Roll

Seller shall provide Purchaser with a Rent Roll for the property, certified to be true and correct by the Seller, setting forth the name and address of each tenant, monthly rent, amount of security or other deposits, status of rental payments, options if any, term of lease, and rent prepayments.

9.13 Payroll Summary

Seller shall provide Purchaser with a summary of Seller's payroll for employees.

[Alternate Clause] Contemporaneously with the execution hereof, to the extent available to Seller, Seller shall provide Purchaser with a list of all employees presently employed by Seller or by the manager of the hotel with respect to the Property, indicating, in each case, the name of each such employee, the position occupied by such employee, such employee's rate of compensation and any agreement relating to any increase thereof or bonus to be paid to such employee, term of employment, contract agreement, if any, and any other relevant information with respect to such employee.

9.14 Inventory of Personal Property

The inventory of Personal Property of the Hotel shall be delivered to Purchaser within twenty (20) days.

9.15 Affidavit From Partners of Sellers

Within thirty (30) days, an affidavit from the partners of Seller shall be provided to Purchaser setting forth who the partners are and the identity of the person or persons authorized to execute the documents required by this Agreement to effectuate the closing.

Category 10 SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS**10.1 Due Authorization**

The performance of this Agreement and the transactions contemplated hereunder by Seller and each general partner of Seller have been duly authorized by all necessary action on the part of Seller and by each of its partners, and this Agreement is binding on and enforceable against Seller and each general partner of Seller in accordance with its terms. Seller shall, on or prior to the Closing Date, furnish Purchaser with certified resolutions, in form and substance satisfactory to Purchaser, evidencing that Seller and each general partner of Seller have been duly authorized to enter into and perform this Agreement and the transactions contemplated hereunder. No further consent of any shareholder, creditor, investor, judicial or administrative bonds, Governmental Authority, or other party to such execution, delivery, and performance is required.

[Alternate Clause] Seller has informed Purchaser, and Purchaser hereby acknowledges and agrees, that, notwithstanding the executions of this Agreement by _____ as the general partners of Seller, this Agreement shall not be or become binding upon Seller unless and until the terms and conditions of the transaction contemplated by this Agreement have been approved by the Board of Directors of the general partners. If both partners of Seller have not obtained authorization within ten (10) days after the Contract Date and given written notice thereof to Purchaser, this Agreement shall be automatically terminated and be null and void, and the parties shall have no further rights or obligations unto the other hereunder.

10.2 Authority and Capacity

Any person signing below warrants that, unless a representative capacity is set forth in connection with his signature, he is acting for himself alone. Seller warrants that Seller is the owner of the Property in fee simple and has the right and power to enter into this offer and to carry out the terms hereof. All persons signing as Seller agree to execute Seller's deed required hereunder.

10.3 Foreign Entity Status

At the closing, Seller shall deliver to Purchaser such documents as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1954, as amended, or the regulations issued pursuant thereto certifying as to the non-foreign status of the Seller. In the event that Seller fails or refuses to deliver such certificate to the Purchaser and the Title Company at the closing, Seller authorizes the Title Company to withhold from the cash portion of the purchase price to be delivered to Seller at closing an amount equal to ten percent (10%) of the purchase price. All such sums withheld by

the Title Company shall be remitted to the Internal Revenue Service within the period prescribed by law. Notwithstanding the foregoing, if the Seller has received a Withholding Certificate from the Internal Revenue Service pursuant to applicable laws and regulations, the Title Company shall withhold from the cash portion of the purchase price payable at the closing only the amount required by the Withholding Certificate, with all such funds so withheld or paid to be remitted to the Internal Revenue Service within the period prescribed by applicable law.

10.4 No Conflicts by Consummation of Agreement

To the best knowledge of Seller, neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (a) result in a breach of, default under, acceleration of, or imposition of any lien or encumbrance against the Hotel under any agreement to which Seller is a party or by which Seller or the Real Property are bound or (b) violate any restriction, court order, judgment, law, regulation, charter, bylaw, instrument, or agreement to which Seller or the Real Property (or any portion thereof) are subject.

10.5 No Undisclosed Interest

All of the Real Property described in Exhibit A [omitted] as being conveyed hereby in connection with the hotel is contiguous. Seller neither owns nor leases nor has any other interest in any real property adjoining, adjacent, or otherwise connected with the operation of the Property and no such real property is being conveyed to Purchaser pursuant to the terms of this Agreement.

10.6 No Untrue Statement

The representations and warranties of Seller contained herein were true in all material respects when made and are true in all material respects with its obligations and agreements hereunder and Seller shall have delivered to Purchaser a certificate dated the Closing Date signed by the President of the Seller to that effect and indicating any changes.

[Alternate Clause] No Exhibit hereto or document specified hereunder furnished or to be furnished pursuant to this Agreement to Purchaser contains or will contain any untrue statement of a material fact.

[Alternate Clause] 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 covenants, representations, and warranties of Seller contained herein not true in any material respect with the same force and effect as if made on and as of the date on which Seller becomes aware of such transaction or occurrence.

[Alternate Clause] Seller hereby represents and warrants to Purchaser as to the truth and accuracy of each of the matters set forth on Schedule C [omitted] annexed hereto, which representations and warranties shall survive the execution hereof (and any investigation made by the Purchaser) and the Closing for a period of two (2) years after the Closing.

10.7 Further Assurances

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

[Alternate Clause] All action required pursuant to this Agreement that is necessary to effectuate the transaction contemplated herein will be taken promptly and in good faith by Seller, and Seller shall furnish Purchaser with such documents or further assurances as Purchaser may reasonably require.

10.8 Actual Knowledge

Notwithstanding anything in this Agreement to the contrary, Seller shall have no liability whatsoever with regard to any matter of which the Purchaser had actual knowledge prior to the Closing. For purposes of this Agreement, "actual knowledge" shall include anything in a written report or document of any sort given to Purchaser in connection with the transaction contemplated in this Agreement or in a written report prepared for Purchaser by any inspector, engineer, auditor, or any other party; or anything known by an inspector, engineer, auditor, or other person reviewing any aspect of the Real Property, the Hotel, the Records, or the general business operations of the Hotel on behalf of Purchaser, whether or not said person disclosed the information to Purchaser or any of the foregoing named persons. By executing this Agreement, the Purchaser waives any such claim; by Closing, the Purchaser shall be deemed to have waived any such claim; and the Purchaser shall not be entitled to "reserve" any claims at Closing of which it has actual knowledge.

10.9 No Further Entrance Into Binding Agreements

Seller will not enter into any new Hotel Contracts or agreements of any kind (whether written or oral) affecting the Property that by their terms require the payment of or receipt by Seller of more than Five Hundred Dollars (\$500) annually, or cancel, modify, or renew any existing Hotel Contracts without notifying Purchaser by written notice. If Purchaser does not approve of any such agreement, within five (5) days of receiving notice from Seller of such agreement, Purchaser may terminate this contract and receive back the Deposit, and thereafter neither party shall have any further obligation to the other.

[Alternate Clause] Seller agrees that from and after the date hereof and pending transfer of title to Purchaser, Seller will not enter into any lease or agreement for the rental of any portion of the Premises, other than in the ordinary course of business.

[Alternate Clause] Seller will not enter into any negotiations with any third party with respect to the sale of the Property unless and until this agreement shall have been terminated in accordance with the provisions hereof.

10.10 Continued Operation

Seller shall continue to operate and manage the Hotel, maintaining present services (including pest control); shall maintain the Hotel in good repair and working order; shall keep on hand sufficient materials, supplies, equipment, and other personal property for the operation and management of the Hotel; and shall maintain in full force and effect and make all payments, and perform, when due, all of Seller's obligations under the Operating Contracts, the Governmental Permits, and all mortgages, restrictions, and other agreements affecting or relating to the Hotel and otherwise in accordance with applicable laws, ordinances, rules, and regulations affecting or relating to the Hotel. Seller shall deliver the Hotel at Closing in substantially the same condition as on the date Purchaser waives or is deemed to waive its rights to terminate this Agreement, reasonable wear and tear excepted. Except as otherwise provided herein, Seller shall terminate, as of the Closing Date, those of the Operating Contracts that by their terms are not assignable. None of the

Personal Property or fixtures shall be removed from the Real Property unless replaced by personal property or fixtures of equal or greater utility and value.

10.10.1 Repairs and Maintenance. All repairs and replacements necessary to maintain the Property in its current condition will be made in the regular course of business up to the Closing Date at the expense of Seller.

10.10.2 Marketing. The Hotel will continue to be operated, promoted, advertised, and marketed substantially in accordance with the present standards of operation, promotion, advertising, and marketing.

10.10.3 Business Relationships. Seller shall preserve intact the normal business and organization of the Hotel and the normal business relationships of the Hotel with all wholesalers, suppliers, contractors, and other parties with whom the Property maintains a business relationship, and Seller shall maintain normal relations with the present employees of the Property.

10.10.4 Inventory. Each and every guestroom and function room in the hotel located on the Property and all public rooms therein are and shall on the Closing Date be no less fully equipped and furnished that they were on _____, 19__ and each and every item of equipment and furniture therein or used in connection with the operation of the business thereon is included within the Property, except with respect to leased equipment.

[Alternate Clause] Until the date hereof and from the date hereof to the Closing Date, each of Seller and manager of the hotel has not and shall have not removed any item of inventory from the Property, other than items of inventory that have been consumed on the Property in the normal course of business.

[Alternate Clause] The book values of food and beverage inventories on the Property at the Closing Date shall be not less than the book values of such inventories maintained by the Property in the comparable month in the preceding year.

10.10.5 No Sale of Hotel. Until the date hereof and from the date hereof to the Closing Date, neither Seller nor the manager of the hotel has nor shall have sold, leased, mortgaged, pledged, or otherwise encumbered or disposed of any part of the Property, except in the ordinary and usual conduct and course of business.

10.10.6 Taxes. Seller is current in the payment of all taxes affecting the Property or operation thereof and Seller shall continue to make timely payments of all such taxes.

10.10.7 Insurance. Seller carries insurance upon or in connection with the Property of the kind and in the amounts as required by the first mortgage, and said insurance is in full force and effect on the date hereof and no notices of cancellation or suspension have been received with respect thereto.

[Alternate Clause] Seller will maintain in effect through the Closing Date all policies of casualty and liability insurance or similar policies of insurance, with limits of coverage not less than those required by the First Mortgagee.

10.11 Licenses and Permits

All required Certificates of Occupancy, underwriter's certificates, zoning, building, housing, safety, fire, health, environmental, liquor, and similar governmental approvals and all

permits and licenses necessary to operate the Hotel in the manner in which it is presently being operated have been issued and are valid and in full force and effect, and none of the foregoing is in the nature of a conditional use permit variance or other special approval.

- [Alternate Clause]** Seller owns and holds all licenses, permits, certificates, concessions, franchises, rights, approvals, and other authorizations, all unencumbered and subject to no challenge or revocation, as are required to carry out and conduct the business carried out and conducted at the Property and each and every aspect thereof and to own, use, and operate the business thereon carried on and conducted; and all such rights and privileges will pass to Purchaser at Closing without creating the right of termination or revocation on the part of any third party granting such right and privilege, except with respect to those licenses, permits, certificates, concessions, franchises, and approvals as expressly noted. With respect to the Property and its use and operation, Seller is not obligated or under any liability to make any payments by way of royalties or fees or otherwise pursuant to any license, royalty, franchise, or other agreement to any owner of, licensor of, or claimant to a patent, trademark, trade name, copyright, or other intangible asset with respect to the use thereof or in connection with the conduct of its business or otherwise.
- [Alternate Clause]** Exhibit C [omitted] identifies and will on the Closing Date identify all Permits used in connection with the operation of the Property, and is complete and correct. Seller has received no written notice from the issuing agency to the effect that a default has occurred in the due observance of any condition to any Permit, and the Seller has not received any written notification from any governmental body to the effect that there is lacking any license, franchise, or permit needed in connection with the operation of the Property and any related business thereof. All Permits are transferable to Purchaser.
- [Alternate Clause]** Seller has unencumbered title to any and all licenses and permits necessary for the customary operation of the Hotel as required by any governmental authority having jurisdiction over the Premises, and such licenses and permits are freely transferable to Purchaser; and the Hotel is properly zoned for its present use as a first-class hotel.
- [Alternate Clause]** Seller has valid transferable permits and/or leases as the case may be for all signs used in connection with the advertising, location, or directions to the Property.
- [Alternate Clause]** To the best of Seller's knowledge, all permits and licenses necessary for the operation of the Property for its current use have been obtained and will be in effect as of the date of closing.
- [Alternate Clause]** Seller will execute and, where necessary, Purchaser will join in the execution of all applications and instruments required in connection with the transfer of the Permits in order to transfer the benefits of the Permits to Purchaser on the Date of the Closing. Seller shall preserve in force all existing Permits and shall timely file proper applications for renewal of any Permit expiring 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.
- [Optional Clause]** The Seller holds valid licenses under the State of _____ Alcoholic Control Law permitting the sale of alcoholic beverages for on-premises consumption and all permits as are required in order for Seller to sell alcoholic beverages on the Property in the places and in the manner in which Seller has heretofore sold such alcoholic beverages.
- [Optional Clause]** All curb cut and street opening licenses or permits required for vehicular access to and from any portion of the Property to any adjoining public street, highway, or road have been obtained and, where required, paid for in full by Seller and are in full force and effect.

10.12 Contracts

There are no contracts, leases, or other agreements affecting the Property other than those to be delivered at the Closing. Such contracts, leases, or agreements are not in default by either party thereto and are freely transferable to Purchaser.

[Alternate Clause] There are no contracts, verbal or written, with any employees or unions, nor any service contracts, maintenance contracts, or any other contracts or agreements in connection with the operation of the Real Property or Personal Property, and there are no actions pending or, to Seller's knowledge, threatened between Seller, as landlord, and any tenant on the Real Property, to reduce any of their rentals.

[Alternate Clause] With respect to the Property, the Seller is not engaged in any labor or other material controversy with any of its employees, and the Seller is not a party to any labor agreement, management contract, employment contract, expense program, or pension, retirement, profit sharing or other benefit plan, program, or arrangement, or to any executive or key personnel incentive or other special compensation or agreement or to other contracts or agreements with employees, including union and incentive contracts or agreements, other than those referred to in Exhibit 3 *[omitted]* annexed hereto; and with respect to each employee of Seller or of the manager of the hotel with respect to the Property, all amounts owing to the date of Closing shall be paid to each such employee on the date of closing, including, without restriction, all salaries, wages, fringe benefits, contributions to pension plans, and accrued vacation pay.

10.13 Franchise Agreement

Annexed hereto is all of the documentation constituting the Franchise Agreement, true and complete copies of which documentation have been heretofore delivered to Purchaser. The Franchise Agreement has not been modified, amended, supplemented, or changed in any manner and the Franchise Agreement is valid, binding, and in full force and effect. As of the date hereof, no defaults on the part of Seller or any other party thereto exist under the Franchise Agreement; all royalty and other payments under the Franchise Agreement, including, without limitation, fixed payments and percentage payments, have been paid to date; and Seller shall deliver to Purchaser at the Closing and thereafter all reports, statements, and financial information necessary or appropriate to enable Seller to calculate percentage royalties and other sums payable to the franchisor, as the case may be, and otherwise to file required financial and other statements pursuant to the Franchise Agreement.

[Optional Clause] On or before the Closing Date, Purchaser will have obtained any required consents or approvals to enable Purchaser to assume the existing license or Franchise Agreement. Purchaser shall use diligence and its best efforts to obtain the approval from the franchisor for the assumption of the existing Franchise Agreement.

[Optional Clause] There are no outstanding requirements or recommendations by the franchisor of the Franchise Agreement or by any insurance company issuing a policy with respect to the Property and/or Personal Property or by any board of fire underwriters or by any other bodies exercising similar functions requiring or recommending any repair or ameliorative work to be done in, at, or about the Hotel.

10.14 Employee-Related Representations

No employee of Seller or of the Property has the right to occupy any dwelling space on the Property or has a dwelling provided for it by the Property.

[Alternate Clause] There are no employment agreements with any of the employees.

[*Alternate Clause*] There are no labor disputes pending or threatened, and Seller has no knowledge or reason to believe such disputes are threatened.

[*Alternate Clause*] Until the date hereof and from the date hereof to the Closing Date, each of Seller and the manager of the hotel has not and shall not have incurred any increase in salaries, wages, or other forms of compensation payable to or to become payable to any employee of the Seller with respect to the Property.

10.15 No Outstanding Litigation or Outstanding Conflicts

Seller represents and warrants that as of the Effective Date, there are no suits, arbitration proceedings, other proceedings, or governmental investigations pending against it or, to the knowledge of Seller, threatened that adversely and materially affect its right or ability to enter into this Agreement or to consummate the sale of the Hotel in accordance with the terms of this Agreement, or that materially affect the Hotel.

[*Alternate Clause*] To the best of Seller's knowledge, there is no violation of any law, ordinance, or regulation and no existing litigation, known potential or threatened litigation, investigation, or other proceeding with respect to any aspect of the real or Personal Property being purchased under this Agreement, and if there were, any such litigation would be covered by insurance. In the event that a lien, claim, or cause of action should arise after the closing resulting or attributable to any of Seller's activities upon the property prior to the closing, the Seller shall, at its sole cost and expense, cause any such lien to be discharged and defend against any such claim or cause of action, and Seller shall hold Purchaser harmless therefrom, including, but not necessarily limited to, charges incurred for the retention of such attorneys or other persons as may be required. If any matters referred to in this paragraph become known to Seller after the effective date of this Agreement and prior to closing, Seller shall notify Purchaser of same.

[*Alternate Clause*] There is no violation of applicable laws, ordinances, or regulations, inclusive of those of administrative boards or agencies and other public authorities, relating to the Property and the business thereon conducted, and the Seller is not in default for having failed to file tax returns or statements required to be filed under the laws of any federal, state, municipal, or other jurisdiction with respect to the Property and the business conducted thereon by Seller, and the Seller has paid or shall pay on or prior to the Closing all taxes, whether income, sales, use, real estate, or otherwise, owing to date with respect to the Property or its ownership or operation thereof and the business conducted thereon, and Purchaser will assume no liability with respect to any period up to and including the Closing Date or otherwise with respect to any such taxes, except for such real estate taxes that may be adjusted at Closing.

10.16 Eminent Domain/Condemnation Actions

Seller represents and warrants that as of the Effective Date, there are no pending condemnation actions of any nature with respect to the Hotel that would materially impair the Hotel's economic viability, and Seller has not received any notice of any such threatened or contemplated condemnation actions.

A. MISCELLANEOUS REPRESENTATIONS, WARRANTIES, AND COVENANTS

10.17 Title Matters

Seller has good and marketable title to the Personal Property and all Personal Property has been fully paid for.

[Alternate Clause] Seller makes no warranty of title as to the Site or the Improvements, except that Seller represents and warrants that it has refrained from any action that might impair Purchaser's title and will continue to do so.

10.18 General Encumbrance

There are no instruments or agreements that in any way encumber or affect the Property, and Seller has neither done nor failed to do anything nor suffered anything to be done as a result of which the Property or any part thereof has been or will be encumbered or title thereto has been or will be affected in any way.

10.19 Mortgage

To the best of Seller's knowledge, all mortgages and liens encumbering the Real Property and Ground Lease are in good standing, and Seller shall keep all of such mortgages and the Ground Lease in good standing through the date of closing.

[Alternate Clause] There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy pending against Seller or contemplated by Seller, and to the knowledge of Seller no such action has been threatened against it.

10.20 Zoning

Except as required by law, Seller shall not seek or consent to any amendment to any Permit that would alter the existing permissible uses of the Hotel or any part thereof.

[Alternate Clause] Seller has not made nor shall Seller make any applications before any zoning board or commission seeking to modify or change the present zoning of the Real Property constituting the Property.

10.21 Operating Liabilities

All Liabilities for sales taxes, unemployment compensation contributions, and assessments incurred by Seller in connection with the operation of the Real Property through the date of actual closing hereunder shall, unless otherwise provided herein to the contrary, be paid prior to or at closing.

10.22 Asbestos

There is now and there shall be on the Closing Date no asbestos or other noxious or environmentally hazardous substance on or about the Property.

10.23 Payment for Labor, Goods, and Services

Seller has paid or will pay in full before or after Closing all bills and invoices for labor, goods, material, and services of any kind relating to the Hotel or any portion thereof, and utility charges relating to the period prior to closing.

10.24 Hotel Names

Exhibit B *[omitted]* identifies the Hotel Names that are included in this sale and Seller is currently using no others in connection with the operation of the Property.

10.25 Break-Even Guarantee

From the date of Closing and for twelve (12) months thereafter, the Seller shall guarantee that gross operating expenses shall be sufficient to cover all debt service on the Seven Million, Six Hundred Thousand (\$7,600,000) Dollar loan and One Hundred Sixty-two Thousand Dollars (\$162,000) of credit fees. The Seller's guarantee will be personally guaranteed by ____.

B. SPECIAL CASES

10.26 Completion of Hotel

Seller agrees that it will undertake and complete the Hotel for the purposes and in the manner intended hereby and in accordance with the plans and specifications therefor that have been prepared by or on behalf of Seller and are attached as Exhibit D [omitted] hereto, and that it will cause such improvements to be made to the Real Property as are necessary for the operation thereof in the manner herein provided.

[*Alternate Clause*] Seller shall obtain all necessary approvals from any and all governmental agencies requisite to the completion of the Hotel and in compliance with all state and local laws, ordinances, and regulations applicable thereto. Upon completion of the Hotel, Seller shall obtain all required permits and authorization from appropriate authorities, if any be required, authorizing the operation and uses of the Hotel for the purposes contemplated hereby.

[*Alternate Clause*] Seller covenants that it will take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of the contracts, including, without limitation, the correcting of any defective work.

10.27 Limitations on Seller's Representations, Warranties, and Covenants

Purchaser acknowledges and agrees that except as otherwise expressly set forth in this Agreement, (a) Purchaser is acquiring the Hotel "as is" and (b) neither Seller nor the Broker nor any other agent of Seller has made, and Purchaser is not relying upon, any representation or warranty, express or implied, with regard to the Hotel or otherwise in connection with the size, value, physical condition, or financial condition of the Hotel or its suitability for development resale or any particular use.

10.28 Survival of Contract

Notwithstanding anything to the contrary contained in this Agreement, after Closing, Purchaser shall have no cause of action against the Seller with respect to the breach of any representation, warranty, or agreement contained herein.

[*Alternate Clause*] All warranties and representations made in this Agreement shall survive the Closing.

10.29 Default and Termination

If Seller defaults at any of the terms, covenants, or conditions of this Agreement or if any of the above conditions are not satisfied, then Purchaser shall have the right to terminate this Agreement by written notice to Seller listing the condition that was not satisfied and the return of the Deposit to Purchaser.

[Alternate Clause] If, at any time prior to the Closing, Purchaser discovers that any of the representations or warranties of Seller are not true or that any of the agreements of Seller have not been complied with or that any of the conditions precedent to Closing are not satisfied, then Purchaser shall notify Seller and Seller may, but shall not be obligated to, cure same. If Seller is unwilling or unable to cure any such matters, Seller shall forthwith give notice of such fact to Purchaser and Purchaser shall, as its sole and exclusive remedy in such event, make an election in writing, which must be received by Seller within ten (10) days after receipt by Purchaser of Seller's Election Not to Cure, to terminate this Agreement, in which event the Earnest Money shall be returned to Purchaser by Seller after its receipt of Purchaser's election, and the parties hereto shall be fully released from any further liability or obligation hereunder. In the event that Purchaser has not received Seller's Election Not to Cure within ten (10) days after Seller's receipt of the notification from Purchaser, Seller shall be deemed conclusively to have elected to cure.

[Alternate Clause] In the event that Seller is unable to deliver title in accordance with the terms of this agreement or is unable to perform or comply with any other condition or obligation on the part of Seller to be performed under this Agreement, or in the event that any representation or warranty made by Seller hereunder shall be untrue as of the Closing Date, in each such case for reasons beyond Seller's control, then Purchaser shall have the option (a) to close and waive objection to any such defect or (b) to terminate this agreement at any time prior to Closing or at Closing, by notice in writing to Seller, whereupon the Deposit and all interest earned thereon shall be returned to Purchaser and whereupon neither party shall be further obligated hereunder. In the event that the transaction contemplated hereby fails to close owing to any reason that is not beyond Seller's control, then Purchaser shall have the right, at its option, to obtain specific performance or to obtain money damages and to terminate this Agreement. Notwithstanding the foregoing, to the extent that there exists a state of fact underlying any representation or warranty made by Seller hereunder, which state of fact shall cause any representation or warranty to be untrue or incorrect as of the Closing, Purchaser shall not be entitled to elect to terminate this Agreement as aforesaid if (i) this state of fact shall be susceptible of correction by the payment of money, (ii) Seller elects to take such steps as are necessary for the correction of such state of fact subject to the reasonable approval by Purchaser of the steps to be taken, and (iii) such steps are taken and such state of fact is corrected within fifteen (15) days from the date initially established for the Closing.

In the event that this transaction fails to close due to Purchaser's unexcused default, then Seller shall be entitled to payment of the Deposit as liquidated damages, and this Agreement shall be terminated and neither party shall be further obligated hereunder.

Category 11 REPRESENTATIONS AND WARRANTIES OF PURCHASER

11.1 General Terms

In order to induce Seller to sell the Hotel and to consummate the other transactions contemplated hereby, Purchaser hereby represents and warrants to Seller that the following are true statements as of the date hereof and agrees that the following shall be true statements as of the Closing, subject to the proposition that, prior to Closing, the truth of the following is a condition to Closing only, with no liability of Purchaser whatsoever.

11.2 Due Organization

Purchaser is duly organized, validly existing, and in good standing under the laws of the state of its formation, and will, on the Closing Date, be qualified to do business in the State of _____, and has all requisite power and authority to execute this Agreement and

the documents referred to herein to be executed by Purchaser. Prior to the closing, Purchaser shall have taken all actions required for the consummation of the transaction contemplated by this Agreement or any document delivered or to be delivered in connection with this Agreement.

[Alternate Clause] Purchaser represents and warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of _____, is qualified to do business in the State of _____, and is authorized to enter into the transactions contemplated by this Agreement. At Closing, if this Agreement has been assigned to a limited partnership, said limited partnership will be duly organized, validly existing, in good standing under the laws of the State of _____, qualified to do business in the State of _____, and authorized to enter into the transactions contemplated by this Agreement.

11.3 No Conflict

Neither the execution, delivery, and performance of this Agreement or any other agreement contemplated hereunder nor the carrying out by the Purchaser of the transactions contemplated hereby or thereby will conflict with, result in a breach of, constitute a default under, or accelerate the maturity of (a) any applicable provisions of the Purchaser's charter or by-laws or other governing instrument, (b) any applicable legal requirements, or (c) any other agreement, indenture, or instrument to which the Purchaser is a party or by which the Purchaser is or may be bound or affected. No consent of any third party is required in order for the Purchaser to enter into this Agreement or any other agreement contemplated hereunder or for the Purchaser to carry out the transactions contemplated hereby or thereby.

11.4 No Pending Litigation

The Individuals and the entity comprised by the Purchaser represent and warrant that as of the Effective Date, there are no suits, arbitration proceedings, other proceedings, or governmental investigations that are pending against them or to their knowledge threatened that adversely and materially affect their right or ability to enter into this Agreement or to consummate the purchase of the Hotel in accordance with the terms of this Agreement.

11.5 Purchaser Authorizations

Within thirty (30) days from the effective date of this Agreement, Purchaser shall furnish to Seller evidence acceptable to Seller, authorizing the consummation by Purchaser of the purchase and sale transaction contemplated hereby and the execution and delivery of the closing documents on behalf of the Purchaser. The foregoing shall also be required as to any person or entity to which Purchaser may assign this Agreement. No assignment of this Agreement by Purchaser will relieve Guarantors of their obligation hereunder. Simultaneously with the provision of such information as required by this paragraph, Purchaser shall also provide to Seller a certificate of current good standing of the Purchaser in the State of incorporation of Purchaser.

11.6 Truth of Representations

Purchaser hereby represents and warrants to Seller as to the truth and accuracy of each of the matters set forth on Schedule D *[omitted]* annexed hereto, which representations and warranties shall survive the execution hereof and the Closing for a period of two (2) years after the Closing.

Category 12 PRORATIONS AND ADJUSTMENTS**12.1 General Accounts Receivable and Accounts Payable**

It is understood and agreed by and between the parties that any and all accounts receivable arising out of Seller's operation of the Hotel prior to the Closing shall remain the property of Seller and are not part of the property being transferred under this Agreement. In the event Purchaser shall receive payments on said accounts receivable due Seller after Closing, Purchaser agrees to promptly remit same to Seller. All accounts receivable arising out of the operation of said Hotel from and after the date of Closing shall belong to Purchaser. Further, it is understood and agreed to between the parties that Purchaser assumes no responsibility or liability for any accounts payable, obligations, or indebtedness of Seller of the Hotel, except those obligations assumed by Purchaser hereunder, and Seller shall hold Purchaser harmless and indemnify Purchaser from any claim by any party relating to any accounts payable, obligation, or indebtedness of any nature that was incurred prior to the Closing.

12.2 Liabilities Not Assumed

The purchase and sale of the Hotel shall be a transfer of assets only, and no liabilities or obligations of the Seller, whether incurred prior to or after the date hereof, shall be assigned by Seller or assumed by Purchaser, with the exception of the following: (a) any liability to provide hotel accommodations and services pursuant to confirmed reservations subsequent to the Closing Date; (b) any liability under the service contracts and equipment leases that is attributable to the period after the Closing Date; and (c) all accounts payable, trade payables, wages, vacation pay, and other accrued operating expenses incurred in the ordinary course of operating the hotel (not including real estate or personal property taxes, which shall be prorated as of the Closing Date). Except as specifically provided herein, Purchaser shall not be responsible for any liabilities arising from acts or omissions of Seller prior to the Closing Date, even though the claim with respect thereto may be brought after the Closing Date.

[Alternate Clause] Purchaser is not assuming any of the liabilities of Seller accrued prior to or on the Closing Date unless otherwise specifically provided in this Agreement, which liabilities are and shall remain after the Closing Date the obligation of Seller.

12.3 Utilities

Seller shall be responsible for all water, sewer, and all other utility charges through the date prior to Closing hereunder, and Seller will use its best efforts to have meters for such utility services read on the date of the closing and thereafter Purchaser shall be responsible for such utility services in its own name commencing with the closing date and thereafter. Seller agrees not to terminate utility services without giving Purchaser at least three (3) days' notice. Purchaser shall, prior to closing, post such utility deposits as required by the applicable utilities to assume the utility services and prevent interruption of service.

[Alternate Clause] Rents, if any, and water, sewer, gas, and electric charges as per meter readings taken not more than twenty-four hours prior to Closing shall be prorated and adjusted as of the date immediately prior to Closing.

12.4 Real Estate and Personal Property

Real estate taxes, personal property taxes, and no prepayable assessments shall be prorated to the date of delivery of possession, using the last available tax bill. Accrued general real estate, personal property, and ad valorem taxes for the current year shall be

prorated on the basis of actual bills therefor, if available prior to closing. If such bills are not available, then such taxes shall be prorated on the basis of one hundred ten percent (110%) of the most currently available information for the Real Property and promptly re-prorated upon the issuance of final bills therefor (and any amounts due from one party by reason of such re-proration to the other shall be paid in cash at that time). Prior to or at Closing, Seller shall pay or have paid all such bills that are due and payable prior to or on the Closing Date and shall furnish evidence of such payment to Purchaser and the Title Insurer.

[Alternate Clause] At Closing, the real estate ad valorem taxes and the personal property taxes shall be prorated between the Seller and the Purchaser on the basis of the tax bill rendered for the year before the year in which the Closing occurs if said tax bill for the year in which the Closing occurs has not been rendered. At such time as the actual tax bills for the Real Property and Personal Property for the tax year during which the Closing is held are available, then taxes shall be re-prorated between the parties based upon the Closing Date. All tax prorations shall be made, taking into account the maximum discount permitted by law. The obligation to re-prorate taxes as set forth herein shall survive the closing.

12.5 Sales Taxes

There shall be no apportionment with respect to sales tax or occupancy taxes charged to guests occupying rooms at the Property subject to such taxes. After the Closing, Seller shall file final sales and occupancy tax returns with the appropriate taxing authority and pay to the appropriate taxing authority sales and occupancy taxes charged to guests and others during the period of time prior to the Cut-Off Time.

12.6 Payroll

Seller will pay all employees for all services performed through 12 P.M. (noon) of the date of Closing, together with all contributions to welfare, pension, fringe benefit, and other such programs required to be made on their behalf, and the employer's share of payroll taxes, social security, unemployment compensation taxes, and disability insurance incident to such salaries, wages, or other benefits. The accrual for vacation and sick day pay and bonuses shall be based upon individual calculations for each employee in conformity with (a) union contracts, when applicable, and (b) past practices as to vacations and sick days allowed and bonuses paid to non-union employees.

12.7 Interest

Interest, accrued or prepaid, shall be apportioned as of the date of Closing.

12.8 Association Dues

Trade association dues, travel agency commissions, trade subscription, and commissions of credit referral organizations, if any, shall be prorated as of the Closing Date.

[Alternate Clause] American Express, Diners Club, Carte Blanche, VISA, Mastercard, Citicorp Credit Service, net receivables, and payments or net receivables of other credit organizations, if any, shall be apportioned and the amount due to Seller shall be paid to Seller by Purchaser if and when collected by Purchaser. Seller agrees to reimburse Purchaser promptly for any refunds Purchaser is required to make with respect to any payment theretofore made to Seller.

12.9 Telephone Charges

Purchaser and Seller shall obtain and determine all telephone charges applicable to the telephone system in use at the Hotel, and Seller shall execute any and all forms required in order to transfer the existing telephone numbers, and any and all rights thereto, to Purchaser.

12.10 Room Rents

Seller shall be credited with all room rents from guests in residence on the night immediately prior to the date of Closing.

[Alternate Clause] Purchaser shall be credited with all room rents from guests in residence on the night immediately prior to the date of Closing.

[Alternate Clause] At 12:01 A.M. on the Closing Date, Purchaser and Seller, or their designated agents and representatives, shall prepare and enter into the cash register a separate "folio" for every hotel guest then residing at the Hotel as disclosed by the guest ledger maintained by Seller (which guest ledger shall be subject to verification by Purchaser) and shall prepare a separate listing or inventory of same. As Purchaser receives payment in response to the accounts set forth on such Guest Inventory, Purchaser shall, within seven (7) days after receipt of such payment, pay to Seller that portion of each such payment representing guest charges attributable to the period prior to the Closing Date, net of all applicable collection charges, including, but not limited to, any applicable credit card commissions or other similar charges. Purchaser shall receive credit for one half (1/2) of the guest charges attributable to guests residing at the Hotel at 12:01 A.M. on the Closing Date for the previous night's lodging.

12.11 Prepaid Rent and Deposits

All prepaid rent, room rental deposits, and all other deposits for advanced reservations or future rentals are to be turned over to Purchaser at Closing. All prepaid amounts under Hotel Contracts shall be adjusted.

[Alternate Clause] On the Closing Date, Seller shall provide Purchaser with a complete schedule (the "Reservation Schedule") of post-closing confirmed guest reservations, which Reservation Schedule shall list (a) the party for whose benefit the reservation was made; (b) the amount of prepaid room rent thereunder; (c) the amount of any room rental deposits; and (d) the amount of any other deposits made for advance reservations, banquets, and/or future services to be provided after the Closing Date. Seller shall pay to Purchaser the amount of all deposits held in connection with such confirmed reservations at the rate or price previously agreed to by Seller.

12.12 Vending Machines

All revenues from vending machines and commissions, if any, payable by the telephone company in respect of public telephones in the Property and long distance telephone calls made from the property shall accrue to the benefit of Purchaser after the Closing.

12.13 Inventory

There shall be no apportionment for inventory of consumable items or any linens, china, silverware, or supplies, the value of which are included in the Purchase Price.

[Alternate Clause] On the Closing Date, Seller and Purchaser shall take a further inventory of the Personal Property for the purpose of assuring the accuracy of the Personal Property Inventory, and

any items of Personal Property that shall have been added or removed since the date of the Personal Property Inventory shall be disclosed in a written supplement to the Personal Property Inventory and furnished to Purchaser at Closing. Any additional items of Personal Property disclosed in said supplement shall be conveyed to Purchaser at Closing in the manner herein provided.

12.14 Working Capital

Purchaser shall pay Seller amounts of all house funds and petty cash funds at the Premises as of 12 P.M. (noon) of the date of the closing. All such amounts shall be verified jointly by representatives of Seller and Purchaser.

[Alternate Clause] Seller shall insure that there is Seventy-five Thousand Dollars (\$75,000) of working Capital deposited in the Hotel's working capital account as of 12 P.M. (noon) of the date of Closing.

[Alternate Clause] Purchaser shall pay to Seller an amount equal to the sum of all cash maintained in all cash registers in use at the Hotel as of 12:01 A.M. on the Closing Date. That cash shall be counted jointly by representatives of Seller and Purchaser.

[Alternate Clause] Promptly after the Closing Date, Seller shall determine, subject to Purchaser's review and approval, the dollar amount of the Working Capital of the Hotel as of the Closing Date. If said dollar amount is less than Five Hundred Fifty Thousand Dollars (\$550,000), Seller shall pay any such deficiency to Purchaser. If said dollar amount is greater than Five Hundred Fifty Thousand Dollars (\$550,000), Seller shall be entitled to withdraw and retain any such excess from the Hotel operating accounts.

12.15 Other Adjustments

Charges due under the Assigned Contracts (defined hereinafter) shall be prorated as of the Closing Date. All other items that are customarily adjusted in transactions similar to the transactions contemplated hereunder shall also be prorated as of the Closing Date.

12.16 Disputes

Any and all disputes as to the adjustments pursuant to this section shall be resolved by an audit. The losing party shall pay all of the costs of such auditing expense. The provisions of this section shall survive the Closing.

Category 13 CLOSING DOCUMENTS AND PROCEDURE

Not later than fifteen (15) days prior to the Closing, the parties shall deliver copies of certain documents, set forth below, to the other parties as specified; the original of said documents shall be executed and delivered at the Closing together with such other documents as are contemplated by this Agreement.

A. SELLER'S RESPONSIBILITIES

13.1 Title Deed

Limited warranty deed in recordable form, executed by Seller, conveying the Real Property to Purchaser free and clear of all claims, liens, and encumbrances except for the Permitted Exceptions and items approved or deemed to be approved by Purchaser.

[Alternate Clause] By general warranty deed, which deed, when filed for record, shall convey to Purchaser and Warrant good and marketable title to the property, in fee simple absolute, free and clear of all liens and encumbrances, except the underlying mortgages, described herein, taxes and assessments not yet due and payable, zoning ordinances and regulations acceptable to Purchaser, and such other "title exceptions," the Permitted Exceptions as well as additional title explanations, as shall have been approved in writing by Purchaser prior to the Closing.

13.2 Bill of Sale

A warranty assignment and bill of sale, executed by Seller, assigning, conveying, and warranting to the Purchaser title to the Personal Property, free and clear of all encumbrances, other than the Permitted Exceptions and items approved or deemed to be approved by Purchaser, and assignments of title to any vehicles owned by Seller included in the Personal Property, together with the original certificates of title thereof.

[Alternate Clause] By Seller to Purchaser, a Bill of Sale in the form customarily used in the county in which the Personal Property is situated, conveying the Personal Property, with warranty of title.

[Alternate Clause] The personal property, which shall be inventoried prior to Closing to the approval of Purchaser, shall be conveyed by a good and sufficient Bill of Sale with warranty of title by Seller as required by Purchaser. Purchaser agrees to accept the Personal Property estate in its present physical condition. Purchaser acknowledges that Seller has made no representations or warranties of any kind or nature, express or implied, with respect to the aforesaid Personal Property and Improvements except as herein set forth.

13.3 Assignment of Governmental Permits

To the extent any Governmental Permits are assignable, an assignment, executed by Seller, to Purchaser of all of Seller's right, title, and interest in and to the Governmental Permits, together with executed copies, applications, forms, and other documents as may be necessary to fully effectuate to the transfer of the same to Purchaser as herein contemplated.

13.3.1 Liquor Permit. Among the permits and licenses to be assigned and transferred with respect to the operation of the Property and the conduct of the Seller's business is the liquor permit issued to the Seller by the _____ Department of Liquor Control. At the Closing, Seller shall cause to be executed and delivered to Purchaser or Purchaser's nominee an instrument in form reasonably satisfactory to Purchaser that assigns, conveys, and transfers to Transferee all of Seller's rights and interests in, under, and to the Liquor Permit.

13.4 Assignment of Intangible Personal Property

An assignment to Purchaser of all right, title, and interest of Seller and its agents in and to the Intangible Personal Property, executed by Seller.

13.5 Assignment of Operating Contracts

An assignment executed by Seller, to Purchaser of those of the Operating Contracts that are assignable, in which Seller agrees to indemnify, protect, defend, and hold Purchaser harmless from and against any and all claims, damages, losses, costs, and expenses (including attorney fees) that arise in connection with the Operating Contracts and relate to the time period prior to Closing.

13.6 Original Documents

To the extent not previously delivered to Purchaser, original copies of the Operating Contracts and Governmental Permits.

13.7 Keys

All keys used in connection with the Property, tagged for identification.

13.8 Title Policy

The Title Policy (for a "marked-up" Title Commitment) issued by the Title Insurer, dated as of the Closing Date, in such amounts and containing such endorsements and other terms as are required herein.

[Alternate Clause] At the Closing, there shall be issued to Purchaser by the Title Company an owner's policy of title insurance on ALTA Owner's Policy Form ___ (the "Title Policy") in the amount of the Purchase Price. The Title Policy shall insure good, marketable, and indefeasible fee simple title to the Site, and to any beneficial easements and/or restrictions appurtenant to the Site, and shall contain as exceptions to title only the Permitted Exceptions and such additional matters as shall be approved by Purchaser. The costs and expenses of the Title Policy shall be paid by Purchaser.

13.9 Resolutions

A certified resolution authorizing Seller to enter into and perform this Agreement and to perform Seller's obligations hereunder.

[Alternate Clause] At Closing, a certificate of the Seller signed by a Senior officer, dated the Closing Date, certifying that all of the representations and warranties of the Seller contained in this Agreement are true and correct on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date.

13.10 Closing Statement

A counterpart, executed by Seller, of a closing statement conforming to the proration and other relevant provisions of this Agreement.

13.11 Records

To the extent not previously delivered to Purchaser, original copies of all records (including, without limitation, all guest ledgers) pertaining to the Hotel.

13.12 Certificate of Non-Foreign Status

The Certificate of Non-Foreign Status in the form attached hereto as Exhibit C *[omitted]*.

13.13 Affidavits

Affidavits reasonably required by Purchaser and/or the Title Company to establish the authority and capacity of Seller to consummate the transaction described herein.

13.13.1 No-Lien Affidavit. By Seller to Purchaser, a Seller's No-Lien affidavit that is customary in form and content in the county in which the Property is located.

13.14 Tenant Notice

By Seller to Purchaser, a form letter to tenants advising them of the sale of the Lessee's interest under the Ground Lease, advising that future rent payment shall be paid to the Purchaser.

13.15 Warranty Assignment

By Seller to Purchaser, a general assignment to Purchaser of all warranties that exist as to equipment, Personal Property, or structural components of the building that have not expired by lapse of time.

13.16 Lease Assignment

By Seller to Purchaser, an assignment of any leases to Purchaser.

13.17 Rent Roll

By Seller to Purchaser, a rent roll, certified to be true and correct by Seller, setting forth the name and address of each tenant, monthly rental, amount of security or other deposits, status of rental payment, options (if any), term of lease, and rent prepayments.

13.18 Hotel Name

An assignment by Seller to Purchaser, to the extent of the Seller's rights therein, without warranty, to the name "_____" and the current telephone numbers of the _____ (if same are transferable to the Purchaser).

13.19 Other Documents

Such other documents and instruments as are contemplated hereunder or as may reasonably be required by Purchaser, its counsel, or the Title Insurer and necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto.

B. PURCHASER'S RESPONSIBILITIES

At Closing, Purchaser shall deliver to Seller:

13.20 Purchase Price

The full Purchase Price, plus or minus proration and other adjustments hereunder, in the amount and in the manner provided pursuant to this agreement.

13.21 Assumption of Ground Lease

By Purchaser to Seller, the consent and agreements of the Lessor to the assignment of the Lessee's interest under the Ground Lease and other matters as required by this Agreement.

13.22 Closing Statement

A counterpart, executed by Purchaser, of a closing statement conforming to the proration and other relevant provisions of this Agreement.

13.23 Assumption of Operating Contracts

An assumption executed by Purchaser in which Purchaser agrees to assume the Operating Contracts assigned to it by Seller, together with the agreement of Purchaser to indemnify, protect, defend, and hold Seller harmless from and against any and all claims, damages, losses, costs, and expenses (including attorney fees) that arise in connection with the assigned Operating Contract and relate to the time period from and after Closing.

13.24 Resolutions

Certified resolution authorizing Purchaser to enter into and perform this Agreement and to perform Purchaser's obligations hereunder.

[Alternate Clause] By Purchaser to Seller, evidence reasonably acceptable each to the other authorizing the consummation of this Agreement and the execution and delivery of all of the Closing documents by the applicable party, and the authority of the applicable party to execute and deliver the closing documents.

13.25 Affidavits

Affidavits reasonably required by Seller and/or the Title Company to establish the authority or capacity of Purchaser to consummate the transaction described herein.

13.26 Franchise Transfer

By Purchaser to Seller, the consent of Franchisor to the transfer of the existing Franchise Agreement from Seller to Purchaser and agreement by such Franchisor as to such other matters required by this Agreement.

13.27 Other Documents

Such other documents and instruments as are contemplated hereunder or as may reasonably be required by Seller, its counsel, or the Title Insurer and necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto.

13.28 Seller's Escrowee Instructions

Seller's instructions to Escrowee regarding the recording and release to Purchaser of the Deed and the other documents described herein.

13.29 Purchaser's Escrowee Instructions

Purchaser's instructions to Escrowee authorizing the disbursement of the Purchase Price to Seller and the delivery of the documents listed above to Seller, conditioned on Escrowee simultaneously informing Purchaser that it is prepared to issue the Title Policy with respect to the Hotel, in the total amount of the Purchase Price, subject only to the Permitted Exceptions.

13.30 Escrowee Actions

Wire transfer to Seller of the Purchase Price and delivery to Seller of the documents described hereinabove.

Causing the Deed (together with all other documents that are to be recorded) to be recorded in the jurisdiction in which the Hotel is located.

Issuance (or contractual obligation of itself to issue) the Title Policy to Purchaser.

Carrying out all of the remaining instructions given by Purchaser and Seller to Escrowee.

Category 14 CLOSING EXPENSES

14.1 Closing Expenses

Seller shall pay the cost of the Title Policy, the Survey, one half of all escrow fees, and recording relating to the instruments of conveyance contemplated herein. Purchaser shall pay any real estate transfer taxes, intangible fee, or tax, and one half of all escrow fees.

[Alternate Clause] Seller shall pay such Closing costs including, but not limited to, transfer, stamp, or documentary taxes. Purchaser shall pay for the costs of title insurance policies and Escrow fees.

[Alternate Clause] All costs relating to the Closing, other than fees payable to Purchaser's and Seller's respective legal counsel, and including, but without restriction, the cost of the title insurance policy and any transfer taxes shall be paid by Seller, and recording fees and sales taxes shall be paid by Purchaser; each of Purchaser and Seller shall be responsible for fees payable to their respective legal counsel.

14.2 Real Estate Brokerage Fees

Real Estate Broker fees will be provided for in a separate agreement between Seller and Broker. Purchaser shall have no liability for any real estate brokerage commission in connection with the acquisition of the Property.

[Alternate Clause] Seller and Purchaser represent and warrant each to the other that no broker was involved in the negotiations leading to the execution of this Agreement or brought it about either directly or indirectly.

[Alternate Clause] Seller and Purchaser each warrant to the other that each has dealt with no broker, salesman, finder, or consultant with respect to this Agreement or the sale contemplated herein except the Broker. All sums due Broker shall be paid in full by Seller. Except as provided above, each shall indemnify, protect, defend, and hold the other harmless from and against all claims, losses, costs, expenses, and damages (including attorney fees) resulting from a breach of the foregoing warranty.

Category 15 EMINENT DOMAIN AND RISK OF LOSS

15.1 Eminent Domain

In the event of the institution of any proceedings, judicial, administrative, or otherwise, relating to the taking of a portion of the Real Property by eminent domain, or condemnation, prior to closing, the Seller shall have the first right to terminate this Agreement, which right shall be exercised within fifteen (15) days after notice of condemnation or proposed taking is received by Seller, whereupon all deposits heretofore paid by the Purchaser shall be returned to the Purchaser, and the parties shall be released from any further obligations hereunder. In the event that the Seller does not elect to cancel this Agreement, then the Purchaser shall have the option, to be exercised within ten (10) days after the aforesaid fifteen (15) -day period, of cancelling this Agreement, in which event all deposits theretofore paid by the Purchaser shall be returned to the Purchaser and the parties shall be released of all further obligations hereunder, or the Purchaser shall elect to close this

transaction, in which event there shall be no reduction in the Purchase Price, except that Purchaser shall be entitled to receive the award as a result of such taking, except that Seller shall be entitled to such portion of the award for its damages between the date of the taking and the date of the Closing, assuming the taking occurred prior to the Closing, in which event the award shall be prorated.

15.2 Risk of Loss

Risk of loss to the Real Property or Personal Property or any portion thereof until the Closing shall be borne by Seller. In the event of damage to or destruction of the Real Property or Personal Property or any portion thereof by fire or other casualty prior to Closing, Seller shall have the option of repairing the damage or of rescinding this Agreement, in which event the deposits theretofore paid by Purchaser shall be returned to Purchaser and the parties shall be released and relieved of all further obligations hereunder.

[Alternate Clause] If the Premises or any part thereof shall be damaged or destroyed by fire or other casualty prior to the Closing, and such damage shall not have been repaired or reconstructed prior to Closing in a good and workmanlike manner to the reasonable satisfaction of Purchaser, Purchaser may, at its option, (a) receive the proceeds of any insurance payable in connection therewith, under Seller's insurance policy or policies, and thereupon remain obligated to perform this Agreement, or (b) terminate this Agreement and receive back any funds previously paid or deposited. Upon termination of this Agreement by Purchaser pursuant to this section, neither party shall thereafter be under any further liability to the other. Seller agrees to advise Purchaser of the present insurance coverage upon the property, to keep said policy or policies in full force and effect through the Closing Date, and to advise Purchaser promptly of any damage to the Premises by any loss or casualty.

Category 16 ASSIGNMENT, SUCCESSORS, AND HEIRS

Purchaser may assign this Agreement and the Purchaser's rights thereunder to any person or entity at any time.

[Alternate Clause] Purchaser may assign this Agreement and the Purchaser's rights thereunder to any person or entity at any time; however, such assignment shall not release Purchaser from any personal guarantees or recourse liabilities given by Purchaser to Seller unless Seller consents to such release in writing, which consent shall not be unreasonably withheld.

[Alternate Clause] This Agreement may not be assigned prior to the Closing Date by either party without the prior written consent of the other, except that Purchaser shall have the right to assign its interest in this Agreement to a limited partnership. When such assignee limited partnership assumes this Agreement, such an assignment shall relieve Purchaser of its obligations hereunder. Subject to the foregoing provisions, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Category 17 GENERAL CLAUSES

17.1 Benefit

This Agreement is for the benefit only of the parties hereto or their nominees, successors, beneficiaries, and assigns, and no other person or entity shall be entitled to rely hereon, receive any benefit herefrom, or enforce against any party hereto any provision hereof.

17.2 Binding Agreement

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns, and shall constitute the entire agreement among the parties.

17.3 Business Day

If any date herein set forth for the performance of any obligations by Seller or Purchaser or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday, or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post office are generally closed in the State of _____.

17.4 Confidentiality

(a) The parties agree that the terms of this Agreement and all information, documents, reports, and studies developed by either party in connection with the within transaction are strictly confidential and that they will make every effort to ensure that the provisions hereof and such information, documents, reports, and the like are not disclosed to any third party (including the press) without the other party's written consent.

(b) Neither the Private Placement Memorandum nor any documents relating thereto will contain statements about Seller or the Hotel unless Seller has previously reviewed such statements for accuracy. However, regardless of whether Seller does or does not review such statements, Seller will not be deemed a sponsor of the offering described in the Private Placement Memorandum, nor will Seller have responsibility for the preparation or review of the offering documentation, and the Private Placement Memorandum will so state.

17.5 Controlling Law

This Agreement shall be interpreted in accordance with the laws of the State of New York.

This Agreement shall be governed by and construed in accordance with the law of the State of New York.

17.6 Entire Agreement

This Agreement constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous oral agreements, understandings, representations, and statements are merged into this Agreement. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument.

[Alternate Clause] This Agreement may be executed in one or more counterparts, and all so executed shall constitute one contract, binding on all the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

17.6.1 Waiver. Either party hereto may, at its option, waive any performance by any other party required under the provisions of this Agreement by an instrument in writing.

[Alternate Clause] No modification or amendment of this Agreement shall be of any force or effect unless it is in writing and executed by both Seller and Purchaser.

17.7 Escrow Agent

This Agreement shall serve as escrow instruction subject to the escrow agent's usual conditions or acceptance where not contrary to any of the terms hereof.

[Alternate Clause] This Agreement shall serve as escrow instruction subject to the escrow agent's usual conditions or acceptance where not contrary to any of the terms hereof. Purchaser's Title Insurer shall be escrow agent for consummation of this transaction.

17.7.1 Escrow Fund. Each Seller and the Purchaser agree that Three Thousand Dollars (\$3,000) of the closing proceeds due Seller shall be held by Escrow Agent, in escrow, for a period not to exceed ninety (90) days from the date of Closing, which escrow monies shall be used to satisfy any liabilities and obligations of the particular Seller pursuant to this Agreement that were not known or could not have been known as of the date of Closing. As to any such liabilities or obligations, before Escrow Agent shall disburse any of such monies in payment of same, the Seller and Purchaser shall provide Escrow Agent with joint written instructions as to the disbursement of such funds.

17.8 Headings

The headings appearing in this Agreement are inserted only as a matter of convenience for reference purposes, and in no way define, limit, or describe the scope and intent of this Agreement or any paragraph hereof.

17.9 Hold Harmless

Seller agrees to indemnify and hold harmless Purchaser from and against all claims, damages, losses, and expense, including reasonable legal fees and other costs, arising from any and all liability, loss, or damage the Purchaser may suffer as a result of claims, demands, costs, or judgments against it arising from or in any way connected with any accident, action, or incident of whatever nature occurring during the period of Seller's ownership of said Premises; and Purchaser agrees to indemnify and hold harmless Seller from and against all claims, damages, losses, and expenses, including reasonable legal fees and other costs, arising from any and all liability, loss, or damage the Seller may suffer as a result of claims, demands, costs, or judgments against it arising from or in any way connected with any accident, action, or incident of whatever nature during the period of Purchaser's ownership of said Premises.

17.10 Litigation

In the event of litigation between the parties with respect to the Real Property, this Agreement, the performance of their obligations hereunder, or the effect of a termination under this Agreement, the losing party shall pay all costs and expenses incurred by the prevailing party in connection with such litigation, including reasonable attorney fees. Notwithstanding any provision of this Agreement to the contrary, the obligations of the parties under this Paragraph shall survive termination of this Agreement.

[Alternate Clause] In the event either party hereto is required to employ an attorney because of the default of the other party, then the defaulting party shall pay to the non-defaulting party court costs and reasonable attorney fees incurred in the enforcement of this Agreement.

17.11 Notices

Any notice or election that may be or is required to be given pursuant to the provisions of this Agreement shall be sufficiently served if sent by certified or registered U.S. Mails, postage prepaid, return receipt requested and addressed as follows:

As to Purchaser:

As to Seller:

17.11.1 Notice Deemed Served. Any properly mailed notice shall be deemed to have been served as of five (5) days after its posting for purposes of establishing that the sending party complied with this Agreement's applicable time limitations, but it shall not be binding on the addressee until actually received.

17.12 Recording

This Agreement shall not be recorded, nor shall any memorandum hereof or excerpt or summary hereof be recorded. Any violation of the preceding sentence shall automatically render this Agreement, and the rights and obligations of the parties hereunder, null and void.

17.13 Reference

Wherever reference is made herein to any party by name or designation, such reference shall be deemed to extend to and include the nominee, successors, and assigns of such party.

17.14 Severability

If any provision of this Agreement is held invalid, the validity of the remainder of the Agreement shall not be affected thereby.

17.15 Time of the Essence

Time is of the essence as to this Agreement.

17.16 Time of Termination of Offer

This offer shall be open for acceptance until _____, 199X. Acceptance shall be effected by delivery to Purchaser of a copy of this Agreement executed by Seller.

17.17 Currency

All amounts herein expressed in dollars shall be in the legal tender of the United States.

APPENDIX **3**

Management Contract Clauses

This appendix is a compilation of clauses from a number of actual management contracts. These clauses have been selected to provide a representative sample of the types of provisions included in a typical management contract. In addition to serving as a guide for an attorney drafting such an agreement, these clauses can help the parties negotiating the agreement by showing them how other contracts have been structured.

The clauses have been arranged topically into 11 different sections. In many cases, a number of differ-

ent clauses are contained under one title in order to provide the reader with optional or alternative language. At the beginning of each clause is an indicator showing the orientation of the clause. Clauses can be owner-oriented, operator-oriented, or neutral. This identification of orientation should allow the reader to select the clauses that best represent his interests. Finally, many of the clauses are followed by editorial notes that provide additional insight into the content of the clause.

Section 1 Preopening Management Services	A3-4	1.19 Monies Invested by Operator	A3-8
1.1 Preopening Services	A3-4	Section 2 Opening Date	A3-8
1.2 Payment of Preopening Fees	A3-5	2.1 Opening Date	A3-8
1.3 Reimbursement for Preopening Expenses	A3-5	Section 3 General Covenants of Owner and Operator	A3-10
1.4 Preopening Plan and Budgets	A3-5	3.1 Owner to Provide Supplies	A3-10
1.5 Owner's Approval of Preopening Plan and Budgets	A3-5	3.2 Owner Responsible for All Expenses	A3-10
1.6 Operator to Prepare Staffing and Wage Schedules	A3-6	3.3 Owner's Right of Inspection	A3-10
1.7 Operator to Assemble a Task Force of Experts	A3-6	3.4 Reserve for Replacement of Furniture, Fixtures, and Equipment	A3-10
1.8 Consultants	A3-6	3.5 Funding the Reserve for Replacement of Furniture, Fixtures and Equipment	A3-11
1.9 Operator to Hire Executive Staff	A3-6	3.6 Reserve for Structural Repairs	A3-12
1.10 Operator to Recruit and Train Staff	A3-6	3.7 Insufficient Reserves	A3-12
1.11 Operator to Perform Preopening Sales and Marketing	A3-6	3.8 Operator's Use of the Reserve Fund	A3-12
1.12 Inaugural Ceremonies	A3-7	3.9 Disposal of Furniture and Equipment	A3-12
1.13 Model Room	A3-7	3.10 Reserve Upon Termination	A3-13
1.14 Operator to Negotiate Loans	A3-7	3.11 Operator's Right of Offset	A3-13
1.15 Operator to Secure Licenses	A3-7	3.12 Owner to Indemnify Operator	A3-13
1.16 Operator to Perform Purchasing Services	A3-7	3.13 Operator to Indemnify Owner	A3-13
1.17 Operator to Supervise Delivery and Installation	A3-8	3.14 Operator Not Liable to Owner	A3-14
1.18 Soft Opening Period	A3-8	3.15 Noncompetition Covenant	A3-14
		3.16 Arbitration	A3-15
		3.17 Legal Costs	A3-15

3.18	Owner Shall Not Pledge Credit of Owner	A3-15	4.33	Contesting Government Regulations	A3-27
3.19	Confidential Information	A3-15	4.34	Operator's Bank Accounts	A3-27
3.20	Owner's Right to Mortgage Property	A3-16	4.35	Transfer of Funds to Owner	A3-28
3.21	Operator to Periodically Meet With Owner	A3-16	4.36	Owner to Furnish Working Capital	A3-28
3.22	Owner Responsible for Debts, Liabilities, and Expenses	A3-17	4.37	Repayment of Funds Advanced by Operator	A3-28
Section 4 Operator's Duties		A3-17	4.38	Operator to Provide Cash Management	A3-29
4.1	Operator's Overall Duties and Responsibilities	A3-17	4.39	Insurance Coverage	A3-29
4.2	Operator's Duties—Maximization of Profits	A3-17	4.40	Types and Amounts of Insurance	A3-29
4.3	Operator to Maintain a Specific Level of Quality	A3-18	4.41	Insurance Policies	A3-30
4.4	Operator to Advise Owner of Majority Policy Matters	A3-18	4.42	Disputes Over Insurable Value	A3-30
4.5	Operator to Have Absolute Operational Control	A3-19	4.43	Insurance Claims	A3-30
4.6	Operator to Comply With Franchise Requirements	A3-19	4.44	Owner to Assume Liability for Inadequate Insurance	A3-30
4.7	Operator to Comply With Terms of Mortgage	A3-19	4.45	Owner and Operator Waive Claims Against Each Other	A3-31
4.8	Operator to Establish Prices	A3-20	4.46	Operator to Keep Books of Accounts	A3-31
4.9	Operator to Establish Credit Policies	A3-20	4.47	Storage and Inspection of Books and Records	A3-31
4.10	Operator's Collection Practices	A3-20	4.48	Books and Records Upon Termination	A3-31
4.11	Operator to Submit Annual Plan	A3-20	4.49	Operator's Monthly Financial Reports	A3-32
4.12	Operating Budget	A3-20	4.50	Operator's Annual Financial Reports	A3-32
4.13	Capital and Equipment Budgets	A3-21	4.51	Operator to Prepare Additional Reports	A3-32
4.14	Submission of Annual Plan to Owner	A3-21	4.52	Annual Audit	A3-32
4.15	Settlement of Disputes Regarding the Annual Plan	A3-21	4.53	Operator to Pay All Bills	A3-33
4.16	Operator Must Comply With Annual Plan	A3-22	4.54	Operator to Provide Centralized Accounting	A3-33
4.17	Operator Does Not Guarantee Financial Projections	A3-23	4.55	Inventory	A3-34
4.18	Minimum and Maximum Budget Expenditures	A3-23	4.56	Internal Audits	A3-34
4.19	Revised Operating Budgets	A3-23	4.57	Legal Actions for Guest or Tenant Default	A3-34
4.20	Duty of Operator to Supervise Hotel Operations	A3-23	4.58	Legal Actions Against the Property	A3-34
4.21	Cost of Supervisory Services	A3-23	4.59	Operator to Provide Advertising, Promotion, and Sales	A3-35
4.22	Cost of Special Services	A3-24	4.60	Operator to Prepare a Marketing Plan	A3-35
4.23	Duty of Operator to Consult With Owner	A3-24	4.61	Operator to Utilize Franchisor's Marketing and Reservation Services	A3-35
4.24	Operator to Enter Into Leases	A3-24	4.62	Operator's Centralized Marketing and Reservations	A3-35
4.25	Operator to Enter Into Service Contracts	A3-25	4.63	Joint Advertising and Sales Promotion	A3-36
4.26	Operator to Enter Into Entertainment Agreements	A3-25	4.64	Operator's Regional Sales Offices	A3-36
4.27	Purchasing by Operator	A3-25	4.65	Operator's Credit Card System	A3-36
4.28	Purchasing From Operator	A3-26	4.66	Operator's Logotype and Symbol	A3-36
4.29	Repairs, Replacements, and Improvements	A3-26	4.67	Public Statements by Owner and Operator	A3-37
4.30	Cost of Maintenance and Repairs	A3-26	4.68	Operator to Provide Centralized Group Services	A3-37
4.31	Operator to Provide Licenses and Permits	A3-26	4.69	Cost of Group Services	A3-37
4.32	Compliance With Government Rules and Regulations	A3-27	4.70	Emergencies	A3-38
			4.71	Taxes and Assessments	A3-38
			Section 5 Management Fees		A3-38
			5.1	Management Fees—General	A3-38
			5.2	Amount of Management Fees—Basic Fee	A3-38

MANAGEMENT CONTRACT CLAUSES

5.3	Amount of Management Fees— Incentive Fee	A3-38	10.4	Appointment of a Receiver for Operator	A3-53
5.4	Payment of Management Fees	A3-39	10.5	Operator's Assignment for Creditors	A3-53
5.5	Disputes Over Management Fees	A3-39	10.6	Operator Causes Licenses to Be Revoked	A3-54
5.6	Management Fee Definitions	A3-40	10.7	Operator Causes Franchise to Be Terminated	A3-54
Section 6	Employment Practices	A3-41	10.8	Operator Not Active in Hotel Business	A3-54
6.1	Operator's Personnel Duties	A3-41	10.9	Operator Fails to Provide Chain Services	A3-54
6.2	Employee Training	A3-41	10.10	Acquisition of Operator by Criminal	A3-54
6.3	Employee Conduct	A3-42	10.11	Termination of Operator for Poor Operating Performance	A3-54
6.4	Employees Are Employed by Owner	A3-42	10.12	Termination by Owner Upon Payment of Termination Fee	A3-57
6.5	Operator to Negotiate Labor Contracts	A3-42	10.13	Owner Idemnifies Operator After Termination	A3-58
6.6	Limits on Employee Compensation	A3-42	10.14	Termination by Operator	A3-58
6.7	Limits on Employment Contracts	A3-43	10.15	Owner's Breach of Contract	A3-59
6.8	Selection of General Manager	A3-43	10.16	Owner's Bankruptcy	A3-59
6.9	Replacement of General Manager	A3-43	10.17	Appointment of a Receiver for Owner	A3-59
6.10	Owner May Not Rehire General Manager	A3-43	10.18	Owner's Assignment for Creditors	A3-59
6.11	Salary for General Manager	A3-43	10.19	Owner Causes Licenses to Be Revoked	A3-59
6.12	Fringe Benefits for General Manager	A3-44	10.20	Owner Fails to Provide Adequate Funds	A3-60
6.13	Owner May Not Give Orders to Hotel Employees	A3-44	10.21	Owner Fails to Compensate Operator	A3-60
Section 7	Trade Names	A3-44	10.22	Owner's Default Under Ground Lease or Mortgage	A3-60
7.1	Use of Trade Name	A3-44	10.23	Owner Not in Compliance With Municipal Laws	A3-60
Section 8	Successors and Assigns	A3-44	10.24	Condemnation of Property	A3-60
8.1	Assignment by Operator	A3-44	10.25	Owner Fails to Restore After Casualty	A3-60
8.2	Assignment by Owner	A3-45	10.26	Owner Fails to Secure Financing	A3-60
8.3	Acceptable Purchaser	A3-45	10.27	Owner Interferes in Operation	A3-60
8.4	Right of First Refusal	A3-46	10.28	Termination by Operator for Any Reason	A3-61
8.5	Future Owners and Operators	A3-47	10.29	Operator May Not Terminate Because of Foreclosure	A3-61
8.6	Assignment as Collateral Security	A3-47	10.30	Termination by Mutual Consent	A3-61
8.7	Subordination to Mortgages	A3-47	10.31	Termination Because Hotel Does Not Open	A3-61
Section 9	Condemnation, Damage, or Destruction	A3-48	10.32	No Default During Arbitration	A3-61
9.1	Partial Condemnation	A3-48	10.33	Payment of Accounts After Termination	A3-61
9.2	Use of Award for Partial Condemnation	A3-48	10.34	Operator to Remove Property After Termination	A3-62
9.3	Total Condemnation	A3-48	10.35	Operator to Deliver Property to Owner After Termination	A3-62
9.4	Award for Total Condemnation	A3-49	10.36	Inventory at Termination	A3-63
9.5	Taking for Temporary Use	A3-49	10.37	Operator to Assign Licenses at Termination	A3-63
9.6	Owner's Options After Fire or Casualty	A3-50	10.38	Cooperation During Termination	A3-63
9.7	Termination for Total Destruction	A3-50	10.39	Use of Operating Supplies on Termination	A3-63
9.8	Uninsured Casualty	A3-51	Section 11	General Provisions	A3-63
9.9	Payment to Operator for Casualty Termination	A3-51	11.1	Ownership of Hotel	A3-63
9.10	Payment to Operator During Restoration	A3-51	11.2	Qualification of Operator	A3-64
9.11	Operator's Response to Casualties, Accidents, and Claims	A3-52			
9.12	Restoration of Hotel	A3-52			
Section 10	Termination Rights	A3-52			
10.1	Operator's Breach of Contract	A3-52			
10.2	Operator's Willful Misconduct or Fraud	A3-53			
10.3	Operator's Bankruptcy	A3-53			

11.3 Engagement of Operator	A3-64	11.19 Partial Invalidity	A3-67
11.4 Furniture, Fixtures, and Equipment ...	A3-64	11.20 Binding Effect	A3-67
11.5 Licenses	A3-64	11.21 Notices	A3-67
11.6 Franchise	A3-64	11.22 Waiver	A3-67
11.7 Operator's Flight to Quiet Enjoyment	A3-64	11.23 Construction of Additional Facilities	A3-68
11.8 Initial Operating Term	A3-65	11.24 Operator Not Responsible for Owner's Obligation	A3-68
11.9 Renewal Terms	A3-65	11.25 Operator to Review Financing Instruments	A3-68
11.10 Delegation of Authority	A3-65	11.26 Modification of Agreement for Refinancing	A3-68
11.11 Establishment of an Agency Relationship	A3-65	11.27 Exculpation	A3-68
11.12 Operator as Independent Contractor ..	A3-66	11.28 Real Estate Broker Indemnification ...	A3-69
11.13 Use of Property	A3-66	11.29 Consumer Price Index Adjustments	A3-69
11.14 Nature of Agreement	A3-66	11.30 Freedom of Action	A3-69
11.15 Operator Does Not Guarantee Profits	A3-66	11.31 Owner's and Operator's Use of the Hotel	A3-69
11.16 Reliance on Operator's Projections	A3-66	11.32 Employee Use of the Hotel	A3-70
11.17 Timely Consent by Parties	A3-66		
11.18 Severability	A3-67		

Section 1 PREOPENING MANAGEMENT SERVICES

1.1 Preopening Services—General

NEUTRAL In general, Operator will perform all activities necessary or reasonably required to open the Hotel for business, to see that the Hotel is properly staffed and equipped, and to see that there is in place, well prior to the Opening Date, a coordinated program for selling the room facilities and services of the hotel to the public.

NOTE: The contract should set forth in detail the preopening duties and responsibilities of the Operator.

[*Alternate Clause*] As part of the Preopening Services, Operator will:
OWNER

- A. Recruit, train, direct, and employ an initial staff for the Hotel;
- B. Initiate and conduct such promotion, publicity, and other like programs as Operator may deem necessary to attract guests to the Hotel on and after the Formal Opening Date;
- C. Negotiate for and enter into agreement for leases, licenses, and concessions for stores, office space, and lobby space at the Hotel, in Owner's name subject to Owner's prior written approval, as agent for Owner;
- D. Apply for, process, and take all necessary steps to procure, in Owner's name or in name of an operator or an individual on its behalf or any combination thereof as may be required by the issuing authority, all licenses and permits required for the operation of the Hotel and its related facilities, including, but not limited to, liquor and restaurant licenses;
- E. Purchase or contract for the purchase of all initial inventories and operating supplies, which shall be paid for out of the Initial Working Capital furnished by Owner;
- F. Assist in coordinating the efforts and activities of the architect, interior designer, and all other consultants retained by Owner in connection with the planning and development of the Hotel;

- G. Supervise the Hotel's sales staff and conduct the sales and marketing efforts through its sales and marketing staff as Operator shall deem appropriate for the Hotel;
- H. Do all other things Operator deems necessary for the proper opening of the Hotel, including, but not limited to, arranging for suitable inaugural ceremonies; and
- I. Coordinate all Preopening Services.

1.2 Payment of Preopening Fees

OPERATOR Owner shall pay Operator a fee equivalent to two and one-half (2½) times Operator's direct personnel costs, including related fringe benefits and payroll costs for those personnel who are directly engaged in performing Preopening Services for the time such personnel are performing such services (excluding (a) personnel at other hotels managed by Operator and from Operator's corporate offices who are temporarily assigned to the Hotel to provide preopening and opening assistance in connection with the opening of the Hotel to the general public ("Preopening Personnel"), and (b) the Operator personnel assigned to the Hotel on a permanent basis in order to perform the services provided for under this clause ("Permanent Employees")). "Direct personnel costs" pursuant to this Section shall be based on Operator's mean grade salary level for personnel in each job classification, which may change from time to time; provided however, that Operator agrees to assign personnel without regard to their actual salary level.

1.3 Reimbursement for Preopening Expenses

OPERATOR Preopening expenses incurred or paid by Operator, not to exceed One Hundred Fifty Thousand Dollars (\$150,000), shall be promptly reimbursed by Owner upon receipt of a statement of account for such expenses.

1.4 Preopening Plan and Budgets

NEUTRAL On or before _____, 19___, Operator shall submit for Owner's approval, not to be unreasonably withheld, a preopening budget ("Preopening Budget") to Owner. Such budget shall not exceed One Hundred Fifty Thousand Dollars (\$150,000).

1.5 Owner's Approval of Preopening Plan and Budgets

NEUTRAL Within thirty (30) days from the date of submission of the initial Preopening Plan to Owner or submission of any additional information requested by Owner in connection with its review of the initial preopening Plan, Owner shall submit to Operator, in writing and in reasonable detail, its objections to and comments on the initial Preopening Plan. A failure to do so shall be deemed an approval thereof by Owner. If Owner and Operator are not able to reach an agreement concerning any modifications to the initial Preopening Plan resulting from Owner's objections and comments within sixty (60) days after such comments and objections are received by Operator (it being expressly understood that the inability of Owner and Operator to agree on such modifications shall not be subject to arbitration), then this Agreement and the Management Agreement shall terminate, unless Operator, by notice given to Owner prior to such date, shall elect to continue them in full force and effect for such period or periods of time, not to exceed forty-five (45) days from the date of Operator's notice as Operator shall, in its sole discretion, determine by so stating in said notice.

1.6 Operator to Prepare Staffing and Wage Schedules

OWNER Prior to the Opening, Operator will prepare for Owner an organization chart of Operator's corporate personnel who will perform the services to be provided by Operator under this Agreement; a proposed organization chart of job positions for the people to be employed by Operator and Owner in connection with the operation of the Hotel under this Agreement; and a preliminary staffing plan providing positions, schedules of employment, and average salaries or wages of persons to be employed by Operator and Owner in connection with the operation of the Hotel under the Management Agreement ("Staffing Plan").

[Alternate Clause] OWNER Prior to the Opening, Operator will prepare staffing tables, employment time tables, hiring and training guidelines for employees, and other programs relating to staffing of the Hotel.

1.7 Operator to Assemble a Task Force of Experts

OWNER The Operator will provide for a task force of experts and personnel to supervise and assist with certain Preopening and Opening operations.

1.8 Consultants

NEUTRAL Pursuant to the services provided by Operator in this Agreement, Owner will not be required to hire separate, outside consultants for special systems (including Hotel computer systems and the Hotel telephone system) and front desk layouts.

Operator will assist Owner in determining what outside consultants are necessary for the design of the project.

Owner will submit to Operator a list of consultants proposed to be used for the design of project, which shall include the names of architect; structural, mechanical, and electrical engineers; interiors and lighting designers; food service and laundry designers; life safety, elevator, and audio-visual consultants; landscaping designer; and any other design consultants required. Operator will either approve, if acceptable, such consultants or suggest alternate consultants. All consultants to be used for the design of the project must be approved by Operator. Such approval shall not be unreasonably withheld.

1.9 Operator to Hire Executive Staff

OWNER At an appropriate time prior to the Opening, Operator will hire and retain, on behalf of Owner, a General Manager, director of sales, head housekeeper, and other department heads, and thereafter, with the assistance of such department heads, Operator will engage on behalf of Owner a full staff of employees for the Hotel.

1.10 Operator to Recruit and Train Staff

OWNER Prior to the Opening, Operator will recruit, train, direct, and employ an initial staff for the Hotel in the name of and on behalf of Operator or a wholly owned subsidiary of Operator.

1.11 Operator to Perform Preopening Sales and Marketing

OWNER Operator will prepare and coordinate, on behalf of the Hotel, preopening advertising, public relations, and sales budgets, and may hire outside advertising and public relations firms, and will manage and coordinate all activities so as to develop a cohesive and coordinated preopening program for advertising, public relations, and sales, all subject to Owner's approval.

Such sales and marketing services will include the following:

- A. Developing a mission statement for the Hotel;
- B. Developing three-year revenue goals for major business segments of the Hotel;
- C. Developing direct sales plans for the Hotel, including backlog goals, room rate guidelines, and sales strategies;
- D. Developing a corporate rate program for the Hotel;
- E. Developing catering market segment and sales goals;
- F. Preparing and recruiting a sales organization necessary to support the goals and objectives developed in items A through D;
- G. Developing a monthly reporting system to monitor sales progress;
- H. Developing appropriate sales promotion strategies; and
- I. Developing preopening plans for advertising, public relations, and marketing.

[*Alternate Clause*] OPERATOR will, on behalf of Owner, hire and retain sales personnel and establish a sales program for the purpose of "selling" the rooms of the Hotel and the use of meeting rooms and other Hotel facilities, prior to the opening of the Hotel.

1.12 Inaugural Ceremonies

OWNER In cooperation with Owner, Operator will arrange for suitable opening and/or inaugural ceremonies.

1.13 Model Room

OPERATOR Owner shall construct, at Owner's expense and Operator's direction, a model room or rooms in the city in which the Hotel is to be located or at some other site mutually acceptable to Owner and Operator. Said model room or rooms shall be constructed pursuant to those sections of Operator's Project Standards Manual that Operator deems appropriate, and shall be used for marketing purposes and to illustrate the Hotel guest rooms, the concept, the detail of construction, and the furniture, fixtures, and equipment (F,F&Es) therein.

1.14 Operator to Negotiate Loans

OWNER In cooperation with Owner, Operator will negotiate leases, licenses, and concession agreements for stores, office space, and lobby space at the Hotel (exclusive of retail space adjacent to the Hotel), subject to Owner's approval. All leases, licenses, or concessions shall be in Owner's name and executed by officers of Owner on its behalf.

1.15 Operator to Secure Licenses

OWNER Operator will assist Owner in securing all licenses necessary to open and operate the Hotel, including, but not limited to, occupational licenses, liquor licenses, Health Department licenses, and the like.

1.16 Operator to Perform Purchasing Services

OWNER Operator will negotiate contracts for the design, specification, and purchase of Operating Equipment, Furnishings and Equipment, and Consumable Supplies. Such contracts shall be subjected to the approval of Owner.

1.17 Operator to Supervise Delivery and Installation

OWNER Operator will supervise and coordinate the delivery, installation, and acceptance of Operating Equipment, Furnishings and Equipment, and Consumable Supplies.

1.18 Soft Opening Period

NEUTRAL If agreed upon by Operator and Owner there may be a period during which the Hotel is open to paying guests, although not on a substantially fully operational basis (the "Soft Opening Period"). Any operation of the Hotel during the Soft Opening Period, which shall not exceed three (3) months in duration, shall be treated as part of the Preopening Period, and any excess of Operating Expenses and Other Expenses over Total Revenue during such period shall not be considered in the determination of Net Operating Profit for any Fiscal Year and shall be distributed to Owner pursuant to the provisions of this Agreement.

1.19 Monies Invested by Operator

NEUTRAL Operator shall lend to Owner upon the terms and conditions hereinafter described the sum of Eight Hundred Thousand Dollars (\$800,000), which represents a part of the estimated cost of Preopening Services (exclusive, however, of (a) all costs in connection with obtaining all licenses and permits, including attorney and consultants fees, and (b) the fee payable to Operator in accordance with the provisions of this Agreement in relation to partial operations prior to the Opening Date), according to the following schedule:

- A. Ten percent (10%) thereof within thirty (30) days of the date the construction loan is committed;
- B. Fifteen percent (15%) thereof upon notice to Owner from Operator on the earlier of (i) three (3) months after the construction loan is committed or (ii) fifteen (15) months prior to the Estimated Opening Date (as defined hereinabove);
- C. Twenty-five percent (25%) thereof upon notice to Owner from Operator twelve (12) months prior to the Estimated Opening Date; and
- D. Fifty percent (50%) thereof upon notice to Owner from Operator (6) months prior to the Estimated Opening Date.

Owner shall execute in favor of Operator a promissory note in the Original principal amount of Eight Hundred Thousand Dollars (\$800,000) with interest thereon at the prime rate as set by the parties agreed upon bank from time to time, such interest to accrue on the unpaid balance until paid. The note shall be due and payable in one balloon installment five (5) years following the Opening Date of the Hotel but shall allow Owner to pre-pay without penalty. Owner shall execute a deed of trust securing the construction-term loan. Operator agrees to subordinate its deed of trust to the construction-term loan upon request to Owner.

Section 2 OPENING DATE

2.1 Opening Date

NEUTRAL The Opening Date is the date of the formal opening of the Hotel and shall be the earliest date after the Completion Date on which each of the following criteria has been met, as thereupon confirmed by Operator's issuance of a Certificate of Operational Readiness in the form annexed hereto as Exhibit E [omitted]:

- A. Eighty-five percent (85%) of guestrooms are permanently available for sale;
- B. Lobby area is equipped and functional;
- C. Front desk is equipped and functional;
- D. Food and beverage outlets are equipped and functional;
- E. Kitchens are equipped and functional;
- F. Elevators and escalators are installed and operating;
- G. Public spaces, banquet rooms, and meeting rooms are equipped and functional;
- H. Telephone Department is equipped and functional;
- I. Parking facilities are available;
- J. Heat, light, power, and air conditioning are available and operating;
- K. Laundry and Valet (dry cleaning) Departments are available and functional;
- L. Adequate Room status and Front Office systems equipment are installed and functional;
- M. Cashiering equipment is installed and functional;
- N. All necessary licenses and permits (including, without limitation, liquor licenses) required for the operation of the Hotel have been obtained;
- O. Necessary operating inventories are on hand;
- P. Necessary inspections by regulatory body have been completed and approvals have been received;
- Q. Municipal Statement of Occupancy has been issued (temporary or permanent);
- R. All required insurance coverage is in force; and
- S. The Complex is capable of rendering deluxe, first-class service to guests on a substantially fully operational basis.

[Alternate Clause]
NEUTRAL The Opening Date is the date of the formal opening of the Hotel. It shall occur on a date to be specified by Operator with the approval of Owner after Operator deems the Hotel to be substantially completed and the Furniture and Equipment and Operating Equipment have been substantially installed therein, all in accordance with the provisions of this Agreement, after all licenses and permits required for the operation of the Hotel (including a certificate of occupancy and liquor and restaurant licenses) have been obtained, adequate working capital has been furnished by Owner in accordance with this Agreement, and the Hotel has been accepted by Operator and is ready to render first-class service to guests on a fully operational basis. Operator may, without accepting the Hotel and with Owner's consent, conduct partial operations of the Hotel prior to the Opening Date.

[Alternate Clause]
NEUTRAL The date for the opening of the Hotel to the public (the "Opening Date") shall be the date specified by Owner in a written notice to Operator (given at least thirty (30) days prior to the Opening Date), provided that in no event shall the Opening Date occur prior to the date on which all of the following conditions shall have been satisfied: (a) The construction of the Hotel shall have been substantially completed in accordance with the Final Plans, (b) the installation of the Furniture and Equipment and Operating Supplies in the Hotel shall have been substantially completed in accordance with the provisions of this Agreement, and (c) all certificates, approvals, licenses, and permits required for the legal use and operation of the Hotel, including liquor and restaurant licenses and certificates of occupancy, shall have been obtained from the appropriate governmental authorities. The parties hereto agree to execute an Addendum to this Agreement setting forth the Opening Date, at such time that the Opening Date is finally determined, and a counterpart of such Addendum shall be attached to and become a part of each counterpart of this Agreement.

Section 3 GENERAL COVENANTS OF OWNER AND OPERATOR

3.1 Owner to Provide Supplies

OPERATOR Owner agrees to provide, at its expense, sufficient initial inventories of operating supplies for the uninterrupted and efficient operation and maintenance of the Property.

3.2 Owner Responsible for All Expenses

OPERATOR Owner shall be solely liable for the costs and expenses of maintaining and operating the property and shall pay all costs and expenses of maintaining, operating, and supervising the operation of the property, including, without limitation, the salaries of all of its personnel.

NOTE: The preceding provision makes the agreement a management contract rather than an operating lease.

3.3 Owner's Right of Inspection

OWNER Duly authorized representatives of Owner shall have the right to enter the Hotel upon reasonable notice at all reasonable times during the Operating Term for the purpose of inspecting the Hotel. Such inspections shall be done with as little disturbance to the business of the Hotel as possible.

All books, accounts, and records maintained for the operation of the Hotel (whether maintained at the Hotel or elsewhere by Operator) shall be open at all reasonable hours upon reasonable notice for inspection, examination, copying, and audit by Owner or any qualified accountant experienced in Hotel matters selected by Owner for that purpose, at Owner's expense.

Owner, brokers, and prospective tenants, managers, and/or purchasers shall have the right to enter the Hotel at all reasonable times upon reasonable notice during the Operating Term, for the purpose of inspecting the Hotel; but the same shall be done with as little disturbance to the business of the Hotel as possible.

[Alternate Clause]
OPERATOR Owner or its agents shall have the right to free access to the Hotel and all of its facilities at all reasonable times, but only for the purpose of inspecting or having others inspect or view the premises either to determine its condition or as prospective purchasers, investors, or lenders. Any concern, comment, or question Owner may have during or after any such visit shall only be directed to Operator or its specified representatives, and not to any other Hotel Employees. In all respects, Owner shall seek to minimize any disruptions to the operation of the Hotel resulting from its access thereto.

[Alternate Clause]
OPERATOR Owner may consult only with the General Manager, or if he is unavailable, the manager on duty, concerning any aspect of the management of the Hotel by Operator.

[Alternate Clause]
OWNER Owner may at any time converse with the General Manager or Operator's Vice-President in charge of the Hotel regarding any subject, and Operator shall instruct them to disclose fully to Owner upon Owner's request all information regarding the operation of the Hotel.

3.4 Reserve for Replacement of Furniture, Fixtures, and Equipment

NEUTRAL Owner shall establish and maintain a separate account to be known as "Reserves for Capital Improvements and Replacements of and Additions to Furniture, Fixtures, and Equipment," for use solely for capital improvements and replacement of, and additions to, furniture and equipment so as to maintain the Hotel in a first-class condition.

[Alternate Clause] Operator shall establish one (1) interest-bearing account (the "Replacement Fund") for use in connection with the Hotel, for the benefit of Owner, with a bank selected by Operator and approved by Owner. The monies from time to time included in the Replacement Fund shall be the property of Owner and shall be kept separate and apart from the Operating Accounts. Operator shall have the sole and exclusive power to designate the persons authorized, by manual or facsimile signature, to withdraw funds from the Replacement Fund shall be excluded from Gross Revenues and in computing Gross Operating Profit for any period and shall remain part of the Replacement Fund. To the extent Operator shall be required to pay any income taxes on the income as a fiduciary or otherwise, the same shall be payable out of such Replacement Fund.

NEUTRAL

NOTE: If operator receives an incentive fee calculated on the basis of net income less a Reserve for Replacement, then part of the Reserve has actually been funded by the operator. This point becomes important when the Operating Agreement terminates.

3.5 Funding the Reserve for Replacement of Furniture, Fixtures and Equipment

NEUTRAL During each fiscal year (and proportionately for any fraction thereof), there shall be reserved and deducted in the determination of adjusted Gross Operating Profit an amount equal to the following percentages of Gross Operating Income: one and one-half percent (1.5%) in the second and third full fiscal year and two percent (2%) in any later years until the amount reserved for the replacement of furniture, fixtures, and equipment equals One Thousand Dollars (\$1,000) multiplied by the number of rooms in the Hotel. After the amount reserved equals this sum, no further amount will be reserved, except that as expenditures are made they will be replaced at the two percent (2%) rate.

NOTE: The objective for funding a reserve for replacement of FF&E is to accumulate a sufficient amount for required replacements, but not so much as to create an excessive balance. Most formulas are based on a percentage of total revenue ranging from two to five percent (2% to 5%).

[Alternate Clause] Funds shall be paid from the Operating Accounts into the Replacements Fund for each Monthly Accounting Period of the Operating term in the following amounts:

NEUTRAL

- A. An amount equal to one percent (1%) of the Gross Revenues of the Hotel for each full Monthly Accounting Period during (i) the Fractional Year in which the Effective Date occurs, if the Effective Date does not occur on the first day of a Fiscal Year, and (ii) the first full Fiscal Year of the Operating Term;
- B. An amount equal to two percent (2%) of the Gross Revenues of the Hotel for each Monthly Accounting Period during the second full Fiscal Year of the Operating Term; and
- C. An amount equal to three percent (3%) of the Gross Revenues of the Hotel for each Monthly Accounting Period of the term of this Agreement following the end of the second full Fiscal Year of the Operating Term.

Notwithstanding the foregoing, no such payment shall be made to the extent that it would cause the balance in such fund to exceed the sum of Three Thousand Dollars (\$3,000) per room for the Hotel. Operator shall be entitled to withdraw from such Replacement Fund to pay for assets in the Equipment Budget and the Capital Expenditures Budget. The items so replaced or added shall be and become, forthwith upon acquisition and installation and without further act or action, the property of Owner.

[Alternate Clause] For each Fiscal Year, an annualized amount initially fixed at ten percent (10%) of the original installed cost of the Furnishings and Equipment shall be set aside for the reserve for replacement of said Furnishings and Equipment. However, whenever Operator shall, from

NEUTRAL

time to time, determine that the replacement value of the Furnishings and Equipment has increased to a degree that makes it necessary to increase the said deduction in order to preserve the standards of the Hotel, Operator shall be entitled to obtain an independent appraisal of the said replacement value, the cost of which appraisal shall be an operating expense, and the amount of the deduction hereunder shall thereafter be fixed at ten percent (10%) of the replacement value as so determined. The said deduction shall be made by a monthly charge equal to one twelfth ($1/12$) of the annualized amount determined as above.

3.6 Reserve for Structural Repairs

NEUTRAL Operator shall establish, in respect of each Fiscal year during the term of this Agreement, a reserve cash amount from which shall be drawn funds for structural or extraordinary equipment repairs, replacement, or maintenance at the discretion of Owner. During each Fiscal Year of this Agreement, funds shall be transferred into the Structural Component Reserve in Accordance with the following percentages: (a) None (0%) for all Fiscal Years through and including the Fiscal Year in which the Renovation Program is completed; and (b) One half of one percent (0.5%) in each full Fiscal Year thereafter.

3.7 Insufficient Reserves

NEUTRAL The percentages for the Replacement Fund described hereinabove are estimates. If, in good faith, Operator believes, at any time during the term of this Agreement, that such percentages have become excessive given the needs of the Hotel, such percentages shall be reduced at the option of Owner. On the other hand, if, in good faith, Operator decides that these percentages may not be sufficient to keep the Replacement Fund at the levels necessary to make the expenditures required for the Hotel as a high quality, first-class facility, and if the Equipment Budget and Capital Expenditures Budget prepared in good faith by Operator exceeds the available funds in the Replacement Fund, Owner shall in good faith consider reasonable proposals made by Operator, in keeping with the need to maintain the position of the Hotel in its competitive geographical market. Owner will have final say in any change to the amounts specified.

3.8 Operator's Use of the Reserve fund

OPERATOR On or after the Formal Opening Date and during each Fiscal Year, Owner will make available to Operator, within thirty (30) days after receipt of Operator's request, for capital improvements and replacements of and additions to furniture and equipment, from the reserve account established therefor, the amount provided in the Annual Capital Budget therefor.

[Alternate Clause]
OPERATOR Any expenditure for replacement, substitution, and additions during each fiscal year may be made by Operator without Owner's consent up to the then-remaining balance in such reserve fund.

3.9 Disposal of Furniture and Equipment

OWNER It is expressly understood that nothing contained in this Agreement shall be construed to give Operator any right to dispose of furniture, furnishings, fixtures, equipment, machinery, or any other personal property used in the operation of the Hotel without the prior written approval of Owner.

However, if such disposal is in accordance with the Annual Plan approved by Owner, prior written approval of Owner shall not be required.

3.10 Reserve Funds Upon Termination

OPERATOR Any amounts remaining in the Reserve upon termination of this Agreement, less (a) the cost to complete any projects which have been previously committed and (b) aggregate deposits to the Reserve of proceeds from sale(s) of FF&E, shall be included in the computation of Total Revenue for the sole purpose of computing Incentive Earnings in the year of termination.

3.11 Operator's Right of Offset

OPERATOR Operator shall have the right at any time, but not the obligation, to withdraw from the Agency Account any amounts owed by Owner to Operator that are not paid by Owner in accordance with the terms hereof, but no failure or forbearance by Operator to deduct any such amounts shall be or shall be deemed to be a waiver of Operator's rights to deduct such amounts subsequently or to collect such amounts from Owner in any other manner available to Operator hereunder or at law or in equity.

3.12 Owner to Indemnify Operator

OPERATOR Owner shall indemnify and hold operator harmless from all liability, loss, damage, cost, or expense relating to, arising, or incurred by reason of or in connection with the operation of the Hotel, including any act or omission, negligent, tortious, or otherwise, of any agent or employee of Operator or its Affiliates unless such act of omission constitutes fraud, gross negligence, or willful misconduct. Owner shall, at Owner's sole cost and expense and at Operator's request or upon Operator's demand, assume the defense of any legal proceeding arising out of the allegation of any such act or omission.

NOTE: Both owners and operators usually seek some form of indemnity from the other party. The key phrases in the preceding clause are "gross negligence" and "willful misconduct," which limit the extent of the provision. The use of the phrase "negligence," (as opposed to "gross negligence") would limit this clause even further.

[Alternate Clause]
OWNER Notwithstanding the foregoing, Owner shall not be required to indemnify Operator against damages suffered as a result of gross negligence or intentional or willful misconduct on the part of Operator, its agents, or its employees, or on the part of any agents or employees selected or engaged Operator on the account of Owner.

The indemnification provided by this provision shall not extend to any liabilities or claims of Owner that may arise out of the breach, intentional or otherwise, of this Agreement by Operator.

No recovery under this indemnification provision will be allowed if the liability or claim of Operator has been paid in full, or if, and to the extent that, it has been paid in part, by any insurance maintained by Owner or Operator.

3.13 Operator to Indemnify Owner

OWNER Operator shall indemnify and hold harmless Owner from all liability, loss, damage, cost, or expense (including, without limitation, attorney fees and expenses) caused by Operator's breach of this Agreement, actions outside the scope of this Agreement, gross negligence, willful misconduct, fraud, or breach of trust, whether during or after the term of this Agreement. Operator's duty to indemnify Owner shall be binding upon all successors and assigns of Operator. In case of any action, suit, or proceeding brought against Owner with respect to which Owner is entitled to indemnification pursuant to this provision, Owner will notify Operator of such action, suit, or proceeding, and of the extent to which Owner is to be indemnified. Operator may, and upon Owner's request will, at Operator's expense,

defend such action, suit, or proceeding, or cause the same to be defended by counsel designated by Operator and approved by Owner.

3.14 Operator Not Liable to Owner

OPERATOR Operator shall not, in the performance of this Agreement, be liable to Owner for any action or omission, negligent, tortious, or otherwise, of any agent or employee of Operator or its Affiliates, unless its act or omission constitutes fraud, gross negligence, or willful misconduct and the damages resulting therefrom are not covered by insurance that Operator is required to maintain hereunder.

[Alternate Clause] OPERATOR Notwithstanding any other provisions of this Agreement, in no event shall Owner make any claim against Operator or its Affiliates on account of any alleged errors of judgment made in good faith in connection with the operation of the Hotel hereunder by Operator or its Affiliates or the performance of services provided for herein, nor shall Owner object to any expenditure made by Operator in good faith in the course of its management of the Hotel or in settlement of any claim arising out of the operation of the Hotel (other than claims involving a settlement of excess of Ten Thousand Dollars (\$10,000), which must be approved by Owner) unless such expenditure is specifically prohibited by this Agreement.

[Alternate Clause] OPERATOR Operator is not liable to Owner or others for any act or omission on the part of its employees, unless Operator has failed to use reasonable diligence in the hiring, discharge, or supervision of such employees so as to maintain a staff of qualified, competent, and trustworthy employees.

3.15 Noncompetition Covenant

OWNER Except with the written consent of Owner, Operator shall not manage or have any equity interest in any other hotel or motel within the radius of five miles of the Hotel during the term of this Agreement.

[Alternate Clause] OWNER For the first five (5) years of the Operating Term, neither Owner, Operator, nor any of their subsidiaries shall either own, lease, manage, or franchise a hotel, motor inn, or similar facility within Area A outlined in red on Exhibit F attached hereto [omitted]. Thereafter for the balance of the Operating Term, the size of the noncompetition area shall be reduced to the area designated Area B on Exhibit F attached hereto [omitted], it being understood that such ownership, leasing, management, or franchising outside of said area shall be totally unrestricted.

[Alternate Clause] OWNER Neither Operator, its parent, nor any subsidiary or entity related to Operator or its parent shall at any time during the Operating Term own any interest in or manage a hotel or motel that is located within seven miles of the Hotel. Except as provided hereinabove, nothing in this Agreement shall deprive or otherwise affect the right of either party to own, invest in, manage, or operate property or business activities that are competitive with the business of the hotel. Operator covenants and agrees that even though it may have either an ownership interest in or a management responsibility for other similar properties that, from time to time, may be competitive with the hotel, Operator always shall represent the hotel fairly and deal with Owner on an equitable basis.

[Alternate Clause] OWNER Operator agrees that, during the first ten (10) years of this Agreement (the "Restricted Period"), Operator shall not hold an interest in any hotel operated under a name of Operator that is located within a ten-mile radius of the Hotel (the "Restricted Area"), provided, however, that if Operator acquires, or is acquired by, a publicly held company (the "Constituent Company") through a merger, consolidation, acquisition of assets, or similar transaction and the Constituent Company holds an interest in a hotel or hotels in the Restricted

Area, the foregoing prohibition shall not apply to the hotel or hotels wherein the Constituent Company holds an interest.

3.16 Arbitration

NEUTRAL In the event that the parties fail to agree on a matter as provided in this Agreement, the matter involved shall be resolved by arbitration. An arbitrator shall be selected by mutual agreement of the parties, or if they cannot agree, by appointment made by the American Arbitration Association from among the members of its panels who are qualified and who have experience in resolving matters of a nature similar to the matter to be resolved by arbitration. Each party shall submit to the arbitrator a detailed and complete statement of terms and conditions that such party considers to be a fair and reasonable resolution of the dispute and that such party considers its "last and best offer." The arbitrator shall decide the dispute by selecting the proposal made by one (1) party that such arbitrator, after consideration of the parties to this Agreement and the economic benefits the parties intend to derive from this Agreement, considers to be the most reasonable and equitable resolution of the dispute. The decision of the arbitrator shall be final and conclusive and shall be binding upon the successors and assignees of the parties.

[Optional Additional Clause] The arbitrator or arbitrators shall have the right only to interpret and apply the terms of this Agreement, and may not change any such terms or deprive any party to this Agreement of any right or remedy expressly or implicitly provided in this Agreement.

NEUTRAL

3.17 Legal Costs

NEUTRAL In the event that either party shall institute legal or equitable proceedings to enforce any provision of this Agreement, the prevailing party, in addition to any other remedy to which it may be entitled, shall be entitled to recover as a part of such judgment or otherwise, and the non-prevailing party shall pay, all costs and expenses incurred in such proceedings, including reasonable attorney fees and disbursements.

3.18 Operator Shall Not Pledge Credit of Owner

OWNER Operator shall not, except in the purchase of Furnishings and Equipment, Operating Supplies, and services reasonably required in the ordinary course of business in the operation of the Hotel, or as may be otherwise required in the performance of its obligations under this Agreement, pledge the credit of Owner, nor shall Operator in the name of or on behalf of Owner borrow any money, execute any promissory note, or pledge, mortgage, or otherwise encumber any real or personal property used in connection with the Hotel or otherwise without the prior written consent of Owner.

3.19 Confidential Information

OPERATOR Owner agrees, for itself and its agents and employees, during the term of the Management Agreement and after its termination, not to reveal to any person (except as required hereunder or as authorized by Operator) any confidential or proprietary information or any other information belonging to Operator, its parent company, or their subsidiaries or affiliates relating to the business contemplated by the Management Agreement and not generally known to the trade and to the public, including, but not limited to, trade secrets, business and financial information, and know-how. Owner further agrees not to use at any time any such confidential or proprietary information belonging to Operator or its parent company or their subsidiaries or affiliates in competition with any of them.

3.20 Owner's Right to Mortgage Property

OWNER Nothing herein contained shall prevent Owner from encumbering the Hotel by mortgage, deed of trust, or trust deed in the nature of a mortgage (the first, unsubordinated mortgage, deed of trust, or trust deed and any instruments secured thereby or collateral thereto shall be herein collectively referred to as the "Mortgage," and the holders of any such Mortgage, or of the indebtedness secured thereby, are herein referred to as "Mortgagee"), provided that Mortgagee shall be subject to the approval of Operator, unless such Mortgagee is a bank, savings and loan association, savings bank, insurance company, mortgage bank, pension fund, educational institution, welfare or retirement or endowment fund, real estate investment trust, or other like institution that is regularly engaged in the business of making loans secured by mortgages on real property, in which case no such approval shall be required.

Owner agrees that, in the event of such refinancing, Owner shall provide Operator notice of such appraised value along with the name, address, telephone number, and résumé of the person who performed said appraisal ("First Appraiser") which person shall be an MAI Appraiser who specializes in the appraisal of hotels. Within ten (10) days of receipt thereof, Operator shall either accept the findings of said appraisal or notify Owner that it disputes said amount, in which event the following shall occur:

- A. Operator shall within ten (10) days of the serving of such notice of dispute to Owner, select an MAI Appraiser ("Second Appraiser").
- B. The First Appraiser, whose fees shall be paid by Owner, and Second Appraiser, whose fees shall be paid by Operator, shall, within ten (10) days of the selection of the Second Appraiser, jointly select a third MAI Appraiser ("Third Appraiser"), whose fees shall be split equally between Owner and Operator.
- C. The Second Appraiser and Third Appraiser shall each independently perform an appraisal of the Hotel, which appraisals shall be delivered to Owner and Operator within ninety (90) days of the date the Third Appraiser is selected.
- D. The value of the Hotel shall be determined by calculating the average of the two appraisals closest in value to each other.

Upon the execution of any Mortgage, Owner shall furnish Operator with a duplicate copy thereof and shall designate the post office address where notices may be served upon Mortgagee. Operator agrees that, so long as any such Mortgage shall constitute a lien on the Hotel, when Mortgagee shall request in writing copies of any and all financial or other information, Operator, pursuant to the terms and provisions of this Agreement, is obligated to deliver same to Mortgagee as often as Mortgagee may reasonably request. Moreover, Operator shall allow, upon request of Owner, any person designated in writing by Mortgagee to examine, audit, inspect, and transcribe all books of account and all other records relating to or reflecting the operation of the Hotel.

[Alternate Clause]
OWNER Owner shall have the right to incur indebtedness in favor of one or more Institutional Lenders for which the Hotel or any part thereof or any interest therein may be used as collateral, so long as the Cash Flow Available for Debt Service for the Fiscal Year immediately preceding the Fiscal Year in which such indebtedness is proposed equals one hundred fifteen percent (115%) of regular annualized debt service on all indebtedness secured and/or to be secured by the Hotel.

3.21 Operator to Periodically Meet With Owner

NEUTRAL After each fiscal quarter, Operator and Owner shall, if deemed necessary by Operator or Owner, meet at a mutually agreeable time and place to review operating results for the Fiscal Year to date and operating plans for the balance of the Fiscal Year.

3.22 Owner Responsible for Debts, Liabilities, and Expenses

OPERATOR All debts and liabilities to third persons incurred by Operator in the course of its operation and management of the Hotel and within the scope of its authority hereunder shall be the debts and liabilities of Owner only, and Operator shall not be liable for any such obligations by reason of its management, supervision, direction, and operation of the Hotel for Owner or for any other reason whatsoever, unless such obligations were incurred by Operator beyond the scope of its authority.

[Alternate Clause]
OPERATOR In performing its duties hereunder during the Operating Term, Operator shall act solely for the account of Owner. All expenses incurred by Operator in performing its said duties shall be borne exclusively by Owner. To the extent the necessary funds are not generated by the operation of the Hotel, they shall be supplied by Owner to Operator upon demand.

Section 4 OPERATOR'S DUTIES**4.1 Operator's Overall Duties and Responsibilities**

OWNER Operator shall be responsible for and have full power, authority, discretion, and control in all matters relating to the operation, management, and maintenance of the Hotel, including, without limitation, (a) rental and occupancy of rooms and commercial space and setting of charges therefor; (b) food and beverage services (including menu development and pricing); (c) employment policies; (d) credit policies; (e) the receipt, holding, and disbursement of funds; (f) accounting; (g) budgeting; (h) maintenance of bank accounts; (i) procurement of inventories, supplies, and services; (j) promotion, sales, marketing, and publicity; (k) maintenance, repairs, and cleaning of all improvements and equipment; and (l) generally, all activities necessary for the operation, management, and maintenance of the Hotel.

4.2 Operator's Duties—Maximization of Profits

OWNER Operator shall use its best efforts in the management and operation of the Hotel so that the Hotel and its services will be operated and maintained in such a manner as to maximize profits and provide a first-rate environment.

NOTE: The preceding clause deals with a duty sometimes overlooked by management companies: the maximization of profits. Operator-oriented contracts usually omit this clause.

[Alternate Clause] Operator shall implement policies and practices to achieve the following goals:

- OWNER**
- A. To facilitate effective and efficient discharge of its obligations under this Agreement;
 - B. to create and enhance goodwill among existing and prospective guests and patrons; and
 - C. to establish and maintain a favorable reputation for the Hotel.

[Alternate Clause]
OWNER Operator shall manage and operate the Hotel and its businesses, services, and sales and shall exercise its best efforts to do so at all times in a manner of a high-quality hotel, consistent with the Franchise Agreement, and within the requirements of the applicable laws. Operator will use its best efforts to maximize to Owner the profits that can be derived from the Hotel and, upon its own initiation, with reasonable frequency, shall consult with and advise Owner and otherwise bring to Owner's attention opportunities to obtain and increase such profits. Operator shall not cause or knowingly permit to occur any act or omission that would violate the Franchise.

4.3 Operator to Maintain a Specific Level of Quality

OWNER Operator shall operate the Hotel throughout the entire Operating Term at a "First-Class Level" and shall provide or cause to be provided all amenities in connection therewith that are customary and usual to such an operation, and shall perform all of the functions and services, including those that are customary and usual for such an operation, so long as Owner does not impair Operator's ability to maintain such First-Class Level by withholding sufficient funds in violation of Owner's obligation to provide funds.

NOTE: When used in an operating agreement, the preceding clause should include a definition of the desired level of quality. The last sentence releases operator from responsibility to maintain this standard if the owner withholds necessary funds.

[Alternate Clause]
OWNER Operator agrees to diligently operate the Hotel as a deluxe hotel throughout the Operating Term and in accordance with the high standards of the hotels operated by Operator and its subsidiary companies. The term "deluxe hotel" as used herein refers to the classification listed in the official Hotel and Restaurant Guide issued July 1977, published by the Public Transportation and Travel Division, Ziff-Davis Publishing Company, annexed to this Agreement *[omitted]*. Operator agrees further to provide in the Hotel all services that are customary and usual to such an operation, while at all times attempting to maximize the revenues and operating profit of the Hotel consistent with the maintenance of the standards set forth hereinabove.

NOTE: The reference cited in the preceding clause can be replaced with other sources, such as provided by the Mobil Travel Guide and AAA.

[Alternate Clause]
OWNER The term "luxury hotel" shall mean a luxury hotel as currently exists in the United States of America comparable in size to the Hotel, with the Hyatt Union Square hotel in San Francisco being used as an example of a luxury hotel at the date of this Agreement.

NOTE: The quality level in the above clause is defined by reference to a specific property. However, this practice can sometimes be difficult for long-term management contracts because the level of quality of the comparable hotel can be altered.

4.4 Operator to Advise Owner of Major Policy Matters

OWNER Operator shall submit outlines, in reasonable detail, to Owner setting forth its plans for and/or any major changes in its management and operation of the Hotel that are likely to have a material effect upon the profitability of the Hotel prior to Operator's institution of such changes.

[Alternate Clause]
OWNER Operator shall consult with and advise Owner concerning all policies and procedures affecting all phases of the conduct of business at the Hotel and will give consideration to suggestions made by Owner. To the extent possible and where required under this Agreement, such consultation and advice shall take place prior to the institution of any major policies and procedures.

[Alternate Clause]
OWNER Operator agrees that it will not make any major policy changes not reflected in the applicable Annual Business Plan that would have a potentially substantial material effect on the operations of the Hotel without first obtaining Owner's approval of such policy change. Notwithstanding any provision herein set forth to the contrary, in the event that it shall ever be determined that Operator has made a major policy change not reflected in the applicable Annual Business Plan without obtaining Owner's approval, and that such change actually has had a substantial material adverse effect upon Hotel operations, Owner may require that Operator reinstate the policy from which Operator departed without Owner's approval, and may seek such other remedies as may be available hereunder.

NOTE: The first part of the preceding clause ties into the Annual Business Plan, which should incorporate specific Owner approvals. The last part of this clause gives the owner the ability to correct mistakes of the operator. This is a strongly owner-oriented clause.

4.5 Operator to Have Absolute Operational Control

OWNER Operator shall have absolute control and discretion in the operation, direction, management, staffing, supplying, and supervision of the Hotel, including, without limitation, performance of the following activities:

- A. Determination of labor policies (including the hiring and firing of all employees);
- B. Granting and limiting credit and establishing credit in connection with the operation of the Hotel (including entering into policies and agreement with credit card organizations);
- C. Determining the terms of admittance for guests and users of the Hotel, including charges for rooms;
- D. Deciding entertainment, amusement, food, and beverage policies;
- E. Instituting such legal proceedings in the name of Owner or Operator as Operator shall deem appropriate in connection with the operations of the Hotel;
- G. Arranging, in cooperation with the Owner, for all advertising, promotion, and publicity relating to the Hotel;
- H. Entering into such contracts, concession agreements, and other undertakings as Operator shall from time to time consider appropriate;
- I. Purchasing operating supplies and other services for the Hotel; and
- J. Undertaking such other and further matters as Operator shall deem consistent with the good order and management of the Hotel.

4.6 Operator to Comply With Franchise Requirements

OWNER Operator agrees to operate and manage the Hotel in compliance with any franchise agreement Owner may have with, and with the rules, regulations, and requirements of, any major hotel franchisor.

[Alternate Clause] **OWNER** Operator shall administer compliance with the Franchise, and shall, in connection therewith, communicate with Franchisor, purchase such supplies and services as may be required by the franchise, conduct the business of the Hotel in compliance with the Franchise, and prepare any and all writings and make all payments required by the Franchise. Operator shall forward to Owner copies of all notices, correspondence, and other writings received from or sent to the franchisor immediately following such receipt or dispatch. Upon Owner's request, Operator shall cause an appropriate employee of Operator to attend any and all meetings administered by Franchisor or held by or for the Franchisees and to prepare reports of such meetings for Owner.

4.7 Operator to Comply With Terms of Mortgage

OWNER Operator shall cause the operation of the Hotel to comply with all terms, conditions, and obligations contained in the Mortgage Instruments of which Operator is made aware (provided that Operator shall be under no obligation to ensure that sufficient funds for payment thereof are generated from Hotel operations) and with any leases or other agreements of which Operator is made aware that are executed by Owner and that relate to the Hotel. Operator shall execute and deliver promptly any agreements and documents that Owner or lender may reasonably request to provide for or verify operation of the Hotel in such manner.

4.8 Operator to Establish Prices

OWNER As part of the Annual Business Plan, Operator will submit to Owner for its approval the rates to be published and charged to members of the general public for normal transient occupancy of the various categories of rooms and suites in the Hotel (hereinafter referred to as the "Rack Rates") during such fiscal year. The Rack Rates, as approved by Owner, may not be changed without Owner's further approval. However, it is understood that the said rates will not apply to group business or other categories of business to which Operator may extend a lower rate and that in its discretion Operator may from time to time permit individuals to occupy rooms or suites at the Hotel at rates lower than the said published rates. Operator will also provide Owner with price schedules for all other products and services of the hotel, such as food, beverage, meeting rooms, and commercial space.

4.9 Operator to Establish Credit Policies

NEUTRAL Operator shall establish and implement policies and procedures for verifying, accepting, limiting, and rejecting the credit of guests and patrons of the Hotel. In connection with the foregoing, Operator shall make appropriate arrangements to honor American Express, Visa, MasterCard, such credit cards as may be required or provided by Franchisor, and such other credit cards as Operator or Owner may deem desirable. Operator shall utilize its best efforts to make such arrangements on the most favorable terms available.

4.10 Operator's Collection Practices

OWNER Operator shall employ its best efforts to collect any and all credit card charges, checks, traveler's checks, drafts, and other accounts receivable. Operator shall employ collection agencies and legal counsel, where appropriate, to pursue such claims. If, during any three-month period, more than three percent (3%) of the Gross Revenue is not collected when due, Operator shall promptly explain to Owner, in writing, the reasons therefor and shall revise the credit policies and practices pursuant to Owner's reasonable suggestions.

4.11 Operator to Submit Annual Plan

OWNER Operator shall submit to Owner for Owner's approval an annual plan for the Hotel in form reasonably satisfactory to Owner. Such plan shall be submitted to Owner no later than sixty (60) days prior to the scheduled Effective Date and at least forty-five (45) days prior to the beginning of each Fiscal Year thereafter.

NOTE: The deadline for submission of the annual plan can range from thirty (30) to one hundred twenty (120) days prior to the beginning of the fiscal year. The owner should have sufficient time to review the plan and negotiate modifications.

4.12 Operating Budget

NEUTRAL The operating budget should contain a Profit and Loss Statement on a monthly and yearly basis that is generally in accordance with the *Uniform System of Accounts for Hotels* promulgated by the Hotel Association of New York City, Inc., as adopted by the American Hotel Association of the United States and Canada (the "Uniform System of Accounts"). This statement should include detailed departmental and supporting schedules for each line item. Such budget estimates shall be presented on the form of pro forma operating statement attached hereto [omitted].

The operating budget shall also include the following items:

- A. Projected occupancy and average room rate by month;
- B. Projected gross revenue, detailed by source;
- C. Leasing plan with respect to commercial or retail spaces that will be vacant;
- D. Projected expenses, detailed by type;
- E. Detailed proposed scheduling of staff, salaries, and wages;
- F. Hotel room rates and charges for other services;
- G. Insurance premiums and property taxes;
- H. Property operations and maintenance (non-capital);
 - I. Advertising, promotional, and marketing expenses;
- J. Calculation of base and incentive fees; and
- K. Narrative overview of all budgeted revenue and expense levels and an analysis of budgeted levels to the previous year's actual results. Any differences should be explained.

4.13 Capital and Equipment Budgets

NEUTRAL As part of the Annual Plan, Operator will prepare a Capital Expenditures Budget setting forth in reasonable detail Operator's best estimate of capital expenditures to be made for major building improvements, renovation, repairs, and expansion for such period. Operator will also prepare an Equipment Budget setting forth Operator's estimate of the capital expenditures for additions and replacement of FF&E.

4.14 Submission of Annual Plan to Owner

OWNER Operator shall submit the Annual Plan to Owner for its approval, and Owner shall have the right to make any changes thereto or to refuse to expend any money suggested by the Annual Plan. Owner shall inform Operator in writing of any such change or refusal before the commencement of the period covered by the Annual Plan. Except as so changed by Owner, the Annual Plan shall be final for all purposes hereunder.

NOTES: The owner should have at least thirty (30) days from receipt of the Annual Plan to make changes. The above clause is strongly owner-oriented.

4.15 Settlement of Disputes Regarding the Annual Plan

NEUTRAL In the event that Owner and Operator shall not agree on any item of any Annual Plan, the terms or items included in such Annual Plan that have been agreed to by both Owner and Operator shall become operative immediately. In regard to the terms or items over which the parties are in dispute, pending the settlement thereof, operator may continue to operate the Hotel at the levels of expenditures agreed to in the most recently approved Annual Plan increased by a percentage equal to the increase in the Consumer Price Index for the calendar year preceding the calendar year for which the dispute has arisen. In the event that Owner and Operator cannot reach agreement on any term or item of the Annual Plan within sixty (60) days of its submission to Owner, such dispute shall be resolved by arbitration.

[Alternate Clause]
NEUTRAL Pending resolution of any dispute over any item or term of an Annual Plan, the specific disputed items shall be suspended and replaced for the fiscal year in question by an amount equal to the lesser of (a) the amount proposed by Operator for such fiscal year or (b) such budget item for the fiscal year prior thereto, subject to escalation per item by the percentage increase in the Consumer Price Index over the twelve (12) -month period immediately preceding the start of the fiscal year in question.

[Alternate Clause] If any of the items in the Annual Plan are disapproved by Owner, Operator and Owner shall enter into negotiations in an attempt to determine mutually satisfactory budgets and programs. Owner shall make final determination with respect to the budgets and programs.

NOTE: The preceding clause gives the owner total veto power over all Annual Plans. Operator-oriented contracts omit any clause calling for owner approval of Annual Plans.

4.16 Operator Must Comply With Annual Plan

OWNER Operator shall comply with the Annual Plan, once it is approved by Owner, and shall not deviate substantially therefrom as to any item, incur additional expense or capital expenditure or obligation, or change the manner of operation of the Hotel without the written consent of Owner, except where such deviation is due to and is in direct proportion to an increase in business at the Hotel in excess of the pro forma operating statement, or in case of an emergency, or where failure to take a particular action would expose Owner to the imminent danger of criminal liability other than the payment of fines.

[Alternate Clause] Operator may deviate from the Annual Plan under the following conditions and for the following reasons:

A. The actual expenditures for the Department within which any given expense is allocable will not exceed one hundred ten percent (110%) of the total budgeted expenditures for such Department approved in the Operating Budget (for the purpose of this Agreement, the term "Department" shall mean each of the following twelve (12) general expense categories along with all of the individual expenses included therein as set forth in the Chart of Accounts: (1) Food, (2) Beverage, (3) Rooms, (4) Food and Beverage, (5) Telephone, (6) Golf, Pool, and Health, (7) Laundry, (8) Other Costs, (9) Heat, Light, and Power, (10) Repair and Maintenance, (11) Advertising and Promotion, and (12) Administrative and General);

B. Such expenditure is expressly authorized in this Agreement;

C. Operator obtains Owner's prior approval of such expenditure;

D. Such expenditure is warranted by increased levels of business;

E. Such expenditure is required to meet emergency conditions and Owner is promptly advised thereof;

F. Additional costs are incurred because of the occurrence of an event(s) not reasonably foreseeable by Operator; or

G. Such expenditure is caused by the occurrence of an event(s) outside Operator's reasonable control.

[Alternate Clause] Operator's sole right to deviate from the planned expenditures on a line-item basis within the accounts for Administration and General, Advertising and Business Promotion, and Property Operations and Maintenance shall be to exceed such planned expenditures on a line-item basis within the foregoing accounts by an amount not to exceed the greater of Fifty Thousand Dollars (\$50,000) (adjusted in accordance with changes in the Consumer Price Index) or ten percent (10%) of the line-item amount. Any substantial deviations from the overall direction of the Marketing Plan portion of the Annual Plan contemplated by Operator shall be submitted to Owner, for its prior approval. Operator shall make no material changes in material business policies affecting the Hotel without Owner's prior approval.

4.17 Operator Does Not Guarantee Financial Projections

OPERATOR Owner hereby represents that in entering into this Agreement Owner has not relied on any projection of earnings ("Projections"); statements as to the possibility of future success, or other similar matters that may have been prepared by Operator. Any Projections made by Operator in contemplation of or in the course of implementing this Agreement will not take into account, nor make provisions for, any rise or decline in local or general economic conditions, and Owner understands that (a) no guaranty is made or implied by Operator as to the cost or the future financial success of the Hotel, and (b) Operator does not warrant or guarantee the Projections in any way whatsoever. Any use of this information is based on this understanding.

NOTE: The preceding clause refers to projections performed by the operator made prior to commencing the management contract. A similar clause should be used to state that the Operator makes no guarantee, warranty, or representation with respect to the budget.

4.18 Minimum and Maximum Budget Expenditures

NEUTRAL At a minimum, the Annual Plan will provide for an expenditure of an amount equal to four percent (4%) of gross revenues of the Hotel (determined in accordance with the Uniform System of Accounts for Hotels) for repairs and maintenance.

NOTE: Some contracts also provide for minimum and maximum amounts for advertising, repairs, and maintenance based on a percentage of total revenue, a specific dollar amount per room, or a specific total dollar amount. Any deviation must be approved by the Owner.

4.19 Revised Operating Budgets

OWNER In addition to the Operating Budget, Operator shall prepare a Revised Operating Budget within thirty (30) days after the end of the third (3rd), sixth (6th), and ninth (9th) Accounting Periods if the Hotel's income before fixed charges for any fiscal quarter is less than ninety percent (90%) of the Gross Operating Profit set forth in the Operating Budget for such fiscal quarter.

4.20 Duty of Operator to Supervise Hotel Operations

OWNER Operator shall reasonably employ the resources of its home office and regional facilities and personnel to supervise and assist the operation of the Hotel. Operator shall cause appropriate officers and employees of Operator to visit and inspect the Hotel and the operation thereof with reasonable frequency, and in any event Operator's regional executive in charge of hotel management shall visit the Hotel no less frequently than once each sixty (60) days.

4.21 Cost of Supervisory Services

OWNER The overall supervisory and management services to be rendered by the home office personnel and staff of Operator in connection with the operation of the Hotel shall be provided by Operator at its own expense and not charged to Owner.

NOTE: When the preceding clause is used, the contract should specify who pays travel expenses and what mode of travel should be utilized.

[Alternate Clause] Upon commencement of operations after the Opening Date, the supervisory services of Operator's corporate officers and employees other than those regularly or tempora-

rily employed on a full-time basis at the Hotel, and specifically including its home office administrative heads of maintenance, housekeeping, decoration and design, public relations, advertising, food and beverage operations, entertainment, sales promotion, forecasting and operations analysis, staff planning, accounting, and reservations, shall be provided by Operator at its own expense and not charged to Owner, except as otherwise specifically provided for in this Agreement, including, without limitation, the out-of-pocket expenses as may be chargeable to the operations of the Hotel. Without limiting the generality of all of the foregoing, Owner shall not be charged with the salaries or wages of any officers, directors, or employees of Operator or any of its affiliated or subsidiary companies except as otherwise specifically provided in this Agreement, or except with such personnel who shall be regularly or temporarily employed on a full-time basis at the Hotel.

[Alternate Clause] Operator may charge to the Hotel (a) the tourist-class travel expenses and meals, for its
NEUTRAL home office personnel, to the extent reasonably allocable to the Hotel and not to other businesses, and (b) the salaries of such personnel only if and for such time as the subject employees are located at the Hotel and are performing full-time services as substitutes for regular Hotel Employees.

[Alternate Clause] Operator may find it desirable to assign one or more of its employees to the Property on a
NEUTRAL temporary basis to perform hotel-related business. Owner agrees to reimburse Operator for all actual expenses to and from the Property and for all room and board while at the Property for such employees.

4.22 Cost of Special Services

OPERATOR Extraordinary types of expenses incurred for projects, such as labor negotiations, renovation or rehabilitation programs, and special market studies, that involve a substantial time commitment of Operator's personnel or the engagement of outside professionals will be reimbursed as a hotel expense, provided, however, that Operator shall not, without Owner's prior approval, incur expenses for such projects in excess of Twelve Thousand Dollars (\$12,000) per project, as such amount may be increased by changes in the Consumer Price Index.

4.23 Duty of Operator to Consult With Owner

OWNER Upon request by Owner, from time to time, Operator shall provide the services of qualified personnel to consult with Owner regarding such subjects relating to the Hotel as Owner may designate, provided that Operator shall have no obligation to provide consulting services of any persons other than employees of Operator or other persons whose services are provided to other hotel owners by Operator.

4.24 Operator to Enter Into Leases

NEUTRAL Operator will use its best efforts and due diligence in entering into leases and concession agreements for stores, commercial space, and services at the Hotel. Any lease or concession for a period in excess of six (6) months (including any renewal options) shall be subject to the prior written approval of and be executed by Owner. Leases or concessions of a term of six (6) months or less may be executed by the Operator in the name of Owner without its consent. Operator shall, subject to the limitations of such leases and concession agreements and general hotel practice, also supervise and control the activities of tenants, concessionaires, and other persons in possession, and their employees and agents.

4.25 Operator to Enter Into Service Contracts

NEUTRAL Operator is authorized to make and enter into all such contracts, equipment leases, and agreements as are required in the ordinary course of business and as are budgeted in the approved Operating Budget for the operation, maintenance, and service of the Hotel, and to make payment for the same when payment is due. However, Operator shall be required to obtain the consent of Owner before entering into any contract for the account of Owner, of whatever nature, if the total amount payable under such contract exceeds One Thousand Dollars (\$1,000), as such amount may be adjusted to reflect changes in the Consumer Price Index, unless such contract is made under circumstances that the Operator reasonably considers to constitute an emergency or such contract is budgeted and approved by Owner. Notwithstanding the foregoing, Operator shall use its best efforts to contact and secure the approval of Owner should any such emergency expenditure be likely to exceed One Thousand Dollars (\$1,000), as such sum may be adjusted pursuant to changes in the Consumer Price Index. Operator shall use its reasonable best efforts to secure for Owner all possible rebates, discounts, and other benefits to be derived from every contract. Any rebate, discount, or other benefit derived under any such contract, lease, or agreement shall accrue to the benefit of the Hotel. Operator shall not be responsible to Owner for the performance of any contract that is not recommended or approved by Operator; however, Operator shall make every effort to ensure the success of Owner's decision with respect thereto.

NOTE: The \$1,000 limit on service contracts in the preceding clause is on the low end of the range. Large properties should have higher limits.

[Alternate Clause] Operator will negotiate and enter into, on behalf of the Owner, service contracts required in the ordinary course of business in operating the Hotel, including, without limitation, contracts for electricity, gas, telephone, detective agency protection, vermin extermination, water, steam, cleaning, elevator and boiler maintenance, air-conditioning maintenance, master television service, laundry and dry-cleaning, and other services that Operator deems advisable. However, no contract with a duration in excess of one (1) year or involving an expenditure of more than Five Thousand Dollars (\$5,000) per annum in the aggregate shall be entered into without Owner's approval.

NOTE: For purposes of the preceding clause, dollar limit on service contracts can range from \$1,000 to \$25,000 over terms of one to five years.

4.26 Operator to Enter Into Entertainment Agreements

NEUTRAL Operator will negotiate and enter into, on behalf of Owner, agreements for entertainment within the Hotel facilities for one hundred twenty (120) days or less.

4.27 Purchasing by Operator

OWNER Operator shall purchase such Consumable Supplies and other expendable items as are necessary to operate the Hotel, and shall pay for such supplies out of the General Account. When taking bids or issuing purchase orders, Operator shall be under a duty to use its reasonable best efforts to secure for and credit to Owner any discounts, commissions, or rebates obtainable as a result of such purchase.

[Alternate Clause] Operator shall promptly remit to Owner all discounts, rebates, profits, commissions, or other emoluments received by Operator or by any "Affiliate" of Operator, which term shall mean any corporation or other entity related to Operator or any officer, director, employee, or shareholder of Operator or of such related corporation or other entity, in connection with any purchase of materials or supplies delivered to or for the Hotel or in connection

with any contracts or agreements entered into on behalf of Owner or in connection with the Hotel. This clause is intended to ensure that neither Operator nor any Affiliate of Operator shall receive, directly or indirectly, any compensation other than that to be paid by Owner to Operator hereunder.

4.28 Purchasing From Operator

OWNER Whenever Operator shall contract with any company controlled by or under common control with Operator, the terms thereof shall be no less favorable to Owner than what Operator could have obtained in the public marketplace for materials or services of the same quality and quantity from independent third parties and on terms no less favorable to Owner than those pursuant to which the Affiliate provides similar services to any other Hotel owned or operated by Operator. Operator shall advise Owner of the substance of any such agreement.

4.29 Repairs, Replacements, and Improvements

OWNER Operator shall make or install, at Owner's expense, all necessary or desirable repairs, decorations, renewals, revisions, alterations, replacements, additions, and improvements in and to the site, building, furnishings, and equipment of the Hotel; provided, however, that such are included in the budget or do not exceed One Thousand Dollars (\$1,000) per item.

NOTE: For purposes of the preceding clause, dollar limitations can range from \$500 to \$100,000. It is important to specify what is a repair and what is a capital replacement.

[Optional Additional Clause] Owner shall at all times have the right to do or arrange for any of such work itself. All such work done or arranged for by Operator involving a payment in excess of Ten Thousand Dollars (\$10,000) shall be contracted for on a competitive bid basis. Operator shall not receive from Owner or from any contractor any markup or payment from any such contract.

OWNER

[Alternate Clause] In accordance with the requirements of the Franchise and the standards applicable to a high-quality hotel, Operator shall (a) maintain the Hotel in good condition and repair generally and (b) maintain, repair, and replace when necessary the Operating Equipment and the FF&E, all out of funds made available for such purposes by Owner. Operator will keep the Hotel and surrounding property in a safe, neat, clean, and sanitary condition at all times and will promptly remove all garbage and trash and ice and snow from the sidewalks, adjoining driveways, and parking areas.

OWNER

4.30 Cost of Maintenance and Repairs

NEUTRAL It is accepted in principle that over the term of this Agreement, expenditures on maintenance and repairs will average not less than five percent (5%) of gross revenue.

NOTE: The preceding clause provides a minimum amount of maintenance and repairs. However, this approach can cause problems, because operations and maintenance do not always vary as a percentage of total revenue. Many other factors, such as the property's age, ratio of food and beverage to rooms, location, and occupancy should be considered.

4.31 Operator to Provide Licenses and Permits

OWNER Operator will seek, on behalf and in the name of Owner (unless the law requires that a particular license be in the name of Operator), the necessary licenses and permits as may be required for the conduct and operation at the Hotel of the business herein contem-

plated, including licenses and permits relating to signage and to the sale of alcoholic beverages. Owner agrees to cooperate fully with Operator in applications for such licenses and permits.

NOTE: Some contracts allow the owner or operator to terminate in the event certain licenses or permits cannot be obtained. It is very important for all licenses to revert to the owner at end of the operating term.

[Alternate Clause]
OPERATOR Owner agrees to execute and deliver any and all applications and other documents and to otherwise cooperate to the fullest extent possible with Operator in applying for, obtaining, and maintaining such licenses and permits.

[Alternate Clause]
OWNER Operator will maintain at all times throughout the term of this Agreement all licenses and permits required of Owner or Operator in connection with the operation and management of the Hotel.

4.32 Compliance With Government Rules and Regulations

OWNER Operator shall exercise its best efforts to conduct the business of the Hotel in compliance with all applicable laws and to ensure that no activity or condition occurs on or about the Hotel in violation of any laws. In the event that Operator shall have reason to believe that any laws may be violated on or about the Hotel, Operator shall promptly so notify Owner.

4.33 Contesting Government Regulations

NEUTRAL Owner shall have the right to contest or to cause Operator to contest any alleged violation of any law and to postpone compliance with the law pending the determination of such contest as permitted by law. In such event, Owner shall indemnify Operator and its employees from any resulting loss, cost, damage, or expense (including fees of attorneys approved or selected by Owner).

4.34 Operator's Bank Accounts

NEUTRAL Operator, on behalf of Owner, shall establish two bank accounts (the "Operating Accounts") for the Hotel in Operator's name, in banks approved by Owner (which approval shall not be unreasonably withheld), with Operator being the only party authorized to draw from the Operating Accounts unless otherwise agreed upon by the parties. One of the Operating accounts for the Hotel shall be known as the Depository Account and shall be used to deposit all cash and rental receipts generated by the Hotel. Operator shall deposit all funds collected from the operation of the Hotel in the Depository Account. The other account shall be known as the General Account and from it all disbursements for the Hotel shall be made. At the end of each Monthly Accounting Period, the amount in the Depository Account shall be drawn down to a minimal balance, and the excess funds shall be transferred to the General Account. Additionally, Operator regularly may draw funds from the Depository Account and deposit them in the General Account. In the event a nearby bank can be used to deposit funds directly into the General Account, the Operator may elect to not use a Depository Account. Funds from the General Account shall be disbursed by the Operator to pay its Base Management Fee, as well as to pay the normal and reasonable expenses of the Hotel incurred in the operation and maintenance of the Hotel pursuant thereto, including all expenses of the type deducted from Gross Revenues in determining Gross Operating Profit hereof and all expenditures of the type deducted from Gross Operating Profit in determining Cash Flow. It is understood and agreed that to facilitate the payment in expenses for the Hotel, Operator may elect to make such payments from an account maintained by Operator for making such payments with regard to

the Hotel and other properties operated by it and shall be entitled to withdraw from the General Account and to deposit to such other account, from time to time, an amount equal to the checks drawn upon such other account for the payment of expenses of such Hotel. All bank accounts shall be owned by Owner and shall be controlled and operated by Operator as the agent of Owner. The agency status of Operator shall be designated on the checks and drafts drawn on such bank accounts.

4.35 Transfer of Funds to Owner

OWNER Subject to maintaining adequate reserves for replacements and working-capital requirements, Operator, at Owner's request, shall transfer such funds as Owner shall specify to a bank account opened and maintained solely by Owner.

[Alternate Clause]
NEUTRAL Within twenty-five (25) days after the end of each calendar month, and simultaneously with the delivery of the financial statements, Operator shall remit to Owner the balance in such bank accounts, less disbursements and advances made on behalf of and for the account of Owner, and less also such reasonable sums as Operator may reasonably deem necessary or appropriate to meet obligations that will or that Operator reasonably believes may become due thereafter, taking into account estimated future income. Operator is also authorized to draw as an advance on its Basic Fee for the preceding month directly from the bank account(s), provided all statements required by this Agreement have been delivered by Operator to Owner.

4.36 Owner to Furnish Working Capital

NEUTRAL On the formal Opening Date and thereafter from time to time throughout the Operating Term, Owner shall furnish to Operator (by deposit into the Agency Account) funds in the amounts requested by Operator to cause the Working Capital to be and remain at a level reasonably sufficient for the uninterrupted and effective operation of the Hotel. All such Working Capital shall be funds of Owner and shall be kept in the Agency Account to be utilized by Operator in Operator's sole discretion in a manner consistent with the practices of the hotel industry.

[Alternate Clause]
NEUTRAL Owner shall provide to Operator the sum of Fifty Thousand Dollars (\$50,000) as Initial Working Capital for use by Operator for initial inventories and operating supplies during the Preopening Period.

[Alternate Clause]
NEUTRAL On or before the Effective Date, Owner agrees to deposit in the General Account the sum of Fifty Thousand Dollars (\$50,000) (the "Initial Minimum Working Capital Balance"). Thereafter, at any time when the balance in the General Account shall be less than the Initial Minimum Working Capital Balance and the balance in the Depository Account is not sufficient to fund such deficit, Owner agrees to deposit to such General Account, as needed, an amount equal to such deficiency (the "Operator Advance"). The total of such deposits is not to exceed Eighty Thousand Dollars (\$80,000) at any given time. Notwithstanding anything herein to the contrary, if, at any time, Owner deposits an Operator Advance to fund any such deficit, such Operator Advance shall be repaid to Owner by Operator without interest out of the General Account at such times when the amounts in the General Account exceeds the Initial Minimum Working Capital Balance.

4.37 Repayment of Funds Advanced by Operator

OPERATOR Operator shall in no event be required to advance any of its own funds for the operation of the Hotel, nor to incur any liability in connection therewith, unless Owner shall have furnished Operator funds necessary for the discharge thereof. If Operator shall at any time advance funds in payment of any expenditure of the Hotel, which Operator shall have the

right but not the obligation to do, Owner shall repay Operator immediately upon demand all or any part thereof with interest, at the prevailing prime rate of the bank or trust company serving as the depository for the Agency Account, which amount Owner hereby promises to pay.

[Optional Additional Clause] If Owner does not provide the Initial Working Capital funds within said thirty (30) days, Operator may elect to provide such funds, and shall be reimbursed therefor by Owner out of Owner's separate funds (not those of the Hotel) with interest at a rate equal to four (4) percentage points over the prime rate.

OPERATOR

NOTE: In the preceding clause, the operator may want to add a sentence stating that it can withdraw reimbursable funds from operating cash flow.

4.38 Operator to Provide Cash Management

OWNER Operator shall provide cash management for the cash portion of the Working Capital. For the purpose of this Agreement, the term "cash management" shall mean expediting cash inflows, controlling cash outflows, and, if reasonably possible, investing the difference between cash inflows and outflows at a market rate.

4.39 Insurance Coverage

NEUTRAL Concurrently with the submission of the Annual Plan, Operator shall furnish Owner with a schedule setting forth the kinds and amount of insurance Operator intends to procure in connection with the operation of the Hotel. This schedule shall specify the kinds and amounts of insurance required to be maintained pursuant to any mortgage, lease, or other agreement, as well as such other kinds and amounts of insurance as Operator shall deem necessary or advisable for the protection of Operator and Owner. Promptly following the receipt of such schedule, Owner shall notify Operator of any changes that Owner shall elect to make in such schedule, and Operator shall thereupon forthwith apply for and obtain, if obtainable, all such insurance from such companies and through such brokers as Owner shall direct.

4.40 Types and Amounts of Insurance

NEUTRAL Owner shall also provide and maintain the following insurance throughout the Operating Term:

A. Public liability insurance having a minimum per occurrence limit of One Hundred Million Dollars (\$100,000,000) against all claims that may be brought anywhere in the world for personal injury (including bodily injury), death, or damage to property of third persons. This insurance shall include coverage against liability arising out of the ownership or operation of motor vehicles, as well as coverage in the said amount against all claims brought anywhere in the world arising out of alleged (i) sale and/or sale of intoxicating beverages ("Dram Shop" coverage); (ii) assault or battery; (iii) false arrest, detention, or imprisonment or malicious prosecution; (iv) libel, slander, defamation, or violation of the right of privacy; (v) wrongful entry or eviction; and (vi) contractual liability.

B. Workers' compensation insurance or insurance required by similar employee benefit acts as mandated by law, as well as insurance against all claims that may be brought for personal injury or death of Hotel Employees, such insurance to have a minimum limit of not less than One Hundred Thousand Dollars (\$100,000) per occurrence.

C. Business Interruption Insurance covering loss of income to both Owner and Operator for a minimum period of one (1) year resulting from interruption of business caused by

the occurrence of any of the risks insured against under the property damage insurance referred to in item A.

D. Crime insurance, including bonds covering Hotel Employees for a minimum of One Million Dollars (\$1,000,000) per loss.

E. Boiler and machinery insurance, including use and occupancy (loss of income) for all direct loss or damage to property caused by failure of boilers or breakdown of machinery, in minimum limits of One Million Dollars (\$1,000,000).

Operator may reasonably require Owner to increase the limits of insurance coverage set forth hereinabove and may reasonably require Owner to carry other or additional insurance, it being reasonable for Operator to require insurance of the types and in the amounts generally carried on hotels owned or operated by Operator or its affiliates. Owner shall pay all premiums on the insurance required by items A, B, C, D, and E, but the cost of insurance required under items A, B, C, and D shall be an Operating Expense.

4.41 Insurance Policies

NEUTRAL Operator shall deliver to Owner, at the commencement of the Operating Term or promptly thereafter, original insurance policies or certificates covering all insurance required or authorized to be maintained under this Agreement, and not less than five (5) days prior to the expiration of the then existing policies shall deliver to Owner such policies, renewals of policies, or certificates.

4.42 Disputes Over Insurable Value

NEUTRAL Any dispute between Owner and Operator as to full insurable value shall be determined as an expense of the Hotel by an appraiser jointly selected by the parties. The value determined by the appraiser so selected shall be binding upon both parties until changed by a subsequent appraisal, but neither party shall have the right to require another appraisal within two (2) years after an appraisal has been made in accordance with this provision. If the parties are unable to agree upon an appraiser within thirty (30) days after the request by one of them for such agreement, the matter may be submitted for arbitration.

4.43 Insurance Claims

NEUTRAL Owner shall give to Operator, and Operator shall give to Owner, prompt notice of any claims in excess of Ten Thousand Dollars (\$10,000) made against Owner or Operator, and each party shall cooperate fully with each other and with any insurance carrier to the end that all such claims will be properly investigated and defended. Operator shall promptly engage legal counsel to defend any such claim against Owner, which counsel shall be approved by Owner.

4.44 Owner to Assume Liability for Inadequate Insurance

OPERATOR Owner assumes all risks in connection with the adequacy of any insurance or self-insurance program, and waives any claim against Operator and its Affiliates for any liability, cost, or expense arising out of any uninsured claim, in part or in full, of any nature whatsoever except for the gross negligence or willful misconduct of Operator, its servants, and employees.

4.45 Owner and Operator Waive Claims Against Each Other

NEUTRAL Provided that Operator shall procure and keep in force all of the insurance required to be obtained by Operator pursuant to this Agreement, neither Owner nor Operator shall assert against the other any claims for any losses, damages, liabilities, or expenses (including attorney fees) incurred or sustained by either of them, to the extent that the same are covered by such insurance, on account of damage or injury to person or property arising out of the ownership, operation, or maintenance of the Hotel. The parties agree that all policies of insurance to be procured by Operator shall permit the foregoing waiver.

4.46 Operator to Keep Books of Accounts

NEUTRAL Operator shall keep full and adequate books of account and such other records as are necessary to reflect the results of the operation of the Hotel. Such books and records shall be kept in all material aspects in accordance with the Uniform System of Accounts for Hotels (The Uniform System of Accounts for Hotels, 8th rev. ed. 1986).

NOTE: The Uniform System of Accounts is updated periodically. The contract should specify the current edition. It is very difficult to sell and refinance hotels that do not follow this system.

[*Alternate Clause*] OPERATOR shall establish and operate accounting and internal audit control systems reasonably acceptable to Owner, and in connection with the foregoing, Operator shall establish and maintain for the benefit of Owner complete, proper, current, and accurate records and books of account reflecting all transactions of the Hotel and of Operator with respect to the Hotel. Such books and records shall be prepared on an accrual basis and otherwise in accordance with generally accepted accounting principles and the Uniform System of Accounts, consistently applied within each accounting period and from year to year. Operator shall store safely such books and records for a minimum of three (3) years following the Fiscal Year to which they are applicable, and Operator shall not destroy or dispose of the same except by delivery to Owner for further storage or destruction as Owner may determine.

4.47 Storage and Inspection of Books and Records

NEUTRAL Except for the books and records that may be kept in Operator's home office or other suitable location pursuant to the adoption of a centralized billing system or other centralized service, the books of account and all other records relating to or reflecting the operation of the Hotel shall be kept at the Hotel. All books and records relating to the Hotel shall be available to Owner and its representatives at all reasonable times after each notice from Owner to Operator of Owner's desire to examine, audit, inspect, and transcribe same.

4.48 Books and Records Upon Termination

NEUTRAL Upon any termination of this Agreement in accordance with its terms, all books and records shall be forthwith turned over to Owner so as to ensure the orderly continuance of the operation of the Hotel, but such books and records shall thereafter be available to Operator at all reasonable times for inspection, audit, examination, and transcription for a period of not less than seven (7) years from the date of said termination.

4.49 Operator's Monthly Financial Reports

NEUTRAL Operator shall deliver to Owner at or prior to the end of each month an accounting for the operations of the Hotel, including a detailed profit and loss statement and balance sheet and cash forecast showing the results of the operation of the Hotel for the preceding month and for the fiscal year to date and the cash needs, if any, for the subsequent six (6) months. Such statement shall: (a) be in the customary form with the schedules annexed and in the same detail as generally prepared by Operator for other hotels it owns or operates, (b) be taken from the books and records maintained by Operator in the manner hereinabove specified, and (c) follow the general form set forth in the Uniform System of Accounts for Hotels (8th rev. ed. 1986), unless Owner reasonably specifies a different form, and shall be calculated on the accrual method.

NOTE: The timing for submission of the financial reports discussed ranges from 15 to 30 days after the cease of the accounting period.

4.50 Operator's Annual Financial Reports

NEUTRAL Within ninety (90) days after the end of each fiscal year, Operator shall deliver to Owner financial statements including a detailed balance sheet, a statement of sources and uses of funds, an income and expense statement, and a computation of the Incentive Management Fee, certified by the Independent Certified Public Accountant, showing the results of operations of the Hotel during such fiscal year. Such financial statements shall be calculated on the accrual method. Any disputes as to the contents of any such statements or any accounting matter hereunder shall be determined by the Independent Certified Public Accountant.

4.51 Operator to Prepare Additional Reports

NEUTRAL Operator shall render to Owner, and any persons so designated by Owner, at Owner's expense, any additional financial statements reasonably required by Owner.

[Alternate Clause]
OWNER Upon request by Owner, from time to time, Operator promptly shall prepare or cause to be prepared additional reports showing aging of receivables, schedules of payables, schedules of supplies and inventory, detailed cash flow information, occupancy reports, reports on insurance claims, reports on the physical condition of the Hotel, information regarding marketing outlook, and information regarding other matters of interest to Owner. Owner shall pay Operator's reasonable expenses incurred in preparation of such reports. Upon Owner's request, from time to time, the General Manager and Owner (or its agents) shall meet and discuss the operations of the Hotel.

4.52 Annual Audit

OWNER Following the close of each Fiscal Year, Owner shall have the right to cause an audit of the books, records, and operations of the Hotel to be made by an independent certified accounting firm. Operator shall cooperate fully with such auditors and shall make available to them any and all information concerning the Hotel. Owner shall deliver to Operator copies of all financial reports regarding the Hotel promptly after they are received from such auditors. Any adjustments to the Management Fee required because of the results of such audit shall be made by the parties within ten (10) business days. The cost of any such independent audit shall be an administrative and general expense of the Hotel for the succeeding Fiscal Year, provided that such cost shall be an expense of the subject year in the event that such year is the last year of the term hereof.

4.53 Operator to Pay All Bills

NEUTRAL Operator will pay all proper bills and expenses incurred in the operation of the Hotel and will file and pay all sales and use, property, franchise, income, and other tax records and returns relating to the Hotel. Operator shall pay as a part of the operating expenses of the Hotel, when due, all charges for water, gas, electricity, and all other public services furnished to the Hotel. Operator likewise shall pay as part of the operating expenses of the Hotel the replacement cost of the Consumable Supply, Other Supply, and other type of supplies; all wages; and all other costs incurred for the property operation of the Hotel in accordance with the provisions hereof. Operator will furnish centralized computing services for the efficient processing of payroll services, financial statements, accounts receivable, and accounts payable.

[Alternate Clause]
NEUTRAL Operator shall cause its accounting department to prepare and timely file all necessary reports with respect to withholding taxes, social security taxes, unemployment insurance, disability insurance, the Fair Labor Standards Act, and all other statements and reports pertaining to labor employment on Owner's payroll in or about the Hotel.

[Alternate Clause]
NEUTRAL Operator shall maintain all required records and prepare and file all forms related to the collection and payment of all sales and use taxes. Operator shall make required payments to the appropriate taxing authority from funds collected therefore by the Hotel. Operator's responsibilities hereunder specifically exclude the preparation or filing of local, state, or federal income tax returns.

[Optional Additional Clause]
OWNER Provided that Owner has timely furnished sufficient funds for the payment thereof, Operator shall indemnify Owner from any penalties incurred as a result of Operator's failure to file sales tax, payroll tax, or local tax returns on behalf of the Hotel, other than income tax returns, for any tax period commencing on or after the date hereof. Any penalties incurred by reason of such failure or Operator's part shall not be considered an expense of the Hotel.

4.54 Operator to Provide Centralized Accounting

NEUTRAL Operator shall make available, in connection with the operation of the Hotel, its complete system of central financial services utilizing Operator's home office financial staff and computer equipment for so long as Operator shall provide such services for at least ten (10) other hotels in this chain.

Such services shall include, without limitation, cash management; verification of daily work; preparation of payroll and benefits administration; preparation of payroll tax returns; handling of accounts receivable (including normal in-house collection activities) and accounts payable; billing under national credit cards; cash management; preparation of monthly internal operating statements; verification of financial controls; advice and monitoring of accounting and reporting systems and internal controls (relating to cash, inventories, and accounts receivable); and training and supervision of cashiers, front desk, and inventory personnel. Such services shall not include the cost of a certified audit or the preparation and filing of state and federal tax returns, other than payroll and sales tax returns.

[Optional Additional Clause]
OPERATOR In addition to all other fees due hereunder, Owner agrees to pay to Operator an Accounting Fee of Two Thousand Dollars (\$2,000) per month to reimburse Operator for the expense of off-premise central office bookkeeping and accounting services, including, without limitation, the cost of issuance of checks and preparation of payroll statements; provided, however, that such Accounting Fee shall, in accordance with Operator's current standard fee schedule therefore be subject to increase annually by the lesser of ten percent (10%) or the percentage of increase in the Consumer Price Index as specified hereinabove.

[Alternate Additional Clause] For so long as Operator provides the Centralized Accounting Servers described herein-above, Operator shall receive a Centralized Financial Service Charge, in an amount equal to one and one-half (1 1/2%) percent of Total Revenues, payable monthly in the same manner as the Basic Fee.

OPERATOR

[Alternate Additional Clause] Operator will be paid a fee of \$750, to be adjusted to reflect the Consumer Price Index, on January 1, 1989 and annually thereafter, as an administrative and general expense of the Hotel, for each Monthly Accounting Period as a non-allocatable reimbursement for centralized computer, payroll processing, checks, accounting, and bookkeeping services. It is expressly understood that no outside accounting services will be hired as an expense of the Hotel for any reason whatsoever, except for the annual audit.

OPERATOR

4.55 Inventory

NEUTRAL Operator shall, on or before the Opening Date, and for every third Year of Operation thereafter, conduct an inventory of all Furnishings and Equipment and maintain complete records of such at the Hotel.

4.56 Internal Audits

OWNER At Operator's sole option, Operator may perform internal audits of the operation of the Hotel. The cost of each audit shall be borne exclusively by Operator and shall not be an Expense of Operation of the Hotel; provided, however, that the out-of-pocket travel costs of Operator's employees engaged in the performance of such audit(s) shall be considered a Reimbursable Expense.

4.57 Legal Actions for Guest or Tenant Default

NEUTRAL Operator may institute, in its own name or in the name of Owner, as required by the law, at the expense of Owner, any necessary legal actions or proceedings to collect charges, rent, or other income for the Hotel or to oust or dispossess guests, tenants, or other persons in possession, and concessionaires, or to cancel or terminate any lease or concession for the breach thereof or default thereunder by the tenant or concessionaire; provided that Operator shall not institute any legal actions with respect to any lease of one (1) year or more or involving more than Ten Thousand Dollars (\$10,000) without the prior written consent of Owner. Any legal counsel engaged under this provision shall be designated by Owner.

4.58 Legal Actions Against the Property

NEUTRAL Operator may, but shall not be obligated to, take at Owner's expense appropriate steps to protest or litigate final court decisions for any violation, order, rule, or regulation affecting the property.

[Alternate Clause] Operator and Owner shall use their best efforts to prevent any liens from being filed against the Hotel that arise from any maintenance, changes, repairs, alterations, improvements, renewals, or replacements in or to the Hotel. They shall cooperate fully in obtaining the release of any such liens. If such a lien arises that was not occasioned by the fault of either party, it shall be treated as an expense of the Hotel. If the lien arises as a result of the fault of either party, then the party at fault shall bear the cost of obtaining the lien release.

NEUTRAL

4.59 Operator to Provide Advertising, Promotion, and Sales

OWNER Operator will plan, prepare, and contract for advertising and promotions for the Hotel designed to publicize the Hotel and attract guests in accordance with the standards set by other high-quality first-class hotel operations. To this end, Operator shall arrange and make contracts for such advertising and promotion as it may deem advisable from time to time for the successful operation of the Hotel.

[Alternate Clause] OWNER Operator shall provide the Hotel with such advertising, public relations, and promotional services as are judged by it to be reasonably necessary and appropriate in order to promote the name and facilities of the Hotel and to maintain its identity as one of the Operator's Hotels. Such services shall include but not be limited to assistance in the following areas:

A. Developing and implementing the Hotel's communications plan following the Operator's guidelines. This task includes planning, publicity and internal communications, and organizing and budgeting the Hotel's advertising and public relations programs;

B. Selecting and providing guidance as required for the public relations personnel;

C. Preparing and disseminating news releases for trade and consumer publications, both national and international; and

D. Selecting an advertising agency.

Operator shall coordinate the Hotel's communications program with Operator's corporate communications program and shall include the Hotel in Operator's corporate identity programs and in its national advertising programs as appropriate.

4.60 Operator to Prepare a Marketing Plan

OWNER Operator will prepare on an annual basis a marketing plan that shall include, but not be limited to, projected occupied room-nights and average daily rate by market segment, a detailed program for advertising and promotion, a detailed program for sales strategies, and a competitive hotel analysis.

4.61 Operator to Utilize Franchisor's Marketing and Reservation Services

OWNER Operator shall cooperate with Franchisor to cause the Hotel to be included in the national advertising programs and central reservation system for all hotels franchised by Franchisor. Operator shall use its best efforts to secure bookings for the Hotel through the sales and reservations systems of Franchisor and Operator and shall encourage the use of the Hotel by and for travelers, organizations, groups, meetings, conventions, travel agencies, and other recognized sources of hotel business.

4.62 Operator's Centralized Marketing and Reservations

OWNER Operator shall provide, or shall cause an Affiliate to provide, in the operation of the Hotel and for the benefit of its guests, inter-hotel reservations, convention and business meeting marketing and promotions, sales promotions, publicity, public relations, and all other group marketing benefits, services, and facilities, including joint advertising programs to the extent appropriate (all herein collectively called "Centralized Services"), similar to those furnished to other hotels owned and operated by Operator. Owner shall pay Operator monthly, as an expense of the Hotel deducted in calculating Hotel Net Income, a Cen-

tralized Services Fee of one and one-half percent (1 1/2%) of Hotel Gross Revenue for the preceding month.

[*Alternate Clause*]
NEUTRAL Owner shall be charged for all costs of reservation equipment, communication facilities, and credit card company charges, and for its pro rata share of all central reservation services payable to third parties, on the same basis as other hotels owned or operated by members of Operator.

[*Alternate Clause*]
NEUTRAL Operator shall process reservations for the Hotel through Operator's reservations system. Any charges payable to third parties in connection with the securing of reservations for the Hotel shall be an operating expense of the Hotel.

[*Alternate Clause*]
OWNER Owner's obligation to participate in the reservation system and related programs shall be conditioned upon the charges therefor being in an amount satisfactory to Owner. In the event the charges therefor are not satisfactory to Owner, Owner may elect not to participate in said system.

4.63 Joint Advertising and Sales Promotion

OPERATOR It is understood and agreed that where advertising or sales promotion for the Hotel is supplied in conjunction with advertising for other of Operator's owned, operated, or affiliated hotels or motels, the cost of such advertising or sales promotion shall be prorated to the Hotel and the other hotels and motels benefitted thereby on a per-room basis; provided, however, that within the total advertising and promotion budget for such fiscal year the cost of such joint advertising and sales promotion allocated to the Hotel shall not exceed one third (1/3) thereof. It is agreed that the Hotel is not benefitted unless its name and location appear in the advertising.

4.64 Operator's Regional Sales Offices

OPERATOR As a result of the growth of the number of hotels owned and/or operated by Operator, Operator is planning to establish regional sales offices in major metropolitan areas throughout the United States. Owner agrees to pay its pro rata share of the expenses of such regional sales offices to be allocated on a per-room basis in the same method as the joint advertising and sales promotion expenses are allocated. The expenses to be allocated to Owner shall not exceed one half of one percent of the Gross Operating Income of the Hotel in any one fiscal year and the per-room charge shall not include any profit for Operator.

4.65 Operator's Credit Card System

NEUTRAL Operator may, from time to time, at its sole discretion implement a charge card system for the convenience of guests and for the promotion of Operator's Hotels. At any time when such a charge card system is in effect, Operator shall make such system available to the Hotel, and Owner hereby authorizes Operator to accept such charge card and all other charge or credit cards designated by Operator for all Hotel charges authorized in accordance with Operator's credit card billing policies, as they may be amended from time to time. Operator shall retain the right at any time during the term of this Agreement to discontinue utilization of its charge card system.

4.66 Operator's Logotype and Symbols

OPERATOR Owner acknowledges that the Hotel's communications plan must be in accordance with Operator's sales, advertising, and public relations philosophies and must adhere to Oper-

ator's corporate identity requirements. In furtherance thereof, Owner acknowledges that Operator's logotype shall be the only logotype or symbol used to identify the Hotel.

4.67 Public Statements by Owner and Operator

NEUTRAL Owner and Operator shall coordinate with one another on all public statements, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this Agreement and/or the performance by either of them of their respective obligations hereunder.

NOTE: Many management contracts are confidential and the terms cannot be released by either party.

4.68 Operator to Provide Centralized Group Services

NEUTRAL Operator may, at the request of Owner and with Owner's approval in each instance, cause its affiliates or subsidiary companies to provide for the Hotel and its guests the full benefit of any reservation system hereafter established by Operator and its affiliates and, with Owner's approval, may cause any such companies to so provide such aspects of any accounting services or other group benefits and services as are made available generally to properties managed by Operator, all of which are collectively referred to herein as "Centralized Services." Owner hereby agrees that the Hotel may participate in all such Centralized Services on the terms and conditions hereinafter specified.

4.69 Cost of Group Services

NEUTRAL Operator shall not charge any profit for group services but shall be entitled to reimbursement for the cost of those specific services elected by Owner to be performed centrally and for the property's pro rata share of all costs and expenses incurred in connection with the rendition of group advertising, business promotion, and reservations services, allocated on the same basis as allocated to other properties owned or operated by Operator.

[Alternate Clause]
NEUTRAL Operator's affiliated or subsidiary companies that provide Centralized Services shall be entitled to be reimbursed for the Hotel's share of the total costs incurred in providing such services on a system-wide basis to hotels and motor inns owned or managed by Operator or its affiliates or subsidiaries. Such costs may include, without limitation, salaries (including payroll taxes and employee benefits) of employees and officers of Operator and its affiliated and subsidiary companies, costs of all equipment employed in the rendition of such services, and a reasonable charge for overhead that does not include any profit. The Hotel's share of said costs shall be determined in an equitable manner by Operator as certified by Operator's chief financial officer taking into account, to the extent possible, differing cost factors relating to the individual properties covered. The Hotel's costs shall be an operating expense of the Hotel.

[Optional Additional Clause]
OWNER Each time that Operator shall charge the operation of the Hotel for its pro rata share of Allocable Chain Expense for any period, it shall furnish to Owner a statement in sufficient detail to provide Owner with data supporting such charge. Owner may, in connection with any such statement for any period, cause an audit to be made of the books and records of Operator and its affiliates relating to the data furnished in such statement, including, without limitation, the Chain Expense and Allocable Chain Expense incurred during such period in the average number of key guestrooms during such period in hotels opened to the public and situated in the United States and operated by Operator or its affiliates.

[Optional Additional Clause] If Operator shall at any time institute major changes in the character or cost of its Group Services, the increased costs shall not be charged to Owner unless those changes have been implemented and the costs thereof allocated among at least two thirds (2/3) of the other hotels Managed by Operator in which Owner has no equity interest.

OWNER

4.70 Emergencies

NEUTRAL In the event that any circumstance shall occur that Operator reasonably and in good faith judges to be an emergency threatening the safety of persons or property (an "Emergency"), then Operator shall take such action and shall cause such things to be done as Operator reasonably and in good faith believes necessary. Operator shall inform Owner of any and all Emergencies as soon as practicable. If practicable, Operator shall obtain Owner's prior approval of any action in response to an Emergency.

4.71 Taxes and Assessments

OWNER Operator shall obtain bills for real estate and personal property taxes, improvement assessments, and other like charges that are or may become liens against the Hotel and recommend to Owner payment thereof or appeal therefrom. Operator annually shall review and submit all real estate and personal property taxes and all assessments affecting the property to Owner and shall file all personal property tax returns.

Section 5 MANAGEMENT FEES

5.1 Management Fees—General

NEUTRAL As consideration for the services to be rendered by Manager as set forth in this Agreement, Owner agrees to pay to Manager a basic management fee (the "Basic Fee"), an incentive fee (the "Incentive Fee"), and an accounting fee (the "Accounting Fee"), each to be determined and paid in accordance with the terms set out herein during each Operating Year of the Operating Term (and, unless otherwise provided, proportionately for a fraction of an Operating Year).

5.2 Amount of Management Fees—Basic Fee

NEUTRAL Commencing on the Effective Date, Owner shall pay Operator a Basic Management Fee equal to five percent (5%) of the Gross Revenues of the Hotel. The Basic Management Fee shall be calculated for each Monthly Accounting Period during the Operating Term and three percent (3%) shall be payable by Operator to itself out of the Operating Accounts (as defined herein) prior to any distributions to Owner and prior to payment of any mortgage Indebtedness or obligations under any Equipment Leases, the remaining two percent (2%) being subordinated to the payment of principal and interest on the initial permanent or take-out loan on the Hotel, accrued without interest, and repaid.

5.3 Amount of Management Fees—Incentive Fee

NEUTRAL Commencing on the Effective Date, Owner shall pay Operator an Incentive Management Fee equal to fifteen percent (15%) of:

- A. The annual Gross Operating Profit, less (i) annual ad valorem taxes, (ii) property insurance, (iii) the amounts paid into the Replacement Fund, and (iv) Nine Hundred Thousand Dollars (\$900,000) (hereinafter call "Net Cash Flow"). In the event the hotel is refinanced, Net Cash Flow shall be adjusted by the difference

between Nine Hundred Thousand Dollars (\$900,000) and the then actual annual principal and interest payments.

- B. Sale or refinancing proceeds in excess of Eight Million Five Hundred Thousand Dollars (\$8,500,000), including the distribution of funds related to the Replacement Fund and initial Reserve Fund.

NOTE: If the incentive fee is based on profits, then the method used to calculate profits should be clearly defined.

[Alternate Clause] The payment of Incentive Management Fees shall be made only to the extent of Cash Flow during such fiscal year. In any year in which Cash Flow is not sufficient to pay Operator the Incentive Management Fee, such unpaid Incentive Management Fee shall accrue and be paid from Cash Flow available in later years until such time as all accrued and unpaid Incentive Fees have been paid.

5.4 Payment of Management Fees

NEUTRAL On or before the twenty-fifth (25th) day following the expiration of each three (3) -month period of the Operating Term, Operator shall receive out of the Operating Account its Incentive Fee for the said three (3) -month period just ended. The Incentive Fee for each three (3) -month period subsequent to the prior three (3) -month period or periods of each Operating Year hereof shall be equal to the excess of the Incentive Fee, calculated on a cumulative basis from the commencement of the then current Operating Year to the end of such three (3) -month period in respect of which the Incentive Fee is being paid, over the aggregate of the Incentive Fee theretofore paid in respect of such Operating Year. To the extent that there may be insufficient funds in the Operating Account for such payment, Owner shall pay to Operator forthwith, on demand, such Incentive Fee. To the extent the cumulative Incentive Fee paid to Operator in any then current Operating Year exceeds, at any time, the actual cumulative amount of Incentive Fee to which Operator is entitled, Operator shall promptly refund the excess to Owner.

NOTE: The incentive fee can also be paid on a monthly basis.

5.5 Disputes Over Management Fees

OWNER If Owner questions any of the amounts or computations for any period (a) as shown by the Annual Statement of Operator's Fee, or (b) in determining Net Distributable Cash, or (c) as shown in statements submitted, and if Owner and Operator are unable to agree thereon, the matter in dispute shall be submitted for a binding decision by a Certified Public Accountant selected by the parties from the following list *[omitted]* in the order listed, subject only to their availability and to their independence, at the time, with reference to Owner, Operator or any affiliate or either:

[list parties]

Any expenses incurred in connection with such a resolution shall be treated as an expense of the Hotel. Owner shall be conclusively deemed to have accepted the accuracy and correctness of each Annual Statement of Operator's Fees unless Owner notifies Operator that Owner questions specific items therein within ninety (90) days after the later of its receipt by Owner or discovery of facts not reasonably in Owner's knowledge at the time it was received, but in any event not later than one (1) year from the date of the report.

5.6 Management Fee Definitions

NEUTRAL The term "Gross Income" shall mean all revenues, sales, or income of any kind, including service fees, resulting from the operation of the Hotel and over which Operator has any direct or indirect responsibility, including, but not limited to the following:

A. Rental of rooms (excluding sales tax, hotel tax, and any other tax relating to room rental);

B. Rentals and other payments from licenses, sublessees, concessionaires, and others occupying space or rendering services at the Hotel (but not including the gross receipts of such licensees, sublessees, concessionaires, or others);

C. Food and beverage sales (excluding sales taxes and gratuities) from meeting rooms, restaurants, bars, and/or room service, if such services are conducted by Operator;

D. Subsidy payments;

E. Proceeds of use and occupancy insurance received or business interruption insurance payments (after deducting therefrom necessary expenses in connection with the adjustment or collection thereof); and

F. Any other form of income, from any source whatsoever, that is directly attributable to the Hotel, but not including the proceeds of any financing or refinancing, casualty or liability insurance proceeds, or condemnation proceeds.

The following amounts shall not be included in determining Gross Income:

A. Gratuities or payments in the nature of gratuities that the Owner is obligated to pay over to employees;

B. Sums and credits received in settlement for loss, theft, or damage to property unless in excess of the cost of settlement of such loss, theft, or damage to property;

C. Excise, sales, or use taxes or similar charges that are required by law to be collected directly from patrons or guests or as part of the sale price of any goods or services or displays, and that must be remitted to governmental authorities; and

D. Credits or refunds to guests not previously deducted.

NOTE: The contract should contain specific definitions for all accounting terms used that are not clearly defined in *The Uniform System of Accounts for Hotels* or for which the parties require a modified definition.

[Alternate Clause] Gross Operating Profit for the Hotel for any period shall mean and refer to Gross Revenues of the Hotel for such period, less the following expenses for such period incurred or authorized by Operator in operating the Hotel:

NEUTRAL

A. All wages and salaries of all employees (exclusive of salaries paid to corporate executive personnel of Operator, but including such wages, salaries, and other compensation chargeable to such employees used by Operator in connection with the operation and management of the Hotel) and all other payroll costs, fringe benefits, employer taxes, and similar charges related to employment; provided, however, that if any employee is also employed elsewhere by Operator, such compensation shall be equitably prorated among the Hotel and such other properties where such employee also is employed.

B. All departmental, administrative, and general expenses relating to the Hotel, including, without limitation, payments to the Marketing Fund and other advertising, promotional, and entertainment expenses; commissions; and the cost of heat, light, power, and other utilities.

C. All costs and expenses of routine maintenance, repairs, and minor alterations to keep the Hotel in good operating condition, which under generally accepted accounting principles are expensed currently rather than capitalized.

D. All license fees and permits relating to the Hotel or the operation thereof.

E. All amounts due under service contracts relating to the Hotel or the operation thereof.

F. The cost of all Consumable Supplies consumed in the operation of the Hotel.

G. A reserve for uncollectible accounts receivable in a reasonable amount determined by Operator and adjusted from time to time to reflect actual experience.

H. All costs and fees of accountants, attorneys, and other third parties who perform services required or permitted hereunder, which under generally accepted accounting principles are expensed currently rather than capitalized.

I. All costs and fees of technical consultants and operational experts for technical or specialized services in connection with non-routine hotel work or matters that under generally accepted accounting principles are expensed currently rather than capitalized.

J. The Base Management Fee (as hereinafter defined).

K. All franchise royalties and other fees or expenses paid or payable by Operator under and pursuant to the Franchise Agreement pursuant to which the Hotel is operated or under or in connection with any renewal or extension thereof.

Section 6 EMPLOYMENT PRACTICES

6.1 Operator's Personnel Duties

NEUTRAL Operator shall select, employ, promote, terminate where appropriate, supervise, direct, train, and assign the duties of all personnel that Operator reasonably determines to be necessary or appropriate for the operation of the Hotel (collectively, the "Hotel Employees"). Operator shall employ its best efforts and exercise reasonable care to select qualified, competent, and trustworthy employees. To the extent possible, Operator shall use local labor in the operation of the Hotel.

6.2 Employee Training

OWNER Operator shall provide appropriate training for all Hotel Employees. Operator also shall cause the appropriate employees to attend any program required by Franchisor pursuant to the Franchise Agreement. The costs of attending any such meetings or seminars, including the cost of tourist-class travel, accommodations, and food, shall be an expense of the Hotel, but shall not unreasonably exceed the amount provided for such purpose in the Operating Budget.

6.3 Employee Conduct

OWNER Operator shall require each Hotel Employee to be at all times (to the greatest extent possible within the scope of his duties) clean, neat, well-groomed, well-postured, unobtrusive, and dignified and to conduct himself at all times and in all contacts with guests, patrons, other Hotel Employees, and members of the public in a friendly, cooperative, helpful, and responsive manner and otherwise in such a way as to contribute to the comfort and goodwill of the guests and patrons of the Hotel and other Hotel Employees and to enhance the reputation of the Hotel generally. Operator shall employ its best efforts to create and maintain among the Hotel Employees a business-like but congenial atmosphere, a spirit of cooperation and goodwill, and a sense of pride associated with providing quality products and services and performing their jobs well.

NOTE: The preceding clause asserts the Owner's interest in maintaining top quality employees. The attitude and conduct of employees is an important factor in the success of a hotel venture.

6.4 Employees Are Employed by Owner

OPERATOR Each Hotel Employee shall be the employee of Owner and not of Operator, and every person performing services in connection with this Agreement, including any agent or employee of Operator or its Affiliates or any agent or employee of Owner hired by Operator, shall be acting as the agent of Owner.

[Alternate Clause]
NEUTRAL The General Manager (or other such Hotel Employees as designated by Operator) shall be an employee of Operator, and Owner shall reimburse Operator monthly for the General Manager's salary and fringe benefits.

[Alternate Clause]
OPERATOR All Hotel Employees and agents shall be on Owner's payroll. Manager shall not be liable to such employees for their wages or compensation.

6.5 Operator to Negotiate Labor Contracts

NEUTRAL Operator will negotiate on Owner's behalf, after consulting with Owner or, if Owner is not available, with Owner's attorney, with any labor union lawfully entitled to represent the Hotel Employees. However, Owner, in its discretion, may participate in such negotiations. No collective bargaining agreement or labor contract resulting from such negotiations shall be valid unless executed by Owner.

[Optional Additional Clause]
NEUTRAL Owner's approval will not be withheld in any case if such contract is consistent with similar agreements commonly in effect in the area.

NOTE: When using the preceding clause, Owner should verify Operator's ability to conduct labor negotiations prior to signing the management contract.

6.6 Limits on Employee Compensation

OWNER Subject to the restrictions imposed by the Operating Budget, Operator shall set the salaries and fringe benefits of all Hotel Employees. Operator shall not permit such compensation to exceed by a substantial amount the compensation paid to employees with similar skills and responsibilities at comparable hotels in and about the area.

NOTE: The annual plan should contain a wage survey of area lodging facilities.

[Alternate Clause]
OWNER No Hotel Employee shall receive compensation in excess of Sixty Thousand Dollars (\$60,000) per year without Owner's prior approval of the pay rate.

NOTE: The preceding clause provides ownership control over employee compensation. The \$60,000 base should be adjusted to reflect local conditions.

[Alternate Clause] In determining employee salaries, Operator may pay such incentive salaries and bonuses to department heads and sales staff as Operator may deem appropriate, provided that such payments are pursuant to an incentive compensation plan that has been previously approved by Owner.

OPERATOR

6.7 Limits on Employment Contracts

OWNER Operator shall not enter into, institute, or grant employee benefits or employment agreements with respect to Hotel Employees that (a) require more than thirty (30) days' notice of cancellation, (b) require more than a thirty (30) -day grace period for termination of funding or participation, or (c) require a penalty or extraordinary payment on cancellation or any such termination, except those benefits or agreements required pursuant to union contracts, as the same may be changed from time to time to comply with applicable laws.

6.8 Selection of General Manager

OWNER The selection of the General Manager, as well as his salary, shall be subject to Owner's prior written approval, which shall not be unreasonably withheld.

[Alternate Clause] The General Manager shall be selected by Operator, but his employment, termination, or transfer to another Hotel shall be subject to the prior approval of Owner. In the event that the General Manager shall resign or be terminated or shall be absent from the Hotel for any period in excess of ordinary vacations and leave time, Operator shall replace the General Manager with a qualified person as soon as reasonably practicable.

OWNER

6.9 Replacement of General Manager

OWNER If the General Manager shall not prove satisfactory to Owner, Owner may, in writing, request Operator to discharge the General Manager, setting forth therein the reasons for such action. If the grounds for removal set forth by Owner shall be sufficient to constitute a violation of the terms of this Agreement, Operator must discharge the General Manager.

[Alternate Clause] Operator may change or replace the General Manager of the Hotel at any time. The decision in regard to any change or replacement shall be at the sole discretion of Operator.

OPERATOR

6.10 Owner May Not Rehire General Manager

OPERATOR Owner agrees that if the General Manager of the Hotel leaves the employ of Operator for any reason, Owner shall not hire the General Manager in any capacity for at least one (1) year following such termination.

NOTE: The preceding clause prevents the Owner from terminating the management company and retaining the General Manager, a practice that can sometimes be tempting from the Owner's point of view. Time periods for such clauses range from one to three years.

6.11 Salary for General Manager

OWNER Owner shall be given prior written notification, subject to its approval, of the appointment and total compensation package of the General Manager. Owner's approval of such compensation package shall not be unreasonably withheld or delayed.

6.12 Fringe Benefits for General Manager

OPERATOR The General Manager is entitled to annual holidays as well as reasonable time off from regular duties for the purpose of attending professional development seminars, managers' meetings, and industry conferences and conventions, and for the purpose of attending to such other business as may be reasonable in the hotel industry. Owner shall pay all reasonable expenses of the employee in attending such meetings, seminars, conferences, and conventions.

6.13 Owner May Not Give Orders to Hotel Employees

OPERATOR Owner may at any time consult or communicate with Operator regarding any of the Hotel Employees, but Owner shall not give orders to or otherwise interfere in the day-to-day activities of the Hotel Employees.

Section 7 TRADE NAMES

7.1 Use of Trade Name

OPERATOR In its operation of the Hotel, Operator may utilize trade names or trademarks that, in whole or in part, may be the same as or similar to the trade names or trademarks now or hereafter used by it or other members of Operator's Group, in connection with the operation of other hotels. The exclusive rights to the use of the trade names and trademarks will belong to Operator, and are not in any way to be considered appurtenant to the Hotel, irrespective of whether any of the trade names and trademarks are used by Operator for the first time at the Hotel or elsewhere. Upon the termination of this Agreement for any reason, all further rights to use the trade names and trademarks shall remain with Operator, and neither Owner nor any other occupant of the Hotel shall have any rights thereto.

[Alternate Clause] After termination of this Agreement, neither Owner nor any other owner or operator of the Hotel shall have the right to use the trade name or any trademarks, emblems, insignia, slogans, or distinguishing characteristics in connection with the operation of the Hotel or in any other manner.

[Alternate Clause] OPERATOR Operator has registered the name, trade name, trademark, and service mark of certain names for restaurants that are used in hotels owned and/or operated by Operator. Owner agrees that any such name, trade name, trademark, or service mark registered by Operator shall remain the exclusive property of Operator; provided, however, that Owner shall have the right to approve the name of any restaurants in the Hotel.

Section 8 SUCCESSORS AND ASSIGNS

8.1 Assignment by Operator

OWNER This Agreement, or any rights and duties expressed herein, shall not be assigned or transferred by Operator without the prior written consent of Owner. Transfer or issuance of the stock of Operator resulting in any change of control thereof shall be deemed a transfer of this Agreement by Operator.

[Alternate Clause] OPERATOR Operator, without consent of Owner, shall have the right to assign this Agreement to any successor or assignee of Operator that may result from any merger, consolidation, or

reorganization, or to any corporation or firm, fifty percent (50%) or more of whose voting stock or control is owned directly or indirectly by Operator, or to another corporation that shall acquire all or substantially all of the business and assets of Operator.

[Alternate Clause]
OPERATOR Operator shall have the right to assign its rights and obligations under this Agreement, or any portion thereof or interest therein, to any person or entity that acquires all or substantially all of the assets of Operator, or the partnership interest of any partner of Operator, without the consent of Owner; provided, however, that any such assignee shall expressly assume in writing the obligations of Operator (or the obligations, if any, of such former partner or Operator) hereunder, in which event the liability of Operator (or of such former partner of Operator, as the case may be) hereunder shall terminate. Operator shall not have the right otherwise to assign its rights and obligations under this Agreement, except with the prior consent of Owner, which consent may not be unreasonably withheld. It is understood and agreed that any approval given by Owner to any assignment shall not be deemed a waiver of the covenant herein contained against assignment in any subsequent case. Any assignee who succeeds to the interest of Operator hereunder (or to the interest of an assignee of Operator hereunder) shall be deemed to be Operator hereunder for all purposes.

[Optional Additional Clause]
OWNER Any consent granted by Owner to any such assignment shall not be deemed a waiver against assignment in any subsequent case.

8.2 Assignment by Owner

OWNER Owner shall have the absolute right to assign this Agreement to any person or entity acquiring all of Owner's right, title, and interest in and to the Hotel without the consent of Operator, provided, however, that any such assignee shall expressly assume in writing the obligations of Owner hereunder in which event the liability of Owner shall terminate hereunder and the assignee who succeeds to the interest of Owner hereunder (or to the interest of an assignee of Owner hereunder) shall be deemed to be Owner hereunder for all purposes.

[Alternate Clause]
OWNER Owner can sell or lease the property provided that the purchaser expressly assumes in writing all of the Owner's obligations under this Agreement.

8.3 Acceptable Purchaser

OPERATOR Operator shall not terminate this Agreement if the proposed purchaser of the property from Owner is an "Acceptable Purchaser," which shall mean one that has (a) total assets of at least Twenty Million Dollars (\$20,000,000) in 1989 dollars, (b) a financial net worth at least equal to twenty-five percent (25%) of the then fair market value of the Hotel (or such proportion if less than all of the Hotel is to be sold), (c) a reputation in the business world generally at least equal to that of Owner and its constituent transferors, (d) no significant part of its business in competition with Operator as a national or regional hotel chain (whether or not in direct competition with the Hotel), and (e) an agreement with Owner to execute at the closing of such proposed sale a document in writing assuming all of the Owner's obligations pursuant to this Management Agreement.

[Alternate Clause]
OWNER If Owner's interest in the Hotel is contracted to be sold or leased, this Agreement shall remain in full force and effect and binding upon Operator, except that Operator shall have the right to terminate this Agreement effective upon transfer of ownership of the Hotel if the purchaser or lessee is: (a) in the reasonable and good faith opinion of Operator, not of sufficient net worth to comply with the obligations reasonably anticipated at such time to be incurred by Owner hereunder, (b) a party who is generally reputed to be controlled by

persons known to be engaged in criminal activities or an associate or agent of criminals, or (c) not an operator of hotels or motels. Operator shall notify Owner of its election to terminate this Agreement within fifteen (15) days of receipt by Operator of notice of any proposed sale of the Hotel. Operator shall not be entitled to exercise the right of termination if Owner shall have notified Operator in writing of the identity of the proposed purchaser or lessee with reasonable supporting background information pertaining thereto, and within fifteen (15) days of such notification, either (a) Operator does not signify in writing to Owner the manner in which any of such purchaser(s) or lessee(s) fall within any of the categories listed hereinabove, or (b) if, having signified as aforesaid, such objections are thereafter resolved to Operator's reasonable satisfaction, or if not so resolved, determined not to be valid pursuant to an arbitration proceeding.

[Alternate Clause]
OPERATOR Owner and Operator recognize that certain Operator Affiliates are now engaged, and will in the future be engaged, in various gaming or casino business activities that are strictly regulated by governmental authorities, and that, by virtue of applicable licensing requirements and other regulations, such activities may be adversely affected by the character and reputation of persons with whom Operator does business. Accordingly, Owner agrees to notify Operator in writing of the identity of any of the following persons or entities together, in each case, with such additional information concerning any such person or entity, and the officers and owners of such entity, as Operator may reasonably request:

- A.** Any proposed assignee of this Agreement in connection with any contemplated sale or lease of the Hotel;
- B.** Any proposed assignee/transferee of a controlling interest in Owner; or
- C.** Any proposed purchaser of a limited partnership interest in Owner in connection with the original offering of such interests or any proposed transferee of any such interest.

Operator shall have a period of ninety (90) days after receipt of such information to investigate the backgrounds and reputations of such persons or entities and shall have the right to disapprove any of the proposed transactions on the basis that it may jeopardize its gaming or casino business activities. Owner and Operator acknowledge the discretionary nature of the governmental regulations and licensing requirements imposed upon Operator Affiliates and agree that Operator shall have the widest possible discretion in withholding its approval if it determines in good faith that any proposed assignment of this Agreement is likely to have an adverse impact or would otherwise jeopardize or delay any present or future gaming or casino business venture (including, without limitation, any approvals, temporary or permanent licensing requirements, or other regulatory procedures in connection therewith) engaged in by any Operator Affiliates.

[Optional Additional Clause]
OPERATOR Any consent granted by Operator to any such sale, lease, or assignment shall not be deemed a waiver against sale, lease, or assignment in any subsequent case.

8.4 Right of First Refusal

OPERATOR Owner shall extend to Operator a first right to purchase the Hotel in the event that Owner decides to sell the Hotel, or any part thereof. Owner shall extend to Operator in writing the opportunity to buy the Hotel upon certain terms and conditions (the "Offer"). Operator shall have thirty (30) days from its receipt of the Offer to accept same. Operator's failure to accept the Offer within such thirty (30) -day period shall be deemed Operator's refusal to purchase the Hotel on the terms and conditions offered, and Owner shall have the right to sell the Hotel upon the same terms and conditions con-

tained in the Offer, or upon terms more favorable to Owner, provided that a contract reflecting such transaction is executed by Owner and the new Purchaser within nine (9) months of the date Operator declines the Offer. In the event no contract has been executed within such nine (9) -month period, or if a contract has been executed during such period but such contract later fails, Owner must resubmit to Operator a written offer to sell the hotel, or any part thereof and, Operator shall again have thirty (30) days to accept or decline such offer.

8.5 Future Owners and Operators

NEUTRAL All references to "Owner" and "Operator" throughout this Agreement shall include and apply to their respective authorized successors and assigns; provided, however, that no assignment of this Agreement shall relieve the assignor of its obligations and liabilities under this Agreement.

8.6 Assignment as Collateral Security

OWNER Nothing herein contained shall prevent Owner from assigning this Agreement to any bank, insurance company, or other financial institution as collateral security to any first mortgage on the property.

8.7 Subordination to Mortgages

OWNER It is mutually agreed that this Agreement is subject and subordinate to the lien of all and any mortgages (the term "Mortgages" shall include both construction and permanent financing as well as secondary or junior financings and personal property financing and shall include deeds of trust and similar security instruments) that may now or hereafter encumber or otherwise affect the Hotel and to all and any renewals, extensions, modifications, recastings, or refinancings thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgage, trustee, beneficiary, or secured party. However, as confirmation of such subordination, Operator shall, at Owner's request, promptly execute any requisite or appropriate certificate or other documents.

Operator agrees to negotiate in good faith with Owner with respect to any modifications to this Agreement or any ancillary agreement that may reasonably be required or requested by any such construction or permanent institutional first mortgagee. Operator agrees that the operation is expressly conditioned upon the approval hereof by such mortgagee and the satisfaction by Owner and Operator of such additional conditions and requirements as may be imposed by such construction or permanent institutional first mortgagee.

It is agreed that in the event any party shall succeed to the interest of Owner through foreclosure or through a deed in lieu thereof, no liability or outstanding obligation of Owner to Operator that arose prior to such foreclosure or deed shall bind, obligate, or become a liability of such party, but Owner shall remain liable therefore.

If requested to do so by any mortgagee, Operator shall furnish to such mortgagee a copy of any financial report, statement, schedule, or plan required under this Agreement, to be submitted by Operator to Owner.

A copy of all notices of default under this Agreement shall be provided to any mortgagee of the Hotel, and such mortgagees shall be given a reasonable opportunity to cure such default. In addition, upon the request of any mortgagee or of either party hereto, Owner and/or Operator shall provide for such requesting party or such mortgagee estoppel certificates that shall state that this Agreement is in full force and shall specify any known defaults, if any, thereunder. Operator shall certify to such mortgagee, and/or to

Owner, that all preconditions and the full effectiveness of the Agreement have been satisfied and that the Operating Term has commenced.

Section 9 CONDEMNATION, DAMAGE, OR DESTRUCTION

9.1 Partial Condemnation

NEUTRAL If only a part of the Hotel shall be taken or condemned and the taking or condemnation of such part does not make it unreasonable or imprudent, in Operator's reasonable opinion, to operate the remainder as a hotel of the same type and class as immediately preceding such taking or condemnation, this Agreement shall not terminate, but out of the award to Owner so much thereof as shall be reasonably necessary to repair any damage to the Hotel, or any part thereof, so as to render the Hotel a complete and satisfactory architectural unit as a hotel of the same type and class as immediately preceding the taking or condemnation, shall immediately be made available for this purpose, subject to the interests of any mortgagee; and the balance of the award, after deduction of the sum necessary for restoration, shall be distributed to the Owner.

In the event of a taking or condemnation of all or part of the Hotel for temporary use, this Agreement shall remain in full force and effect. Restoration, repairs, and alterations shall be commenced promptly after the termination of the taking or condemnation for temporary use and same shall be completed with diligence. Operator's fees shall be computed on the basis of actual Gross Income and Adjusted Gross Operating Profit.

To the extent that any of the provisions of this Article conflict with the terms of any mortgage or other secured financing covering the Hotel, the terms of such mortgage or other secured financing shall supersede the provisions herein.

9.2 Use of Award for Partial Condemnation

OPERATOR Any compensation or award received by Owner with respect to any taking of the property in partial condemnation shall be used first for any restoration, repair, replacement, or rebuilding required by Operator and, thereafter, any excess shall be divided between Owner and Operator in such proportion that Operator will receive twenty percent (20%) of that fraction of the excess determined by dividing the then-remaining number of years in the term of this Agreement (including partial years and assuming exercise of all options to renew) by the remaining number of years in the useful life of the Hotel (for Hotel purposes) prior to the taking.

9.3 Total Condemnation

OPERATOR If the whole of the Buildings and the Land shall be taken or condemned by reason of any eminent domain, condemnation, compulsory acquisition, or like proceeding by any competent authority for any public or quasi-public use or purpose, or if such a portion thereof shall be taken or condemned as to make it imprudent or unreasonable, in the reasonable opinion of Owner, to use the remaining portion as a hotel of the same type and class as immediately preceding such taking or condemnation, then, in either of such events, this Agreement shall terminate with respect to the Hotel as of thirty (30) days after written notice from Owner to Operator of Owner's decision to terminate this Agreement under this provision. Owner and Operator each shall have the right and authority, as to their respective interests in such hotel, to defend at their own expense against any such taking or condemnation or to sue for or appeal from any such award and, in the exercise of such right, to compromise and settle any such action or award solely as to their own interest in the Hotel, on such terms as they may deem advisable. Operator shall continue to manage

the Hotel and to perform all of the duties required hereunder until such time as this Agreement terminates as herein provided.

9.4 Award for Total Condemnation

OWNER If, in Operator's reasonable opinion, it is not possible to use the remaining portion of the Hotel as a hotel of the type and class immediately preceding such taking or condemnation, then Operator may terminate this Agreement as of the date of such event. Operator shall not be entitled to participate in any award of such taking or condemnation.

[Alternate Clause]
OWNER All proceeds of any condemnation shall belong to Owner, except to the extent that separate award is made to Operator. Operator shall have the right to seek an award in an eminent domain, condemnation, compulsory acquisition, or like proceeding only if such action by Operator is not likely to, and does not, in Owner's opinion, prejudice any of Owner's rights or diminish or adversely affect any award or proceeds sought by or awarded to Owner.

[Alternate Clause]
OWNER Owner shall receive the whole of any award for any complete expropriation; provided, however, that Operator may separately claim, prove, and receive an award for any separately compensable rights of Operator taken in such expropriation only if Operator shows, to Owner's satisfaction, that such claim may be made separately from Owner's claim, and that any award would not adversely affect the timing or amount of the award to which Owner is entitled.

[Alternate Clause]
OPERATOR Operator shall have the right, during the first ten (10) full Fiscal Years of the Operating Term, in the case of either total or partial taking or condemnation, either to institute or to intervene in any available administrative proceeding or judicial action intended to determine just compensation for such taking, for the purpose of representing Operator's compensable interest in any award thereof arising from this Agreement and more specifically from Operator's right of quiet enjoyment pursuant to this Agreement. Such award, after first paying any amounts due any mortgagee and all borrowings of the joint venture owning the property and returning Owner's initial capital contribution to Owner, shall be apportioned between the parties hereto in consideration, without limitation, of the following factors: (a) recoupment by Owner of its investment, (b) return on investment to date, (c) actual loss of income, in the event of partial taking or condemnation, (d) loss of reasonably anticipated future income, in the event of total taking, (e) length of unexpired term and any renewals thereof, and/or (f) proportion that Operator's fees under this Agreement bear to return to Owner after Operator fees. Any award that does not recognize such separate and compensable interest in Operator shall be the subject of arbitration between the parties hereto pursuant to the provisions of this Agreement. Thereafter, Operator may institute a proceeding and shall be entitled only to any separate award made to Operator that does not reduce the award otherwise payable to Owner.

[Alternate Clause]
OPERATOR In the event that this Agreement terminates owing to a full condemnation, the aggregate of the awards or other proceeds of the taking (including any interest included in or paid with respect to such award or proceeds) shall be paid to Owner; provided, however, that if such awards or other proceeds of the taking shall represent loss of income to Operator, Operator shall be entitled to a fair and equitable share of such awards or other proceeds to the extent of such loss of income.

9.5 Taking for Temporary Use

NEUTRAL In the event of a taking of all or part of the Hotel for temporary use, this Agreement shall remain in full force and effect, and the following shall be applicable:

A. If the taking is for a period not extending beyond the Operating Term, the awards or other proceeds on account of the taking (including any interest included or paid with respect to such awards or proceeds) other than any portion of such awards or proceeds specifically identified as compensation for alterations or damages to the Hotel shall be included in Gross Revenue and Operating Profit for the Operating Year or Years in which received. When and if, during the Operating Term, the period of temporary use shall terminate, Owner shall make all such restorations, repairs, and alterations as shall be necessary to restore the Hotel to its condition prior to such taking for temporary use and shall complete the same with diligence.

B. If the taking is for a period extending beyond the Operating Term, the awards or other proceeds on account of the taking (including any interest included or paid with respect to such awards or proceeds) other than any portion of such awards or proceeds specifically identified as compensation for alterations or damages to the Hotel for the period of the taking up to the stated expiration of the Operating Term shall be included in determining Gross Revenue and Operating Profit for the Operating Year or Years in which received, and the remainder of such awards or other proceeds (including interest as aforesaid) shall be paid to Owner.

9.6 Owner's Options After Fire or Casualty

OWNER If the Buildings, Operating Equipment, or Furniture, Furnishings, and Equipment for the Hotel shall be damaged or destroyed to the extent of twenty-five percent (25%) or more of its replacement cost during the Operating Term by fire or other casualty, Owner shall have the right and option, upon notice served upon Operator within sixty (60) days after such fire or other casualty (or within ten (10) days after ascertaining the amount of such proceeds of insurance, if later), to either (a) replace and restore the Hotel to the condition that existed prior to such destruction and to have the full proceeds from the insurance thereon, in which case this Agreement shall continue in full force and effect, or (b) to terminate this Agreement as to the Hotel, provided that such notice of termination shall be voidable at the option of Operator and by written notice to Owner if, within one (1) year after such notice is given to Operator, Owner (or any affiliate of Owner) shall commence to repair, restore, rebuild, or replace the destroyed Buildings, Operating Equipment, or Furniture, Furnishings, and Equipment with the intent of operating the Hotel as a hotel, motel, or other transient lodging facility. In case of such termination by Owner, the amount of any Incentive Fee due to Operator under this Agreement shall be agreed upon mutually.

9.7 Termination for Total Destruction

NEUTRAL Owner shall be entitled to elect, by written notice given to Operator within ninety (90) days after a fire or other casualty, to terminate this Agreement, if one of the following conditions is met:

- A.** The Hotel is damaged or destroyed to such an extent that the cost of repairs or restoration exceeds, in Owner's determination, eighty-five percent (85%) of the full replacement cost (excluding excavations, footings, and foundations) of the Hotel; or
- B.** The major food and beverage facilities in the Hotel are rendered substantially unusable for their intended use during the last eighteen (18) months of the Operating Term; or
- C.** The percentage of the guestrooms in the Hotel referred to in column x shall be rendered unsuitable for use by guests as a result of any damage or destruction to the whole or any part of the Hotel when the Operating Term shall have no more than the number of years to run set forth in column y, as follows:

<i>Percentage of Rooms Rendered Unusable</i>	<i>Years</i>
<i>x</i>	<i>y</i>
55	Five
40	Four
30	Three
20	Two
10	One

[Alternate Clause] If the percentage of the guestrooms in the Hotel referred to in column *a* shall be rendered unsuitable for use by guests as a result of any damage or destruction to the whole or any part of the Hotel when the term of this Agreement shall have no more than the number of years to run that is set forth in column *b* below, as follows:

NEUTRAL

<i>a</i>	<i>b</i>
50	Five
40	Four
30	Three
20	Two
10	One

then Owner or Operator may terminate this Agreement within thirty (30) days after the occurrence of such damage or destruction by giving notice to the other party hereto irrespective of the insurance coverage applicable to said damage or destruction.

9.8 Uninsured Casualty

OWNER If the whole or any part of the Hotel shall be damaged or destroyed by any cause for which insurance coverage was not required to be maintained by Owner, and the cost of the Casualty Restoration with respect thereto shall exceed thirty percent (30%) of the replacement value of the Hotel, as determined by an independent licensed architect selected by Operator and Owner, then Owner may terminate this Agreement by providing written notice to Operator within thirty (30) days after the occurrence of such damage.

9.9 Payment to Operator for Casualty Termination

OPERATOR If all or any part of the Hotel is damaged or destroyed to such an extent that the estimated cost of the Casualty Restoration exceeds fifty percent (50%) of the total replacement cost (without deduction for depreciation) of the Hotel, then, if Owner reasonably concludes on the basis of the factors existing at the time of such casualty that it would be uneconomic to repair and restore the Hotel, Owner shall have the right to terminate this Agreement with respect to the Hotel upon payment to Operator of a termination fee equal to five (5) times the total Base Fee and Incentive Fee (without any accrual or limitation based on Cash Available for Incentive Fee) earned by Operator with respect to the Hotel for the most recent full Operating Year. Notwithstanding such termination, the Hotel shall remain subject to Operator's right of first refusal pursuant to this Agreement.

NOTE: The termination fee included in the above clause is higher than most such fees. Usually the fee is two or three times the management fee.

9.10 Payment to Operator During Restoration

OPERATOR At all times until operations of the Hotel are fully recommenced, Owner shall pay to Operator each month an amount equal to the average total monthly payments paid to Operator for the twelve (12) months preceding the appropriation (or such lesser actual period, if the

Hotel has been managed by Operator for less than twelve (12) months) but in no event an amount that exceeds the sum of Total Revenue and the proceeds of business interruption insurance after payment or provision for payment of all other operating expenses of the Hotel, including debt service on indebtedness permitted to be incurred pursuant to this Agreement and taxes for such month.

9.11 Operator's Response to Casualties, Accidents, and Claims

OWNER Operator shall promptly investigate all accidents and claims for damage relating to the ownership, operation, and maintenance of the Hotel and related facilities and any damage or destruction to the Hotel and related facilities. Operator shall report to Owner any such incident that is material, together, if applicable, with the estimated cost of repair thereof.

[Alternate Clause]
OWNER In the event of any damage or loss to the Hotel by fire or other casualty, Operator shall give immediate written notice thereof to Owner if the damage or loss involves more than Twenty-Five Thousand Dollars (\$25,000).

[Alternate Clause]
OWNER As agent for Owner, Operator shall promptly apply for the insurance covering such damage or loss, and in the Owner's name shall prosecute and negotiate for payment of such proceeds, employing counsel (to be selected by the Owner) if necessary for such purpose.

[Alternate Clause]
OWNER Operator shall prepare any and all reports required by any insurance company as a result of any such incident and shall submit to Owner the paperwork concerning any material incident for approval prior to submission to any such insurance company.

9.12 Restoration of Hotel

NEUTRAL If the Hotel, or any portion thereof, shall be damaged or destroyed at any time or times during the Operating Term by fire or any other casualty, the Owner, at no expense or risk to Operator, shall, using diligence and dispatch, repair, rebuild, or replace the same (such repairing, rebuilding, or replacing being herein referred to as "Restoration") so that after such Restoration the Hotel shall be substantially the same as prior to such damage or destruction, and all proceeds of insurance, other than business interruption insurance, shall be made available to the Owner for this purpose. Owner shall use its best efforts to obtain the consent of any Mortgagee of the Hotel to make insurance proceeds available for application to such Restoration, and if such Mortgagee consents, Operator shall have the right to ensure that such proceeds of insurance shall be applied to such Restoration. If the Owner fails to undertake such Restoration within one hundred twenty (120) days after a fire or other casualty that affects a material portion of the Hotel, or fails to complete the same diligently, Operator may, at its option, terminate this Agreement by written notice to Owner, effective as of the date received by Owner. Operator shall supervise all aspects of the restoration at no cost to Owner, provided, however, that if the proceeds of insurance provide for a supervisory fee, such fee shall be paid to Operator.

Section 10 TERMINATION RIGHTS

10.1 Operator's Breach of Contract

OWNER Owner may terminate this agreement if Operator shall have committed a material breach of this Agreement, or otherwise failed to observe or perform any material covenant or provision of this Agreement, and Owner shall have served written notice upon Operator

setting forth the details of such alleged breach, and Operator shall not, within thirty (30) days after the mailing of such notice, have cured such breach to the reasonable satisfaction of Owner, or if such breach is of a nature that it cannot be cured within such thirty (30) -day period, Operator shall not within such thirty (30) -day period have commenced and at all times thereafter have diligently proceeded with all acts required to cure such breach and does not cure such breach to the reasonable satisfaction of Owner within sixty (60) days. Any such termination under this subdivision shall be without prejudice, however, to any and all other rights and remedies that the Owner may have for breach of this Agreement by the Manager.

[Alternate Clause] OWNER In the event that Operator violates any of its covenants and agreements herein, or fails to perform any of its obligations, undertakings, or conditions as set forth in this Agreement, and shall not cure such failure within thirty (30) days after written notice from Owner, Owner may terminate this Agreement upon ten (10) days' prior written notice to Operator.

10.2 Operator's Willful Misconduct or Fraud

OWNER Owner may terminate this Agreement if Operator shall engage in any act of willful misconduct or fraud with respect to, or the misappropriation or diversion of funds or property of, Owner for Operator's own benefit.

10.3 Operator's Bankruptcy

OWNER If Operator shall file in any court, pursuant to any statute of either the United States or any state, a petition in bankruptcy or insolvency, or for a reorganization, or for the appointment of a receiver or trustee of all or a substantial portion of Operator's property, or if Operator makes an assignment for or petitions for or enters into an arrangement for the benefit of creditors, or if a petition seeking relief under the bankruptcy laws is filed against Operator that is not discharged within ninety (90) days thereafter, then Owner may terminate this Agreement upon written notice to Operator.

[Alternate Clause] OWNER If Operator shall file a voluntary petition for reorganization or for any arrangement under any provisions of any bankruptcy code now or hereafter enacted, Owner may terminate this Agreement upon written notice to the party filing such petition.

[Alternate Clause] OWNER If a petition shall be filed by any third party for the reorganization of Operator under any provisions of any bankruptcy code now or hereafter enacted and such proceeding is not dismissed within ninety (90) days after such filing, then Owner may terminate this Agreement upon written notice to the party against whom such petition was filed.

10.4 Appointment of a Receiver for Operator

OWNER If a receiver, trustee in involuntary bankruptcy, or other similar officer shall be appointed to take care of all or a substantial portion of the property of Operator, then Owner may terminate this Agreement upon written notice to the party for whom such official has been accepted.

10.5 Operator's Assignment for Creditors

OWNER If Operator makes a general assignment for the benefit of its creditors, Owner may terminate this Agreement upon written notice to the party making such assignment.

10.6 Operator Causes Licenses to Be Revoked

OWNER If the property's licenses or permits, including, but not limited to, occupancy, food, and alcoholic beverage service, are revoked because of the wrongful acts of Operator, Owner may terminate this Agreement upon written notice to Operator.

10.7 Operator Causes Franchise to Be Terminated

OWNER If the Franchise is terminated as a result of the operation of the Hotel being in non-compliance with the Franchise requirements, Owner may terminate this Agreement upon written notice to Operator, unless such termination is due to Owner's failure to fund sums to maintain the Franchise in good standing.

10.8 Operator Not Active in Hotel Business

OWNER Operator shall be deemed to have ceased to be actively engaged in the business of operating and managing hotels and inns if less than sixty-six and two thirds percent (66 $\frac{2}{3}$ %) of the total gross income of Operator and its wholly-owned Affiliates or wholly-owned Related Entities shall be derived from the hotel, inn, catering, restaurant, beverage, and related businesses.

[Alternate Clause]
OWNER If Operator and other members of its chain collectively shall cease to own, lease, or manage at least ten (10) hotels in the continental United States, Operator shall be deemed to have ceased to be actively engaged in the business of operating and managing hotels and inns.

10.9 Operator Fails to Provide Chain Services

OWNER Owner may terminate this Agreement if Operator shall fail to maintain, at Operator's expense, at all times during the Operating Term, a toll-free operator-tended inter-hotel reservation system pursuant to which persons located anywhere in the United States can, without long distance charge to such persons, make reservations by telephone at the Hotel.

10.10 Acquisition of Operator by Criminal

OWNER Owner may terminate this Agreement if Operator shall be acquired or controlled by a party who is generally reported to be controlled by persons known to be engaged in criminal activities or an associate of criminals.

10.11 Termination of Operator for Poor Operating Performance

OWNER In the event that the Payment to Owner as provided herein shall, for any three (3) consecutive full Fiscal Years, be insufficient to meet Owner's debt service requirements for the Hotel under the original mutually agreed financing plan for the Hotel after provision for real estate taxes, or if during the extended period of operation the Gross Operating Profit of the Hotel as defined herein shall, for any two (2) consecutive Fiscal Years, average less than one hundred fifty (150) times the average room rate for each such year times the number of available guestrooms in the Hotel, Owner shall have the right to issue a Notice of Termination of this Agreement, on three (3) months' notice to Operator. If such notice is accompanied by a declaration by Owner that it has determined to cease the use of the Improvements as a Hotel, this Agreement shall automatically terminate at the end of the three (3) months' notice period, provided, however, that if at any time within five (5) years thereafter the Improvements are again to be used as a Hotel, Operator shall have the right, but not the obligation, to reinstate this Agreement and to operate the Hotel in accor-

dance with the terms and conditions thereof, except that the Operating Term shall be extended for the period in which the building has not been used as a hotel. If the Notice is not accompanied by such a declaration, Operator shall have the right to serve a notice of arbitration upon Owner pursuant to the terms of this Agreement, and the date of termination specified in the notice shall be extended until thirty (30) days after a final award has been entered that Operator has not sustained the affirmative burden of proving, by a preponderance of evidence, that the failure to meet the performance standard was due to causes or conditions beyond Operator's control. In the event that the arbitrator shall determine that Operator has sustained the aforesaid burden of proof, the aforesaid notice of termination shall be nullified and shall have no force and effect.

NOTE: The preceding clause provides for termination due to the operator's failure to achieve specific profit levels.

[Alternate Clause]
OWNER In addition to the foregoing rights of termination for default, if the Adjusted Gross Operating Profit for any two (2) consecutive fiscal years occurring after the first three (3) full Fiscal Years (i.e., Fiscal Years of not less than three hundred sixty-five (365) days) of the Operating Term of this Agreement shall be less than zero (0) for each such Fiscal Year, Owner may terminate this Agreement.

Operator shall have the right, but not the obligation, on one occasion and one occasion only, to pay Owner the difference between the actual Adjusted Gross Operating Profit for either of the two consecutive Fiscal Years that give rise to Owner's right to terminate on which Owner's said notice was based and zero (0) (or such amount to which it may have been reduced in accordance with the preceding paragraph), in which event Owner's notice of termination shall be deemed withdrawn, provided, however, that in the event the next fiscal year following such cure by Operator results in an adjusted gross operating profit of less than zero (0), Owner shall have the option to terminate.

NOTE: The preceding clause gives the operator the right to cure.

[Alternate Clause]
OWNER Owner shall have the right, within sixty (60) days after the sixth (6th) anniversary of the Formal Opening Date, to terminate this Agreement by giving Operator written notice during such sixty (60) -day period of Owner's intent to terminate this Agreement on a date set forth in such notice, which date shall not be less than ninety (90) days nor more than one hundred eighty (180) days after Operator's receipt of such notice, if Operator fails to achieve a Total Income Before Fixed Charges of at least \$..... during the twelve (12) months immediately preceding the sixth (6th) anniversary of the Formal Opening Date.

If Owner so advises Operator of Owner's intent to terminate this Agreement in such a manner, Operator shall have fifteen (15) days from the date of receipt of such notice of termination during which Operator may cure such failure by loaning to Owner an amount equal to the difference between \$..... and the Total Income Before Fixed Charges actually achieved by the Hotel in the twelve (12) months immediately preceding the sixth (6th) anniversary of the Formal Opening Date.

In the event that Operator cures such failure described above by making a loan to Owner, such loan shall be evidenced by a promissory note from Owner to Operator, in form and substance satisfactory to Operator and consistent with the terms hereof, and shall bear interest at the rate of six percent (6%) per annum. Repayment of the full amount of the loan is to be made from Cash Flow beginning in the year following the seventh (7th) anniversary of the Formal Opening Date, after payment of the Incentive Management Fees due and payable as provided for herein, and payments on such loan shall be made monthly or otherwise as such Cash Flow is available until such loan has been paid in full.

NOTE: The preceding clause allows the operator to cure its default by making a loan.

[Alternate Clause]
OWNER If, after the first two (2) full calendar years of operation, the Hotel has no Gross Operating Profit in any Operating Year, Owner may, at its option, terminate this Agreement, unless Operator advances the necessary funds required to fully cover (a) any negative Gross Operating Profit; (b) plus an amount equal to a fifteen percent (15%) annual return on equity funds (as hereinafter defined) invested in the Hotel. Should Operator advance any funds necessary for such purpose, Operator shall be reimbursed for any such advances out of future Adjusted Gross Operating Profit, if any, derived from the operation of the Hotel; provided, however, that such reimbursement shall not result in a negative Adjusted Gross Operating Profit and provided that such reimbursement shall reduce Adjusted Gross Operating Profit upon which any Incentive Fee is computed. Such reimbursement shall be in an amount equal to the amount so advanced plus interest on the balance of funds advanced outstanding from time to time at a rate of fifteen percent (15%) per annum, provided, however, that such reimbursement shall be payable only from funds remaining after Owner shall have received a fifteen percent (15%) return on Equity Funds invested in the Hotel.

[Optional Additional Clause]
OWNER In addition to the other provisions regarding termination herein provided, Owner shall have the right to terminate this Agreement if after five (5) full years of operation of the Hotel, eighty percent (80%) of the Adjusted Gross Operating Profit for any subsequent Operating Year does not equal at least a fifteen percent (15%) annual return for equity funds invested in the Hotel.

As used herein, the term "Equity Funds" shall mean all funds invested in or loaned to Owner by its principals and applied to the construction and operation of the Hotel over and above all borrowed funds, plus fair market value of all other assets, such as land contributed by the principals in Owner to Owner in return for a capital account credit, but only to the extent such assets are used in connection with the Hotel.

[Alternate Clause]
OWNER Owner shall have the right, at its option, to terminate this Agreement on thirty (30) days' written notice to Operator if, for any two (2) consecutive Fiscal Years during the Operating Term, the amount of Gross Operating Profit is less than the amount corresponding to each of the following Fiscal Years:

<i>Year</i>	<i>Gross Operating Profit</i>	<i>Percentage of Market Study Projections</i>	<i>Percentage Cash on Equity</i>
1988	\$1,197,000	95	5.3
1989	1,447,000	95	13.4
1990	1,619,000	95	19.0
1991	1,692,000	90	21.4

For each year thereafter, the Gross Operating Profit number will be adjusted by the Consumer Price Index. In the event the Hotel were to be wholly or partially closed for business during any such year, for reasons beyond the control of Operator, then the foregoing performance standards shall be equitably adjusted.

Notwithstanding the above, Operator shall have a one-time right to cure the termination by paying to Owner, within five (5) business days, the amount that the actual Gross Operating Profit was deficient for each of the two Fiscal Years. If Operator makes this payment, the termination will be waived; however, if the actual Gross Operating Profit is less than the amount corresponding for the immediately succeeding Fiscal Year, Owner will again have the right to cancel this Agreement, and, as Operator will have already used its one-time right to cure, Operator will not be able to cure. If this Agreement is terminated as a result of this provision, the Incentive Fee to Operator will remain in effect.

[Alternate Clause]
OWNER A "Negative Earnings Event" shall occur if, at the completion of any Fiscal Year, the cumulative Performance Test Cash Flow for all Fiscal Years through such Fiscal Year is less

than One Dollar (\$1). "Performance Test Cash Flow" shall mean Cash Flow Available for Debt Service less Notional Free and Clear Cash Flow.

"Notional Free and Clear Cash Flow" shall be (a) none (\$0) through and including that Fiscal Year (the "Base Year") in which the Renovation Program is completed, (b) One Million Five Hundred Thousand Dollars (\$1,500,000) for the first full Fiscal Year following the Base Year, (c) Two Million Five Hundred Thousand Dollars (\$2,500,000) for the second full Fiscal Year following the Base Year, (d) Three Million One Hundred Thousand Dollars (\$3,100,000) for the third full Fiscal Year following the Base Year, and (e) Three Million Four Hundred Thousand Dollars (\$3,400,000) for the fourth full Fiscal Year following the Base Year and each Fiscal Year thereafter.

If a Negative Earnings Event shall occur, Owner may elect to terminate this Agreement upon written notice to Operator, within ninety (90) days after receipt of the annual financial statements as provided herein disclosing the occurrence of such a Negative Earnings Event. In this event, this Agreement shall terminate on the last day of the second (2d) calendar month following the month in which such notice was given.

A Negative Earnings Event shall not be a default hereunder, nor shall a default hereunder be a Negative Earnings Event.

[Alternate Clause] Beginning in the fourth (4th) full or partial Fiscal Year of operation of the Hotel, Operator shall achieve a level of performance (the Performance Standard) that is at least equal to eighty-five percent (85%) of the approved budgeted Gross Operating Profit or any revised approved budgeted Gross Operating Profit. If Operator fails to achieve the Performance Standard for three Fiscal Years of any five (5) -fiscal-year period, Owner shall have the option to terminate this Agreement. Notwithstanding the foregoing, if the Performance Standard is not met for any Fiscal Year, the Performance Standard shall be deemed to be met for such Fiscal Year to the extent that the deficiency for that Fiscal Year ("Performance Deficiency") is cured by operations in the succeeding Fiscal Year. To the extent that operations in the next succeeding Fiscal Year do not cure the Performance Deficiency, Operator may at its option contribute an amount equal to the Performance Deficiency for such Fiscal Year by deposit in the Bank Account (as hereinafter defined) by April 30 of the second (2d) succeeding Fiscal Year, and upon such contribution, the Performance Standard shall be deemed to have been met for the Fiscal Year.

10.12 Termination by Owner Upon Payment of Termination Fee

OWNER From the Formal Opening Date until the second anniversary of the Formal Opening Date, Owner shall have no right to terminate this Agreement except for those events of default set forth herein. Commencing with the second (2d) anniversary of the Formal Opening Date, this Agreement may be terminated by Owner for any reason by notice to Operator of Owner's intent to terminate this Agreement upon the expiration of a period of not less than ninety (90) nor more than one hundred eighty (180) days from the date of notice and payment of the following amounts:

A. If notice is given by Owner to Operator during the period commencing on the second (2d) anniversary of the Formal Opening Date, but prior to the fifth (5th) anniversary of the Formal Opening Date, Owner shall pay Operator a fee equal to one and one half (1 1/2) times the amount of Base Management, Centralized Service, and Incentive Fees earned by Operator for the twelve (12) months immediately preceding the date of termination.

B. If notice is given by Owner to Operator after the fifth (5th) anniversary of the Formal Opening Date, and prior to the tenth (10th) anniversary of the Formal Opening Date, Owner shall pay Operator a fee equal to one (1) times the amount of Base Management, Centralized Services, and Incentive Fees earned by Operator during the twelve (12) months immediately preceding the date of termination.

C. If notice of termination is given by Owner to Operator after the tenth (10th) anniversary of the Formal Opening Date, Owner shall pay Operator a fee equal to seventy-five percent (75%) of the Base Management, Centralized Services, and Incentive Fees earned by Operator during the twelve (12) months immediately preceding the notice of termination. In no event, however, shall the amount paid Operator by Owner under this provision be greater than the amount determined by multiplying (i) the amount earned by Operator during the year commencing on the ninth (9th) anniversary of the Formal Opening Date for Base Management Fees, Centralized Services, and Incentive Fees by (ii) a fraction, the numerator of which is the latest published Consumer Price Index figure available as of the date of termination and the denominator of which is the latest published Consumer Price Index figure available as of the tenth (10th) anniversary of the Formal Opening Date.

NOTE: Termination fees generally range up to three times the total management fee paid over the previous 12-month period.

[*Alternate Clause*]
OPERATOR If this Agreement terminates pursuant to Owner's election, Owner shall pay to Operator liquidated damages, representing the agreed, reasonable stipulated sum of all losses suffered by Operator because of such termination (including, without limitation, home office and key Hotel personnel commitments and loss of profits), in an amount equal to three (3) times annual fees and charges payable to Operator in the Fiscal Year ended immediately prior to the date on which Owner gives a termination notice to Operator.

[*Alternate Clause*]
OWNER Owner may terminate this Agreement without cause and upon thirty (30) days' prior written notice only in the event of a sale of the Hotel to a third party and then only as follows:

A. There shall be no right to terminate hereunder for the first three (3) years after the Effective Date;

B. If the Agreement is terminated in the fourth (4th) year, Owner will pay to Operator three (3) times the prior year's Base Management Fee as liquidated damages;

C. If the Agreement is terminated after the fourth (4th) year, Owner will pay to Operator the lesser of two and one half (2½), or the number of years remaining under the Initial Term, times the prior year's Base Management Fee as liquidated damages.

D. In addition, Operator shall be entitled to receive its Incentive Management Fee upon such sale, as per provisions of this Agreement.

10.13 Owner Indemnifies Operator After Termination

OPERATOR As a further condition of termination for any reason, Owner and, if this Agreement terminates in connection with a sale, any successor Owner shall indemnify and keep Operator harmless against any and all losses, costs, damages, liabilities, claims, and expenses, including reasonable attorney fees, arising or resulting from the failure of Owner or any prospective purchaser, lessee, or operator to provide any of the services contracted for in connection with the business booked for the Hotel to and including the date of termination, including any and all business so booked as to which facilities or services are to be furnished subsequent to the date of termination.

10.14 Termination by Operator

OPERATOR This Agreement and the employment of Operator may be terminated at the option of Operator ninety (90) days after written notice, and, except as to liabilities or claims that shall have accrued or arisen prior to such termination, all obligations hereunder shall cease upon the happening of any of the events specified hereinbelow.

10.15 Owner's Breach of Contract

OPERATOR Operator may terminate this Agreement if Owner shall have committed a material breach of this Agreement, and Operator shall have served written notice upon Owner setting forth the details of such alleged breach, and Owner shall not, within ten (10) days after the mailing of such notice in the case of a monetary default, have cured such breach, or if Owner shall not, within thirty (30) days after the mailing of such notice in the case of any other default, have cured such breach, or if such breach is of a nature that it cannot be cured within such thirty (30) -day period, and Owner shall not within such thirty (30) -day period have commenced and at all times thereafter have diligently proceeded with all acts required to cure such breach or does not cure such breach within sixty (60) days. Any such termination under this subdivision shall be without prejudice, however, to any and all other remedies that the Manager may have for breach of this Agreement by the Owner.

[Alternate Clause]
OPERATOR In the event that Owner violates any of its covenants and agreements herein, or fails to perform any of its obligations, undertakings, or conditions as set forth in this Agreement, and shall not cure such failure within thirty (30) days after written notice from Operator, Operator may terminate this Agreement upon ten (10) days' prior written notice to Owner.

10.16 Owner's Bankruptcy

OPERATOR If Owner shall file, in any court and pursuant to any statute, of either the United States or any State, a petition in bankruptcy or insolvency or for a reorganization or for the appointment of a receiver or trustee of all or a substantial part of Owner's property, or if Owner makes an assignment for or petitions for or enters into an arrangement for the benefit of creditors, or if a petition seeking relief under the bankruptcy laws is filed against Owner that is not discharged within ninety (90) days thereafter, Operator may terminate this Agreement upon written notice to Operator.

[Alternate Clause]
OPERATOR If Owner shall file a voluntary petition for reorganization or for any arrangement under any provisions of any bankruptcy code now or hereafter enacted, Operator may terminate this Agreement upon written notice to the party filing such petition.

[Alternate Clause]
OPERATOR If a petition shall be filed by any third party for the reorganization of Owner under any provisions of any bankruptcy code now or hereafter enacted and such proceeding is not dismissed within ninety (90) days after each filing, then the Operator may terminate this Agreement upon written notice to the party against whom such petition was filed.

10.17 Appointment of a Receiver for Owner

OPERATOR If a receiver, trustee in involuntary bankruptcy, or other similar officer shall be appointed to take care of all or a substantial portion of the property of Owner, then Operator may terminate this Agreement upon written notice to the party for whom such official has been accepted.

10.18 Owner's Assignment for Creditors

OPERATOR If Owner makes a general assignment for the benefit of its creditors, the Operator may terminate this Agreement upon written notice to the party making such assignment.

10.19 Owner Causes Licenses to Be Revoked

OPERATOR Operator shall have the right to cancel and terminate this Agreement with respect to the Hotel if Owner causes any material license, permit, or other governmental authorization

necessary for the operation of the Hotel in accordance with the provisions of this Agreement to be revoked, rescinded, or terminated or its renewal to be refused by the governing authority having jurisdiction thereof where such revocation, rescission, termination, or refusal to renew is due to circumstances beyond Operator's control.

10.20 Owner Fails to Provide Adequate Funds

OPERATOR Operator may terminate this Agreement upon Owner's failure to maintain agreed-upon minimum balance in the Property's operating bank account.

10.21 Owner Fails to Compensate Operator

OPERATOR Operator may terminate this Agreement if compensation due Operator from Owner is not received by Operator thirty (30) days after Operator has submitted a written request for such compensation.

10.22 Owner's Default Under Ground Lease or Mortgage

OPERATOR Operator may terminate this Agreement as a result of a default by Owner under the ground lease (if any) or the mortgage, or if the landlord or mortgagee shall declare a default or take any other action in pursuance of the remedies arising as result of such default.

10.23 Owner Not in Compliance With Municipal Laws

OPERATOR If Owner shall fail to comply with any rule, order, termination, ordinance, or law of any federal, state, county, or municipal authority and Owner is not in good faith contesting same, Operator may terminate this Agreement upon ten (10) days' written notice to Owner.

10.24 Condemnation of Property

OPERATOR Operator may terminate this Agreement if the property is condemned in whole or in part and if Operator determines that the remaining facilities are insufficient for the efficient and profitable operation of the property.

10.25 Owner Fails to Restore After Casualty

OPERATOR Operator may terminate this Agreement if the property or any portion thereof shall be damaged or destroyed by fire or other casualty and if Owner fails to undertake to repair, restore, rebuild, or replace any such damage or destruction within ninety (90) days after such fire or other casualty, or shall fail to complete such work diligently.

10.26 Owner Fails to Secure Financing

OPERATOR Operator may terminate this Agreement if Owner has not secured firm investment commitments and firm financing commitments in amounts and upon terms approved by Operator in order to finance the construction, furnishing, equipping, and operation of the property.

10.27 Owner Interferes in Operation

OPERATOR Operator may terminate this Agreement if Owner repeatedly fails or refuses to observe Operator's right of non-interference.

10.28 Termination by Operator for Any Reason

OPERATOR Operator may terminate this Agreement with or without cause if it gives thirty (30) days' notice in writing to Owner, without payment of any damages to Owner, after the first (1st) complete year of operation.

10.29 Operator May Not Terminate Because of Foreclosure

OWNER If any mortgagee or other person or legal entity shall become Owner of the property, or any part thereof, as a result of any foreclosure or a conveyance in lieu of foreclosure, Operator shall have no right or power to terminate this Agreement solely because of such change in ownership of the property, or any part thereof, and shall recognize the mortgagee or such other person or legal entity as Owner hereunder to the same extent as though it or they had been Owner hereunder as of the execution of this Agreement, provided that such mortgagee or such other person or legal entity shall agree in writing with Operator to be bound by the terms and conditions of this Agreement to the same extent as if such mortgagee or such other person or legal entity had been an original party hereto.

10.30 Termination by Mutual Consent

NEUTRAL This Agreement and the employment of Operator may be terminated at any time by mutual agreement of Owner and Operator.

10.31 Termination Because Hotel Does Not Open

NEUTRAL If the opening of the Hotel shall not have occurred by July 1, 1990, then this Agreement shall terminate, unless Operator, by notice given to Owner prior to such date, shall elect to continue them in full force and effect for such period or periods of time as it shall, in its sole discretion, determine by so stating in said notice.

10.32 No Default During Arbitration

NEUTRAL Notwithstanding the foregoing, neither Owner nor Operator shall be deemed to be in default under this Agreement if a bona fide dispute with respect to any of the foregoing events of default has arisen between Owner and Operator and such dispute has been submitted to arbitration.

10.33 Payment of Accounts After Termination

NEUTRAL All accounts due and owing as between the parties shall become immediately due and payable upon termination, including a pro rata share of the Basic Fee and Incentive Fee then due Operator, if any.

[Alternate Clause]
OPERATOR Upon termination of this Agreement after the Commencement Date for any reason, Operator shall be entitled to receive from Owner the following amounts, subject to Owner's right of set-off in cases of termination of this Agreement by Owner because of a breach of this Agreement by Operator:

- A. Reimbursement of all expenses incurred with respect to the Hotel and to which it is otherwise entitled pursuant to this Agreement.
- B. Payment of all of its Basic Fees, Deferred Fees (and accrued interest thereon), Incentive Fees, and Centralized Financial Services Charges to date of termination;
- C. Payment of any other sums due Operator hereunder; and

D. Reimbursement of the actual cost, together with administrative costs incurred, of all non-cancelable or non-terminable employee benefits to which employees (whether employed by Owner or Operator, other than those who continue to be employed by Operator after such termination) and their covered dependents may be entitled after the date of termination of this Agreement, including, without limitation, any amounts required to be paid pursuant to the Employee Retirement Income Security Act of 1974, as amended, in accordance with the terms of such documents or instruments as may be in force on the date of termination of this Agreement provided, that (i) the parties shall cooperate, to the extent reasonably practicable, in order to create plans and provide benefits such that there will be no liability pursuant to this section as a result of the termination of the coverage of any such employees pursuant to such plans; and (ii) the parties shall cause the trustee under any defined benefit plan that applies to employees of Owner pursuant to a collective bargaining agreement to determine, or cause an actuary selected by it to determine, as of the termination date of this Agreement, the excess of the accrued vested benefits over the balance of funds in such plan or, in the case of a multi-employer plan, the amount of the termination liability attributable to Owner's participation in the plan pursuant to the collective bargaining agreement relating to employees of the Hotel, and, at such times as such excess or termination liability is required to be funded, Operator shall fund twenty percent (20%) of such amount as of the termination date but will not, however, be obligated to fund amounts pursuant to this provision or the immediately following sentence that, in the aggregate, exceed the aggregate of Incentive Fees paid to Operator pursuant to this Agreement. Twenty percent (20%) of the cost of such determination and any costs associated therewith shall be paid by Operator. The balance of any amounts not required to be paid by Operator pursuant to this subsection D shall be Owner's obligation. Upon termination of this Agreement, Operator shall render a final accounting within forty-five (45) days after the end of the month of termination, regardless of the reason for such termination.

10.34 Operator to Remove Property After Termination

OWNER At the termination of this Agreement, Operator shall remove all its property from hotel's premises.

10.35 Operator to Deliver Property to Owner After Termination

OWNER Upon termination of this Agreement, Operator agrees to deliver to Owner any and all Furnishings and Equipment (along with then existing warranties, operating instructions, and service contracts). Operating Supplies, keys, locks and safe combinations, reservation lists, ledgers, bank statements for the Hotel Operating Account, budgets, accounting books and records, insurance policies, bonds and other documents, memoranda, schedules, lists, contracts, agreements, leases, licenses, correspondence, and other items required for the operation of the Hotel, including the Working Capital and the Reserve Fund. Any of the foregoing which are held in Operator's name shall be assigned by Operator to Owner.

[Optional Additional] Upon termination of this Agreement, all of such books and records forthwith shall be
OWNER turned over to Owner so as to ensure the orderly continuance of the operation of the Hotel, but such books and records shall be available to Operator at all reasonable times for inspection, audit, examination, and transcription for a period of three (3) years thereafter.

[Alternate Clause] Operator shall transfer to Owner (a) all of Owner's books and records regarding the Hotel
OWNER that are in the custody and control of Operator, and (b) all Operator's right, title, and interest in and to all liquor, restaurant, and other licenses and permits, if any, used by

Operator in running of the Hotel; provided, however, that if Operator has expended any of its own funds in the acquisition of such licences and permits, Owner shall reimburse Operator therefor if Owner requests such assignment and transfer of such licenses and permits.

10.36 Inventory at Termination

OPERATOR Upon termination of this Agreement, at the expense of Owner, Operator shall arrange for an independent agency to conduct an inventory of Furnishings and Equipment (the cost of which shall be an Expense of Operation), copies of which shall be made available to both Owner and Operator.

10.37 Operator to Assign Licenses at Termination

OWNER Operator shall, in connection with the termination of this Agreement, surrender and assign to Owner any and all licenses, permits, and/or other authorizations or property required for the operation of the Hotel in accordance with the directions of Owner and with applicable governmental laws, regulations, orders, or other provisions.

10.38 Cooperation During Termination

NEUTRAL During the period of termination of this Agreement, Owner and Operator shall fully cooperate with each other in connection with all matters relating to the Hotel that took place prior to termination.

10.39 Use of Operating Supplies on Termination

OPERATOR Upon the expiration or earlier termination of this Agreement, Owner shall have the right to use in connection with the operation of the Hotel any and all items of Operating Supplies bearing the name of Operator, but shall not reorder any such items. However, if within fifteen (15) days after termination of this Agreement, Operator offers to buy any and all of said Operating Supplies bearing the name of Operator, trademarks, emblems, insignias, slogans, or distinguishing characteristics, at fair market value, Owner shall cease to use same and shall sell same to Operator. In the event of any dispute as to such fair market value, the Independent Auditor shall determine said value. Removal of Operator's name from the Hotel shall be at Operator's cost.

[Alternate Clause]
OWNER Operator will purchase from Owner, for a purchase price equal to fair market value but not exceeding cost, all unbroken cases of operating supplies and expendable products then on hand at the Hotel or ordered or purchased and that bear only the identification of Operator.

Section 11 GENERAL PROVISIONS

11.1 Ownership of Hotel

NEUTRAL Owner covenants and agrees that its right, title, and interest in and to the Hotel will upon the Commencement Date be as detailed in the description of the hotel project, the survey, and the legal description of the land attached hereto as Exhibit I [omitted].

NOTE: The preceding clause assures the Operator that the contract is with the actual owner of the hotel.

11.2 Qualifications of Operator

NEUTRAL Operator is qualified in the supervision, operation, and management of hotels.

11.3 Engagement of Operator

NEUTRAL Owner desires to engage Operator to manage and operate the Hotel for the account of Owner, and Operator desires to accept such engagement, all upon the terms and conditions hereinafter set forth.

[*Alternate Clause*] OPERATOR Owner turns over to Operator all control and discretion in the operation, direction, management, and supervision of the property.

11.4 Furniture, Fixtures, and Equipment

NEUTRAL The phrase "Furniture, Fixtures, and Equipment" shall mean the furniture, furnishings, fixtures, and equipment installed and used in the Hotel, including, without limitation: (a) all necessary furniture and furnishings for guestrooms, public areas, and non-public areas (e.g., kitchen, laundry, and cleaning facilities, rooms for the use of employees, storage areas, front desk, and administrative offices); floor and window coverings; decorative light fixtures; and equipment. However, this phrase shall not encompass the Hotel's major mechanical and electrical equipment and systems (e.g., the elevators).

NOTE: The preceding clause provides a definition of furniture, fixtures, and equipment for the Hotel. Such a definition is important because such items are generally replaced from a Reserve for Replacement account.

11.5 Licenses

NEUTRAL Owner hereby certifies that it has all necessary food and liquor licenses authorizing sale and consumption upon the premises.

11.6 Franchise

OPERATOR Owner will keep in full force and effect the Franchise, if any, and will comply with all terms and conditions of such Franchise required to be performed by Owner.

11.7 Operator's Right to Quiet Enjoyment

OPERATOR Owner covenants to Operator that, so long as no grounds exist for termination of this Agreement by Owner, Operator shall and may peaceably and quietly possess, hold, occupy, enjoy, and manage the Hotel throughout the Operating Term, free from molestation, eviction, ejection, or disturbance by Owner, any person through whom Owner may derive title to the Hotel, or any other person claiming by, through, or under Owner. Owner agrees to pay and discharge any payments and charges and, at its expense, to prosecute or defend all appropriate actions, judicial or otherwise, necessary to ensure such peaceful and quiet possession of the Hotel by Operator.

[*Alternate Clause*] OPERATOR The parties acknowledge and agree that the continued operation by Operator of the Hotel pursuant to the terms hereof represents a valuable asset of Operator, and, moreover, is critical to the maintenance by Operator of its reputation in the hotel industry. Therefore, and notwithstanding any provision of law or of this Agreement otherwise pertaining, it is agreed that any attempt by Owner to disturb Operator's right to quiet enjoyment of the Hotel or to terminate this Agreement, other than in strict accordance with its terms, would

cause Operator to suffer great, incalculable, and irreparable harm, and may be enjoined by Operator in any court of law having jurisdiction, to the end that this Agreement may be specifically enforced in the aforesaid manner by Operator.

NOTE: Although the preceding clause is attractive from the operator's viewpoint, it sets the owner up for a massive damage suit if the contract is terminated. In addition, this provision might impact the principal-agent relationship that allows for termination of the agency. An owner would be unlikely to agree to this clause.

11.8 Initial Operating Term

NEUTRAL The phrase "Operating Term" shall mean and refer to that period commencing on the Effective Date and ending at 11:59 PM on the last day of the fifteen (15th) full Fiscal Year thereafter, or on any earlier date upon which this Agreement terminates pursuant to the provisions hereof.

[Alternate Clause] The obligations of Owner and the services of Operator under this Agreement shall commence upon the completion of the construction of the Hotel and the issuance of all permits required for the operation of the Hotel (the "Commencement Date") and shall expire on December 31 of the fifteenth (15th) year following the Commencement Date, unless terminated sooner by the terms of this Agreement.

NEUTRAL

11.9 Renewal Terms

OWNER After the expiration of the initial Operating Term, the term of this Agreement shall continue on a calendar year-to-year basis unless canceled by Owner upon the giving of four (4) months' advance written notice.

[Alternate Clause] Operator shall have the right to extend the Operating Term for three (3) successive periods of ten (10) years each, provided that the following conditions are met:

OPERATOR

- A. Owner at such time is not entitled to terminate this Agreement by reason of Operator's default;
- B. The Operating Term shall have been extended for all prior periods; and
- C. Operator shall have given notice to Owner of its election to extend the Operating Term on or before the first (1st) day of January on the last full calendar year of the Initial Operating Term, or any extension thereof then in force.

11.10 Delegation of Authority

OPERATOR The operations of the Hotel shall be under the supervision, direction, and control of Operator, and, except as otherwise specifically provided in this Agreement, Owner delegates to Operator sole and full responsibility for the proper and efficient operation, management, and maintenance of the Hotel.

NOTE: In the preceding clause, the phrase "without interference from Owner" can be added to strengthen the operator's position.

11.11 Establishment of an Agency Relationship

NEUTRAL In the performance of its duties as Operator, Operator shall act solely as agent of Owner. No provision of this Agreement shall constitute or be construed to be or create a partnership or joint venture between Owner and Operator.

11.12 Operator as Independent Contractor

OPERATOR Owner hereby appoints and engages Operator, and Operator hereby accepts such appointment on the terms and conditions hereinafter provided by this Agreement, to maintain, operate, manage, supervise, rent, and lease the Hotel on Owner's behalf. The performance of all activities by Operator hereunder shall be as an independent contractor and not as an agent of Owner, except as otherwise specifically provided herein. Operator's appointment and engagement hereunder encumbers the Hotel and runs with the Land upon which the Hotel is situated.

NOTE: The preceding clause attempts to make the owner-operator relationship an encumbrance that runs with the land in the manner of a lease, thereby giving the operator greater possessory rights. It is doubtful, however, whether a management contract can be construed as anything more than an agency agreement.

11.13 Use of Property

OWNER Operator shall use the property solely for the operation of a hotel under standards comparable to those prevailing in the hotel industry and for all activities in connection therewith that are customary and usual to such an operation. Operator, in any event, shall comply with and abide by all applicable laws and regulations.

11.14 Nature of Agreement

NEUTRAL The relationship of Owner and Operator created hereby is that of a principal and agent, it being understood that Operator's agency is defined by virtue of this Agreement. Nothing herein contained shall constitute or be construed to be or create a co-partnership or joint venture between Owner and Operator with respect to the management of the Hotel as provided for in this Agreement.

11.15 Operator Does Not Guarantee Profits

OPERATOR Operator makes no guarantee, warranty, or representation that there will be profits or that there will not be losses from the operation of the Property.

11.16 Reliance on Operator's Projections

OPERATOR Owner hereby certifies that it has not relied on any projection of earnings, statements as to the possibility of future success, or other similar matter that may have been prepared by Operator, and understands that no guaranty is made or implied by Operator as to the future financial success of the Hotel.

11.17 Timely Consent by Parties

NEUTRAL Except as herein otherwise provided, whenever in this Agreement the consent or approval of Owner or Operator is required, such consent or approval shall not be unreasonably withheld or delayed and shall be in writing, signed by an officer or agent, thereunto duly authorized, of the party granting such consent or giving such approval. In cases where consent or approval is required, the failure to respond within twenty (20) Business Days of the receipt of the request for such consent or approval shall be conclusively deemed to constitute the requested consent or approval unless another period is expressly provided for in this Agreement in which case the other period shall apply.

11.18 Severability

NEUTRAL In the event any term or provision of this Agreement or any application thereto to any person or circumstance shall be declared prohibited, invalid, or unenforceable to any extent in any jurisdiction, as determined by a court of competent jurisdiction, such term or provision shall, in that jurisdiction, be ineffective only to the extent of such prohibition, invalidity, or unenforceability, or as applied to such persons or circumstances, without invalidating or rendering unenforceable the remaining terms or provisions hereof or affecting the validity or enforceability of such term or provision in any other jurisdiction or as to other persons or circumstances in such jurisdiction, unless such would effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of the Agreement on the party benefited by such term or provision.

11.19 Partial Invalidity

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

11.20 Binding Effect

NEUTRAL This Agreement shall be binding upon Owner and Operator and, as provided in this Agreement, their respective successors and assigns, provided that, except as specified in this Agreement, neither of the parties hereto shall assign their rights hereunder without the consent and approval of the other party. This Agreement contains the final and entire agreement between the parties hereto. No change or modification of this Agreement shall be valid or binding upon the parties hereto unless such change or modification shall be in writing and signed by the parties hereto. Neither the parties nor their agents shall be bound by any terms, conditions, statements, warranties, or representations, oral or written, not herein contained.

11.21 Notices

NEUTRAL Any notice, statement, or demand required to be given under this Agreement shall be in writing, sent by certified mail, return receipt requested, postage prepaid. Notices shall be sent to Owner at the address specified hereinabove or at such or to such other address or addresses as Owner shall designate in the manner herein provided. Notices shall be sent to Operator, at the address specified hereinabove, marked "Attention: President," with a copy to the attention of the Senior Vice President of Finance, or at such or to such other address or addresses as Operator shall designate in the manner herein provided. A notice shall be deemed to have been given on the day ten (10) business days after it shall have been deposited as aforesaid in any post office or post box maintained by the United States Government.

11.22 Waiver

NEUTRAL The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No

waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

11.23 Construction of Additional Facilities

OPERATOR In the event a casino, restaurant, or cocktail lounge should be operated at the Hotel, Operator shall have the exclusive right to operate same and to include gross revenues in the total revenues of the Hotel and gross revenues less operating expenses in the Gross Operating Profit of the Hotel.

[Alternate Clause]
OPERATOR In the event a casino should be operated at the Hotel, Operator shall have the exclusive right to operate same, and the excess of the gross amount wagered therein over the total amount of money won by wagers will be included in the Total Revenue of the Hotel. The said excess, reduced by the Operating Expenses specified herein that relate to the casino, will be included in the Gross Operating Profit of the Hotel.

11.24 Operator Not Responsible for Owner's Obligations

OPERATOR Owner shall not represent in any proposed financing arrangement or to any proposed lender or participant in a private or public investment that Operator shall be in any way responsible for Owner's obligation in financing arrangement other than to state that the property will bear the name of Operator, will be managed by Operator, and will be a part of the Operator's hotel system.

11.25 Operator to Review Financing Instruments

OPERATOR In order to ensure Owner's full and faithful compliance with the terms of this Agreement and to prevent any misunderstanding on the part of a proposed lender or participant in any such investment offering, Owner shall, prior to the closing of any such proposed financing arrangement, inform and furnish Operator with the identity of the proposed lender and copies of the proposed closing documents, and Owner shall, prior to the printing of any prospectus concerning said private or public investment offering, furnish Operator with a copy of said prospectus, and said prospectus shall not be published or distributed without the prior written consent of Operator.

11.26 Modification of Agreement for Refinancing

OWNER If, in connection with any refinancing of the Hotel, any Mortgagee shall request modifications of this Agreement as a condition of such refinancing, Operator covenants not to unreasonably withhold or delay its agreement to such modifications, provided that such modifications are reasonable and do not increase the obligations or adversely affect the rights of Operator hereunder.

11.27 Exculpation

OWNER Operator agrees that it will look only to Owner's estate and property in the Hotel (or the proceeds thereof) for the satisfaction of Operator's remedies for the collection of a judgment requiring the payment of money by Owner in the event of any default by Owner hereunder, and no other real or personal property or assets of Owner or of Owner's individual principals shall be subject to levy, execution, or other enforcement procedures for the satisfaction of Owner's remedies under or with respect to this Agreement.

11.28 Real Estate Broker Indemnification

NEUTRAL Each party agrees to indemnify and hold the other party harmless from and against all loss, cost, damage, or expense (including reasonable attorney fees) suffered or incurred in connection with claims made by a real estate broker or other persons claiming, by or through the indemnifying party, entitlement to any brokerage fees or similar payment in connection with the negotiation and execution of this Agreement.

11.29 Consumer Price Index Adjustments

NEUTRAL Expenditure limitations and required minimums and maximums specified herein are based on the purchasing power of money as of the date of this Agreement. Notwithstanding Operator's authorization to revise the Operating Budget and Capital Budget as heretofore specified, said limitations, minimums, and maximums shall be subject to annual adjustment to retain the purchasing power intended at the onset of this Agreement. The annual adjustment shall be based upon annual percentage increases or decreases in the Consumer Price Index for all Urban Consumers (1967 = 100) specified for "All Items" as published by the United States Department of Labor, Bureau of Labor Statistics.

11.30 Freedom of Action

OPERATOR Operator may engage in and/or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership financing, leasing, operation, management, brokerage, and development of real property, which may be adjacent to and/or competitive with, the Hotel. Owner shall not have any right by virtue hereof in and to such other business ventures or to the income or profits derived therefrom.

11.31 Owner's and Operator's Use of the Hotel

NEUTRAL Officers and employees of Operator or its parent company, or a reasonable number of persons designated by Owner may occupy guest rooms at a fifty percent (50%) discount from the rates charged to the public, provided, however, that lodging facilities may be utilized in such a manner only if space is available and not reserved or occupied by members of the public and is utilized in accordance with Operator's standard employee privilege program, as amended from time to time. The percentage discount may also vary from time to time as percentage changes are made and promulgated in Operator's employee benefit handbook or employee benefit card. In the event a room occupied by a person paying less than the full room rate, as provided hereunder, is needed to satisfy the demands of full-paying guests, such person shall be given the choice of vacating the room or paying full price for the room, so long as the demand for such room persists.

[Alternate Clause]
OWNER Operator agrees that during the Operating Term and subject to availability, Operator will make rooms in the Hotel available (a) without charge to the officers of the general partner (and its constituent partners) of Owner, (b) at fifty percent (50%) of the normal rate for such rooms to the limited partners of Owner, and (c) at fifty percent (50%) of the normal rate for such rooms to certain brokers involved in marketing the interests in Owner's partnership (a list of such brokers shall be provided to Operator by Owner) for a period of one (1) year after the Closing. The provisions of this clause shall be limited to seven (7) nights for each calendar year period.

[Alternate Clause]
OWNER Operator shall provide complimentary suites at the Hotel to Owner, its officers, directors, employees, agents, and guests upon request at such times as vacancy permits and at other times in reasonable amounts and upon reasonable notice. Operator shall provide

such complimentary accommodations to Franchisor as are required under the Franchise and shall provide complimentary accommodations to travel agents and others to the extent necessary to market and promote the Hotel as provided in the Operating Budget.

11.32 Employee Use of the Hotel

OPERATOR Operator, in its discretion and as is customary and usual in hotels, may provide reasonable food and lodging for full time employees of the Hotel, and allow them the reasonable use of Hotel facilities.

APPENDIX 4

Management Contract Terms

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class commercial hotel— Illinois	320	1983	20 years	—	4.5%	20% GOP subordinated to debt service and \$1.25-million partner distribution	Years 1–2: 2% Thereafter: 3%
First-class commercial hotel— Illinois	400	1981	50 years	—	3% of gross revenue	20% of GOP provided 80% of balance equals or exceeds defined investment basis	Year 1: 1% Year 2: 2% Years 3–5: 3% Years 6–10: 4% Thereafter: 5%
First-class historic inn (independent)— Maryland	120	1985	5 years	None	2.5% of GOP	None	Year 1: 1% Year 2: 1.5% Add .05% each additional year
First-class resort hotel— Illinois	400	1983	2 years	7 terms, total of 60 years (operator's option)	3% of gross revenue	20% adjusted house profit until payback then 25%	Years 1–8: 3% Years 9–11: 4% Thereafter: 5%
First-class resort hotel (independent)— Florida	300	1975	10 years	10 years	3.5% of gross revenue or \$65,000	12% GOP	Cash reserve, \$75,000
First-class commercial hotel— Illinois	850	1988	20 years	—	3% of gross revenue	25% of net cash flow after return to partnership equal to debt service	Year 1: 0.5% Year 2: 1% Year 3: 1.5% Year 4: 2% Year 5: 3%
First-class airport hotel— California	450	1981	25 years	—	3% of gross revenue plus 10% house profit, cap. equals 4% gross revenue	—	—

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class convention hotel— Illinois	1,500	1984	20 years	1 period of 10 years	3% of gross revenue	15% of total adjusted income before fixed charges	Years 1–3: 3% of gross revenue Thereafter: Negotiated
Midrate commercial hotel— Texas	250	1974	5 years	3 periods of 5 years (operator's option)	1.75% of gross revenue	—	—
First-class commercial inn— Illinois	250	1984	20 years	—	3.5% of gross revenue	0%: IBFC <\$1 million 2.5%: IBFC \$1 million to \$1.5 million 5.0%: IBFC \$1.5 million to \$2 million 7.5%: IBFC \$2 million to \$2.5 million 15.0%: IBFC \$2.5+ million	—
Midrate commercial hotel— Georgia	150	1974	1 year	Annually	1.75% of gross revenue	—	—
First-class conference hotel— Virginia	350	1987	10 years	5 periods of 5 years (operator's option)	Year 1: greater of \$15,000/month or 4% of gross Thereafter: 4% gross	15% of cash flow after defined deductions	Negotiated, or 2% per year
Midrate airport hotel— New York	300	1987	25 years	—	4% of gross	—	—
First-class commercial hotel (independent)— New Jersey	250	1987	—	—	3% of (room + food + other revenue)	—	—
First-class commercial hotel— Tennessee	400	1972	30 years	2 periods of 10 years (operator's option)	3% of gross revenue	2% of adjusted NOI subordinated to debt service	4% of gross revenue
First-class commercial hotel— Maryland	400	1982	30 years	—	4% of gross revenue	20% of profit	Year 1: 1% Years 2–3: 2% Thereafter: 3%
First-class commercial hotel— Massachusetts	350	1987	10 years	5 years (operator's option)	1% of total revenue	5% GOP plus all F&B profit	—

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class commercial hotel— (independent) Massachusetts	400	1987	10 years	5 years (operator's option)	1% of total revenue	5% GOP plus all F&B profit	—
First-class commercial hotel— Louisiana	450	1981	20 years	3 periods of 10 years (operator's option)	3% of gross revenue	10% of GOP subordinate to debt service	5% of gross revenue
First-class commercial hotel— Washington, D.C.	1,150	1961	20 years	—	\$125,000 per year	2% of adjusted net sales	—
First-class commercial hotel— Washington, D.C.	550	1975	20 years	2 periods of 10 years (operator's option)	3% of gross revenue	—	—
First-class commercial hotel (independent)— Washington, D.C.	350	1984	15 years	12 periods of 5 years (operator's option)	Year 1: 3% Year 2: 5% of gross revenue	3% of adjusted net cash flow	Year 1: 0% Year 2: 2% Thereafter: 3%
First-class suite hotel— Illinois	200	1982	20 years	2 periods of 10 years	5% of gross revenue	50% cash flow over \$400,000, cap at 25% cash flow	—
First-class commercial hotel (independent)— Maryland	220	1986	5 years	—	\$12,000 per month	5%: GOP < \$500,000 7.5%: GOP \$500,000 to \$1 million 10%: GOP > \$1 million	—
Midrate commercial inn— California	250	1983	10 years	—	Years 1–2: 2.5% Year 3: 3% Thereafter: 3.5%	Years 1–5: 10% net cash flow Thereafter: 15%	2% of total revenue
Midrate commercial hotels— throughout U.S.	—	1982	10 years	Automatic renewal	2% of adjusted gross revenue	8.5% of the aggregate defined pretax profit	—
First-class commercial hotel— Ohio	250	1983	30 years	2 periods of 10 years	5% of annual gross revenue	20% annual profit in excess of basic service fees	—
First-class convention hotel— New York	1,200	—	20 years	2 periods of 10 years	Years 1–2: 2% of total revenue Year 3: 2.5% Year 4: 2.75% Thereafter: 3%	20% of adjusted GOP	Year 1: 1% of total revenue Year 2: 1.5% Year 3: 2% Year 4: 4%

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Economy commercial hotel— New York	200	1985	100 years	—	5% of gross revenue	None	—
First-class commercial hotel— Oklahoma	250	1986	5 years	3 periods of 5 years	2% of gross	None	—
First-class commercial hotel— Ohio	900	1968	25 years	2 periods of 10 years	4% of total revenue	—	—
Luxury resort hotel— Colorado	300	1987	25 years	—	3% of gross revenue	10% of gross operating profit	Year 1: 1% Year 2: 2% Year 3: 3% Thereafter: 4%
First-class commercial hotel— Michigan	300	1981	10 years	3 periods of 10 years	\$75,000 per year	3% of hotel gross revenue, 1% office gross revenue, 1% of retail gross less base fee	2% per year
Economy commercial hotel— Georgia	250	1987	10 years	5 years (owner's option)	4% of gross revenue	25% of NOI after payment of preferred return	—
Economy commercial hotel— Florida	250	1987	10 years	5 years	4% of gross revenue	25% of NOI after payment of preferred return	—
First-class commercial hotel— Louisiana	1,300	1968	25 years	3 periods of 10 years	2.7% of gross revenue	33.3% adjusted house profit	5.5% of gross sales
First-class commercial hotel— New Jersey	400	—	10 years	—	3% of gross revenue	8% of GOP	—
First-class suite hotel— Texas	200	1986	5 years	2 periods of 5 years	4.5% of gross income	10% of net cash flow before property taxes and insurance	—
First-class suite hotel— Arizona	120	1986	5 years	2 periods of 5 years	4.5% of gross income	10% of net cash flow before property taxes and insurance	—
First-class commercial hotel— New Jersey	350	1980	25 years	3 periods of 5 years	Years 1–2: 3% of gross revenue Thereafter: 3.25%	19% of adjusted GOP	Year 1: \$150 PAR Year 2: \$200 PAR Year 3: \$250 PAR Year 4: \$300 PAR

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Midrate commercial hotels— throughout U.S.	Varies	1987	15 years	4 periods of 10 years, 1 period of 5 years (operator's option)	6% of gross revenue	15% of GOP	Year 1: 3.5% Year 2: 5% Year 3: 6% Thereafter: 8%
First-class commercial hotel— Washington, D.C.	300	1985	15 years	—	3.5% of total revenue	10%: 0–\$500,000 15%: \$500,000 to \$1 million 20%: 1 million to \$1.25 million, not to exceed 6% total revenue	Year 1: 1.5% Year 2: 2.5%
First-class commercial hotel— Michigan	425	1985	10 years	2 periods of 10 years	None	15% of cash available, NOI management fee equals 4% of NOI first 10 years	After stipulated fees, partners' returns, partners' capital contributions
Midrate commercial hotel— Michigan	225	1988	5 years	3 periods of 5 years	3% of gross revenue except telephone	—	—
Midrate commercial hotel— Michigan	100	1988	5 years	3 periods of 5 years	3% of gross revenue except telephone	—	—
First-class convention hotel— New York	1,900	1985	25 years	5 periods of 10 years	3% of gross revenue	50% of NCF until payments equal or exceed 20% of project profit	Year 1: 1% Year 2: 2% Years 3–5: 3% Years 6–10: 4% Thereafter: 5%
First-class commercial hotel— New York	400	1981	30 years	2 periods of 10 years	Year 1: 5% Thereafter: 4%	20% of profit in excess of basic fee	Years 1–2: 2% Year 3: 3%
First-class airport hotel— Utah	300	1988	5 years	Automatically for 3 years	Greater of 3 25% of gross revenue or \$10,000 per month	10% of IBFC monthly	—
First-class commercial hotel— Florida	175	1987	15 years	5 years	2.3% of gross revenue	Years 1–5: 2% of gross revenue Years 6–10: 3% Thereafter: 4%	Year 1: 1% Year 2: 2% Years 3–11: 3% Thereafter: 4%
First-class suite hotel— California	350	1986	20 years	3 periods of 10 years	5% of gross revenue	Years 1–3: 40% "subordinated," paid if gross revenue stipulated costs plus 12% return to owner	Year 1: 1% Year 2: 2% Year 3: 3% Year 4: 4%

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class suite hotel— California	325	1987	20 years	2 periods of 10 years	5% of gross revenue	—	—
First-class commercial hotel— Illinois	150	1985	10 years	2 periods of 5 years	4.5% of gross revenue except telephone	—	Minimum of 7.8% of gross revenue
Midrate commercial hotel— Minnesota	250	1987	20 years	1 period of 10 years	5% of gross revenue	—	3% minimum reserve
Midrate commercial hotel— Florida	150	1987	20 years	15 years (operator's option)	Originally 4%, renegotiated to 3% of gross revenue	25% of net profits	Year 1: 2% Year 2: 3% Thereafter: 4%
First-class commercial hotel— New York	225	1988	5 years	—	\$11,000 per month	5% of gross revenue up to \$400,000, 7.5% of GOP	—
First-class resort hotel— Florida	250	1989	15 years	10 years	3% of gross revenue	25% of net operating profit after \$3.3 million payment to owner	Year 1: 1.5% Year 2: 2% Year 3: 2.5% Thereafter: 3%
First-class commercial hotel— Alaska	250	1985	25 years	—	4.5% of gross revenue excluding alcohol	5% capital improvements supervision fee	—
First-class commercial hotel— Missouri	—	1984	12 years	5 periods of 3 years (automatic renewal)	4% of gross revenue	—	—
First-class historic inn— Maryland	130	1983	15 years	3 periods of 15 years (operator's option)	4% of gross revenue	5% after debt service	Year 1: 1% Thereafter: Increasing 5% per year until 5.0%
First-class commercial hotel— Colorado	300	1982	25 years	—	3% of gross revenue (monthly)	1% of gross revenue subordinated to req. partners' return	—
First-class convention hotel— Florida	750	1983	30 years	2 periods of 5 years (operator's option)	3% of gross revenue	30% of net cash flow	Year 1: 1% Year 2: 2% Thereafter: 3%

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class commercial hotel—California	250	1988	15 years	3 periods of 5 years	Years 1-2: 3.5% Thereafter, 5%	10% of total income before fixed charges (capped at 3% of total revenue)	3% of total revenue)
First-class commercial hotel—Wisconsin	230	1981	25 years	1 period of 5 years	3.5% of gross revenue	10%: GOP \$1.7 million 12.5%: GOP \$2.1 to \$2.5 million 15%: GOP over \$2.5 million maximum of 18% if operator provides equity	—
First-class commercial hotel—Colorado	225	1987	60 months	Automatically, month to month	4% of total revenue	5%: GOP <\$1 million 7.5%: GOP \$1 million to \$2 million 10%: GOP \$2 million to \$3 million 12%: GOP \$3 million to 4 million 15%: GOP >\$4 million	—
First-class convention hotel—Washington, D.C.	900	1985	20 years	2 periods of 10-years (operator's option)	3.5% of gross revenue	10% of profits	Year 1: 1% Year 2: 2% Years 3-7: 3% Thereafter: 4%
First-class airport hotel—Colorado	600	1986	5 years	1 period of 5 years (automatic)	4% gross revenue	14% of total income before fixed charges excluding base fee	—
Midrate commercial hotel—Louisiana	225	1986	7 months	—	Year 1: The greater of \$6,000 per month or 3% of gross revenue Year 2: 2% of gross revenue	Year 1: 10% of cash flow Year 2: 13% of cash flow	—
First-class suite hotel—Ohio	225	1986	15 years	Continuing unless one party terminates	3% F&B revenue, 5% all other gross revenue	—	—

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class commercial hotel— Ohio	150	1985	5 years	—	3% of gross revenue (minimum of \$120,000/year)	10% of net operating profit	—
First-class historic hotel— Maryland	—	1985	20 years	—	3.5% of gross revenue	12.5% of gross revenue subordinated and not accessed	Year 1: 1% Year 2: 2% Thereafter: 3%
First-class commercial hotel— Georgia	275	1984	30 years	2 periods of 10 years (operator's option)	20% of gross operating profit	—	Years 1–5: 3% Years 6–10: 4% Thereafter: 5%
First-class suite hotel— Indiana	360	1982	20 years	2 periods of 10 years (operator's option)	5% of gross revenue	—	3% of gross revenue
First-class convention hotel— Texas	—	1986	20 years	—	3% of gross revenue	10% of gross operating profit	2% of gross revenue not exceeding \$1,000/room
Midrate commercial hotel— Georgia	120	1984	5 years	—	5% of gross revenue	2.5% of gross revenue after \$20,000 distributed to Ltd. partners	—
Midrate commercial hotel— Utah	400	1981	20 years	1 period of 10 years (operator's option)	—	—	Year 1: 2% Year 2: 3% Year 3: 4% Thereafter: Subject to review
First-class airport hotel— Pennsylvania	325	1983	25 years	3 periods of 5 years (operator's option)	—	—	Year 1: 1% Year 2: 2% Year 3: 3% Thereafter: 4%
First-class commercial hotel— Connecticut	—	—	20 years	2 periods of 5 years (operator's option)	4% of gross revenue	25% of cash flow after debt service	—
Midrate commercial hotel— Pennsylvania	—	—	10 years	2 periods of 10 years (owner's option)	4% of gross revenue	—	—
Midrate airport hotel— Florida	—	—	20 years	2 periods of 5 years (operator's option)	5% of gross revenue	21% of cash flow after all operating expenses and debt services	—

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Economy commercial hotel— Maryland	—	—	10 years	4 periods of 5 years (owner's option)	4% of gross revenue	30% of cash flow after debt service and a 10% com. ret. on equity	—
First-class commercial hotel— Atlanta	—	—	25 years	5 periods of 10 years (operator's option)	3% of gross revenue	20% of cash flow before debt service	—
First-class suite hotel— New Jersey	—	—	15 years	—	5% of gross revenue	—	—
First-class commercial hotel— Wisconsin	—	—	10 years	1 period of 10 years (operator's option)	3% of gross revenue	10% of cash flow after debt service	—
First-class commercial hotel— Texas	—	—	20 years	—	3% of gross revenue	20% of net cash flow in excess of projected cash flow figures	—
First-class commercial hotel— New Jersey	—	—	25 years	5 periods of 10 years (operator's option)	3% of gross revenue	20% of net cash flow before debt service	—
First-class commercial hotel— Alabama	—	—	10 years	—	4% of gross revenue	25% of cash flow after debt service and a com. pref. return of 12%	—
First-class suite hotel— Colorado	—	—	3 years	3 periods of 1 year	Greater of 2.5% of gross revenue, 12% of cash flow before debt service or \$60,000	—	—
First-class commercial hotel— Texas	—	1985	2 years	—	3% of gross revenue	15% of net operating income	2%
First-class suite hotel— Wisconsin	200	1985	10 years	5 year basis	Years 1-2: 3% Year 3: 3.5% Thereafter: 4%	Year 3 and thereafter: 3.5% of net operating profit	Year 1: 1% Year 2: 2% Year 3: 2.5%
First-class airport hotel— Texas	275	1981	20 years	2 periods of 5 years	3% of gross revenue	2% of net operating profit	Year 1: 1% Year 2: 2% Year 3: 3%

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class commercial hotel— New York	200	1980	20 years	—	1% of gross revenue	2% IBFC if IBFC <2% 3% IBFC if IBFC 27% to 27.9% 4% IBFC if IBFC 28% to 28.9% 5% IBFC if IBFC 29% to 29.9% 6% IBFC if IBFC 30%	—
First-class airport hotel— Florida	250	1984	1 year	—	3% of gross revenue	—	2% of gross revenue
Midrate commercial hotel— New Jersey	225	1986	20 year	2 periods of 10 years	Years 1–3: 4% of gross revenue Years 4–7: 5% Years 8–15: 5.5% Thereafter: 6%	—	Year 1: 1% Year 2: 2% Year 3: 3% Year 4: 4% Thereafter: 5%
First-class resort hotel— Virginia	—	1983	10 years	5 year terms	2% gross: 3 million 4% gross: \$3 million to \$4 million 6% gross: \$4 million to \$5 million 7% gross: \$5 million	—	—
First-class commercial hotel— Massachusetts	150	1980	50 years	—	3% of gross revenue	10% of net operating profit	Year 1: 1% Year 2: 1.5% Year 3: 2% Year 4: 3% Thereafter: 4%
First-class suite hotel— California	250	1986	25 years	3 periods of 5 years	3.5% of gross revenue	1.5% of gross revenue	3%
First-class commercial hotel— North Carolina	150	1985	20 years	Renewable	5% of gross revenue	10% of gross operating profit	—
First-class resort hotel— Hawaii	725	1980	15 years	2 periods of 15 years	3% of gross revenue	20% to 30% operating profit, depending on owner's stipulated objective	Year 1: 1% Year 2: 2% Years 3–5: 3% Years 6–10: 4% Thereafter: 5%
First-class convention hotel— New York	1,300	1983	15 years	May be extended	Years 1–3: 2% of total revenue	Year 3 and thereafter: 3% of gross revenue, subordinated	—

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class commercial hotel— Massachusetts	250	1979	25 years	5 periods of 10 years	3.5% of gross revenue	Years 1-3: 25% of gross revenue if 79% occupancy achieved Thereafter: 30% of gross if 80.5% occupancy achieved	Years 3-5: 1% Year 6: 2% Years 7-9: 3% Years 10-12: 4%
First-class commercial hotel— Florida	500	1983	20 years	—	3.5% of gross revenue	10% of gross operating profit	Years 1-3: 2%
First-class resort hotel— Florida	500	1985	25 years	—	4% of gross revenue	14% of income before fixed charges	1.5%
First-class commercial hotel— New York	800	—	20 years	—	Years 1-3: 3% of gross revenue Thereafter: 4%	20% of net cash flow after debt service	—
First-class resort hotel— Florida	800	1982	20 years	2 periods of 10 years	3% of gross revenue (excluding telephone)	—	Year 1: 1% Year 2: 1.5% Year 3: 2.5% Year 4: 3% Thereafter: 4%
First-class commercial hotel— New Jersey	350	—	25 years	5 periods of 10 years	3% of gross revenue	20% of operating profit, subordinated to debt service	Year 1: 1% Year 2: 2% Years 3-5: 3% Years 6-10: 4% Thereafter: 5%
First-class conference center— Florida	300	—	25 years	3 periods of 10 years	1.5% for central financial services + 3.5% of gross revenue	20% inc. fee	4% of rooms revenue
Midrate commercial hotel— Kansas	200	1986	5 years	—	3% of gross revenue	10% net operating profit	Years 1-2: 2% Thereafter: 3%
First-class commercial hotel— New Jersey	350	1980	3 periods of 5 years	Years 1-2: 3% Thereafter: 3.5%	15% of adjusted gross operating profit	—	—
First-class airport hotel— Colorado	600	1986	5 years	5-year term	4% of gross revenue	14% of income before fixed charges	—

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class commercial hotel— Louisiana	1,200	1967	40 years	None	3% of gross revenue	Excess of 20% adjusted gross profit over 3% sales	—
First-class commercial hotel— Virginia	300	1988	10 years	1 year	4% of total revenue (reduction to 3.5% if actual income before fixed expense is less than 75% and 80% budgeted)	—	—
First-class commercial hotel— Florida	660	1982	25 years	None	4% of total sales	—	—
Midrate commercial hotel— Utah	400	1981	20 years	10 years	3.1% of adjusted gross revenue	10% of gross operating profit	Year 1: 2% Year 2: 3% Thereafter: 4%
Midrate commercial hotel— Texas	120	1986	—	—	6% of gross revenue	—	—
Midrate commercial hotel— Arizona	125	1975	25 years	—	4% total sales	—	—
First-class airport hotel— Pennsylvania	320	1983	25 years	3 periods of 5 years (operator's option)	3.5% of gross revenue	10% cash after depreciation	Year 1: 1% Year 2: 2% Year 3: 3% Thereafter: 4%
Midrate motor inn— North Carolina	150	1985	20 years	—	5% of gross revenue	10% operating profits	Maximum single expenditure without owner approval of \$5,000
First-class resort hotel— Hawaii	720	1980	15 years	2 options of 15 years each	3% of gross revenue	20% operating profit	Year 1: 1% Year 2: 2% Years 3–5: 3% Years 6–10: 4% Thereafter: 5%
First-class commercial hotel— New York	1,270	1983	15 years	—	Years 1–3: 2% gross revenue Thereafter: 3% gross revenue	Subordinate to debt service	—

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class commercial hotel— Massachusetts	250	1979	25 years	5 periods of 10 years	3.5% gross revenue	2.5% revenue subordinate to debt service and partner accumulated preferred return	Years 1-3: 1% Years 4-6: 2% Years 5-7: 3% Thereafter: 4%
First-class commercial hotel— Florida	500	1983	20 years	—	3.5% gross revenue	10% of GOP	Years 1-3: 2% gross revenue
First-class resort hotel— Florida	500	1985	25 years	—	4% gross revenue	14% total income before fixed charges	1.5%
Luxury commercial hotel— New York	780	—	20 years	—	Years 1-3: 3% gross hotel revenue Thereafter: 4% gross hotel revenue	20% net cash flow after servicing debt and/or equity financing of 100% hotel project	—
First-class resort hotel— Florida	815	1982	20 years	Two 20-year terms	3% gross revenue less telephone revenue	20% amount equal to the adjusted total income before fixed charges	Year 1: 1% Year 2: 1.5% Year 3: 2.5% Year 4: 3% Thereafter: 4%
First-class commercial hotel— New Jersey	360	—	25 years	Five 10-year terms	3% total revenue	20% operating profit subordinate to debt service (plus BONUS of 30% remaining cash flow after limited partners receive a 15% ROI)	Year 2: 2% Years 3-5: 3% Years 6-10: 4% Thereafter: 5%
First-class commercial hotel— Florida	320	1988	25 years	Three 10-year terms	1.5% for central financial services and 3.5% of gross revenue	20% revenue after debt service	4% of room revenue
First-class commercial hotel— Maryland	300	1980	25 years	Five 10-year terms	3% gross	20% operating profits	Year 1: 1% Year 2: 2% Years 3-5: 3% Years 6-10: 4% Thereafter: 5%
Midrate commercial hotel— Kansas	400	1986	5 years	—	3% gross revenue plus 1% of gross revenue for accounting services	10% net operating profit	Years 1-2: 2% Thereafter: 3%

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Proposed commercial hotel— New Jersey	235	1986	20 years	Two 10-year terms	Years 1–3: 4% gross revenue Years 4–7: 5% Years 8–15: 5.5% Thereafter: 6%	Year 1: 1% Year 2: 2% Year 3: 3% Year 4: 4% Thereafter: 5%	—
First-class commercial hotel— Wisconsin	—	1972	10 years	10 years (operator's option)	3% of gross sales	—	10% of cash flow after debt services, subordinate to a 10% return on equity
First-class commercial hotel— Texas	—	1985	20 years	None	3% of gross sales	20% of net cash flow in excess of the projected cash-flow numbers	—
First-class commercial hotel— Maryland	—	1987	25 years	Five 10-year terms at the option of operator	3% of gross sales	20% of net cash flow before debt service; bonus incentive fee equal to 30% of net cash flow remaining after owner has received an annual 15% ROI	—
First-class suite hotel— Colorado	—	—	3 years	Three 1-year terms	3.5% of gross revenue, 12% of CFBD, or \$60,000	—	—
First-class suite hotel— Wisconsin	205	1985	10 years	5-year basis	Year 1: 3% Years 2–7: 3.5% Thereafter: 4%	Year 3 and thereafter: 3.5% net operating profit	Year 1: 1% Year 2: 2% Year 3: 2.5%
First-class airport hotel— Texas	275	1981	20 years	Two 5-year renewals	3% gross revenue	2% net operating profit	Year 1: 1% Year 2: 2% Thereafter: 3%
First-class commercial hotel— New York	215	1980	20 years	—	1% gross revenue	Minimum 2% IBFC IBFC 27% to 27.9%: 3% IBFC 28% to 28.9%: 4% IBFC 29% to 29.9%: 5% IBFC 30% or greater: 6%	—

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class airport hotel— Florida	240	1984	1 year	—	3% gross revenue	—	—
First-class resort hotel— Virginia	300	1983	10 years	5-year terms	Gross revenue < \$3 million: 2% \$3 million to \$4 million: 4% \$4 million to \$5 million: 6% \$5 million or more: 7%	—	—
First-class historic hotel (independent)— Massachusetts	155	1980	60 years	—	3% gross revenue	10% of net operating profit	Year 1: 1% Year 2: 1.5% Year 3: 2% Year 4: 3% Thereafter: 4%
First-class historical hotel (independent)— Louisiana	510	1982	25 years	—	3.5% of total revenue	NOP 0-20% of equity: 10% NOP 20% or greater: 10% NOP plus 20% of amount exceeding base	Year 1: 1% Years 2-5: 1.5% Thereafter: 3%
First-class suites hotel— California	250	1986	25 years	Three 5-year renewals	3.5% gross revenue plus 1.5% accounting fee	1.5% subordinate to debt (preferred return must exceed 10%)	3%
Midrate commercial hotel— Virginia	—	1968	10 years	Two 5-year extensions (owner's option)	4% of gross sales	None	—
Midrate commercial hotel— Florida	—	1984	20 years	Two 5-year terms (manager's option)	5% of gross sales	21% of cash flow after debt service	—
Midrate commercial hotel— Maryland	—	1984	10 years	Four 5-year terms (owner's option)	4% of gross sales	30% of cash flow before debt service and a 10% cumulative return on invested equity, 30% net capital proceeds	—
First-class suite hotel— New Jersey	—	1986	15 years	—	5% of gross sales	—	—

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Midrate commercial hotel (independent)—Georgia	125	1984	5 years	—	5% of gross revenue	2.5% gross profit after \$20,000 distributed to limited partners	—
First-class airport hotel—Colorado	590	1986	5 years	5 years, automatic renewal	4% gross revenue	14% of total income before fixed costs, excluding base fee	amount reflected by budget
First-class commercial hotel—Texas	—	1986	20 years	—	3% of gross revenue	10% of gross operating profit	2% of gross revenue placed in a fund not to exceed \$1,000 per room
First-class suite hotel—Indiana	360	1982	20 years	Two 10-year renewals (operator's option)	5% of gross revenue	—	3% of gross revenue
First-class historic hotel—Texas	—	1985	2.5 years	—	3% of gross revenue	15% of net operating profit	2%
First-class convention center—Georgia	280	1984	30 years	Two 10-year terms, manager's option	20% gross operating profit	—	Years 1–5: 3% Years 6–10: 4% Thereafter: 5%
First-class historic hotel—Maryland	—	1985	20 years	—	3.5% of gross revenue	12.5% of revenue subordinate to debt, no accrual for unpaid portions	Year 1: 1% Year 2: 2% Thereafter: 3%
Midrate historic hotel—Ohio	150	1985	5 years	—	3% of gross revenue not less than \$120,000 per annum	10% of net operating profit	—
First-class suite hotel—Ohio	220	1986	15 years	—	3% F&B gross revenue, 5% all other gross revenue	—	—
Midrate commercial hotel—New York	110	1985	3 years	Upon mutual agreement	3% of gross revenue	10% of first \$50,000 after debt service, 15% of next \$50,000 after debt service, 20% thereafter	—

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Midrate commercial hotel— Illinois	220	1987	10 years	—	3.5% of gross revenue	—	—
First-class suite hotel— Texas	310	1985	10 years	10 years (operator's option)	5% of adjusted gross revenue	—	—
First-class suite hotel— Virginia	170	1987	15 years	—	3% of gross revenue	6% net operating profit above \$1.95 million, 8% between \$1.95 million and \$2.15 million, 10% above \$2.15 million	Year 1: 1% Year 2: 2% Thereafter: 3%
First-class commercial hotel— South Carolina	300	1981	25 years	Five 10-year terms (manager's option)	—	Years 1–10: 27% Thereafter: 20%	Year 1: 1% gross revenue Year 2: 2% Years 3–5: 3% Years 6–12: 4% Thereafter: 5%
First-class airport hotel— Pennsylvania	335	1986	25 years	operator's option	3% of gross revenue	20% of operating profit	4%
First-class suite hotel— California	250	1986	14 years	Two 5-year terms (operator's option), three 5-year terms (owner's option)	3.5% of gross revenue and 1.5% accounting fee	1.5% of gross, subject to fund availability	3%
First-class convention hotel— Ohio	625	1983	20 years	Three 10-year renewals	3.5% of gross revenue	subordinate to debt service	Year 1: 1% Year 2: 2% Year 3: 3%
Midrate commercial hotel— Florida	155	1989	—	—	4% of gross revenue or \$6,250 per month	—	—
First-class commercial hotel— California	250	1989	20 years	—	Years 1–5: 3% of gross revenue Thereafter: 3.5%	Years 1–5: 20% of CF before debt service Thereafter: 20% CR before debt service plus 2% of golf-related revenue	Years 1–3: 1.5% Years 4–6: 2% Years 7–9: 3% Thereafter: 4%
Midrate convention hotel— Oklahoma	220	1986	10 years	Manager's option	4% gross receipts	—	—

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Luxury commercial hotel— Georgia	1075	1973	30 years	—	—	6% of gross operating profit up to first \$3 million plus 4.5% of GOP over \$3 million	2% gross operating revenue
Luxury commercial hotel— California	360	1986	20 years	—	3% of gross revenue	25% of gross operating profit	Year 1: 1% Year 2: 2% Year 3: 3% Thereafter: 4%
Budget commercial hotel— Maryland	190	1985	30 years	10 years (operator's option)	4% of gross revenue	35% of net operating income after owner's priority	Years 1–3: 1% Year 4: 2% Year 5: 3% Thereafter: 4%
First-class suite hotel— Illinois	265	1987	10 years	10 years	Gross sales <\$2 million: 5% \$2 million to \$3 million: 8% \$3 million and greater: 10%	—	—
First-class suite hotel— New Jersey	265	1986	20 years	Three 10-year terms	5% of adjusted gross revenue without F&B and 5% of payment from F&B lessee	4% of room revenue, 3% of gross suite revenue	Years 1–2: 2% of gross revenue Year 3: 3% Thereafter: 4%
Restaurant management contract, suite hotel— New Jersey	275	1988	5 years	—	Year 1: \$200,000 In successive years, the excess of operating profit over the lesser of \$75,000 or \$36,000 plus incentive fee (Year 2); \$48,000 plus incentive fee (Year 3); \$60,000 plus incentive fee (Year 4). Year 5: The excess of the operating profit over \$75,000	Year 2: 40% of operating profit Year 3: 30% of operating profit Year 4: 20% of operating profit	—

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Restaurant management contract, suite hotel— Illinois	240	1988	3 years	Two 5-year options	Year 1: \$12,000 Year 2: \$24,000 Thereafter: To be negotiated	If revenue exceeds \$1.5 million, 3% of annual gross sales	—
First-class suite hotel— Illinois	240	1986	20 years	Three 10-year terms (operator's option)	5% of adjusted gross revenue	—	Years 1–2: 2% of gross revenue Year 3: 3% Thereafter: 4%
Luxury commercial hotel— Louisiana	500	1980	20 years	One year	4% of total revenue	10% of income before fixed costs	Year 1: 1% Year 2: 2% Year 3: 3% Thereafter: 3.5%
First-class commercial hotel— Illinois	1,215	—	20 years	Two 10-year terms	Years 1–2: 2% of total revenue Year 3: 2.5% Year 4: 2.75% Thereafter: 3%	20% of adjusted gross operating profit	Year 1: 1.8% of total revenue Year 2: 1.5% Year 3: 2% Thereafter: 4%
Midrate historic hotel (independent)— Ohio	80	1988	One year	Owner's option	2.5% of gross revenue	—	—
First-class commercial hotel— Colorado	210	1989	One year	One year	The greater of 2.5% of gross revenue or \$96,000 annually	The greater of 10% of net operating income or \$350,000	—
First-class commercial hotel— Ohio	250	1988	—	—	First 6 months: 4% Thereafter: 3.5%	10% of gross operating profit in excess of \$1,300,000	\$200,000 initially, to be renegotiated
Midrate commercial hotel— Ohio	350	1968	10 years	—	5% of room revenue	—	—
Luxury commercial hotel— Georgia	375	1988	9 years	Two 10-year terms	3% of gross revenue	10% of net income from operations	Year 1: 1% Year 2: 2% Thereafter: 3%
Midrate commercial hotel— New York	210	5 years	Three 5-year terms	—	5% of gross revenue	5% of budgeted gross operating profit plus 15% of actual gross operating profit	2% of gross revenue

MANAGEMENT CONTRACT TERMS

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
First-class suite/airport hotel—Florida	260	1986	10 years	10 years (operator's option)	5% of total revenue	—	Not less than 3% of gross revenue, payable monthly
First-class commercial hotel—Oklahoma	340	1983	25 years	Four 10-year terms (operator's option)	3% of room revenue	25% of operating profit	—
Budget hotels throughout U.S.	—	1986	20 years	Five 10-year terms	Years 1–8: 1% of gross revenue Thereafter: 2%, plus 3% "system fee"	15% of operating profit, increasing to 20% after \$33.9 million for a period of 13 consecutive accounting periods, payable only out of cash flow available	Year 3: 1% of gross revenue Year 4: 2% Year 5: 3% Year 6: 4% Year 7: 5% Thereafter: 6%
First-class commercial hotel—Michigan	240	1983	20 years	10-year term (operator's option)	4% of gross revenue	25% of income before fixed charges less the management fee, taxes, insurance, ground rent, and 17% of the total verified cost of hotel construction	—
Midrate historic hotel (independent)—New Jersey	200	1987	10 years	10 years	3% of gross revenue	25% of cash flow in excess of \$2,030,000	—
Luxury resort beach hotel—California	290	1987	30 years	Three 10-year terms (operator's option)	3.5% of gross revenue	25% of net profit after specified debt service	2.5% of gross revenue less telephone revenue
First-class commercial hotel—California	550	1982	30 years	—	3% of gross revenue	25% of net cash flow after specified debt and equity returns	3% of gross revenue
Luxury commercial hotel—Washington D.C.	900	1985	30 years	Two 10-year renewals (operator's option)	3.5% of gross revenue	10% of defined profit	Year 1: 1% Year 2: 2% Years 3–7: 3% Thereafter: 4%

Property	Number of Rooms	Date of Contract	Initial Term	Renewal Term	Management Fee Base	Management Fee Incentive	Reserve for Replacement
Luxury airport hotel— California	750	1984	20 years	Four 5-year terms	3.5% of gross revenue	20% of net distributable cash flow after partner advances and owner's return on equity of \$300,000	Years 1-2: 1% Years 3-4: 1.5% Years 5-7: 2% Thereafter: 2.5%
First-class suite hotel— Georgia	265	1985	20 years	Three 10-year terms (operator's option)	4% of room revenue	25% of distributable cash flow	3% of room revenue
First-class commercial hotel— Connecticut	—	1986	20 years	Two 5-year terms (operator's option)	4% of gross sales	25% of cash flow after debt service on any mortgage	—

APPENDIX 5

Hotel Ground Leases

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel—Northeast	300	1966	30 years with two 15-year extensions	3% of room revenue and 1% of food and beverage revenue	.5182
First-class commercial suite hotel—South Central	260	1984	25 years and three 10-year options	During construction: \$100,000 Years 1–2: \$150,000 Year 3: \$200,000 Year 4: \$250,000 Thereafter: \$300,000	1.61
Midrate commercial hotel—South Central	200	1968	33 years	3% of room revenue, 1% of F&B revenue	4.99
Midrate commercial hotel—North Central	230	1967	33 years with two renewals of 33 years each	\$5,000 per year through original term	1.15
Proposed convention hotel—Northeast	300	1984	30 years from opening; right to renew for three additional 15-year periods each; maximum term is 75 full fiscal years beginning 1984	\$180,000 from 1984 to 1987; in 1987, an amount equal to the greater of \$225,000 for first 2 years and \$250,000 thereafter or 2.75% of annual gross sales if landlord is not contractor (25% if landlord is contractor)	16.05
Midrate commercial hotel—Southeast	600	1973	99 years	4% of gross room rentals (up to 75% occupancy on any given night), 2% of gross F&B	5.96
Proposed midrate commercial hotel—North Central	180	1985	40 years with four successive 10-year options	\$10 per year plus maintenance of a small city park; 12% of fair market value after 40-year-term	1.71
Midrate commercial hotel—South Central	300	1966	20 years with five 10-year renewals	\$5,400 annually (CPI adjusted every 5 years)	1.625
Midrate commercial hotel—South Central	300	1967	33 years with one 33-year extension	3% of room revenue, 1% of F&B revenue, 10% of shop and store income	4.64

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel— South Central	300	1984	30 years and two 10-year extensions	2.5% of room revenue, 1% of F&B revenue, 2% of other income	.71
Convention hotel— Northwest	480	1980	20 years and two options of 20 years each	\$30,000 per month in sixth year, additional rent of 5% of net cash flow	5.55
Motor hotel—Northwest	230	1973	75 years	\$13,804.80 fiscal rental per year (adjusted by CPI equates to roughly \$31,000 in 1987-1989); adjusted every 10 years	12.3
Luxury commercial hotel— Northeast	170	1986	10 years with two 10-year options	Year 1: \$400,000 Year 2: \$800,000 Years 3-10: \$1,200,000 Bonus after 5.5% management fee (cumulative), landlord receives 100% of NCF to \$300,000, 80% up to maximum of \$750,000, 75% thereafter.	1.02
Resort hotel— Southwest	125	1978	55 years with two 10-year renewal options	Base \$90,000 quarterly; percentage is the greater of 8% of room revenue or 4% of gross sales	9.8
Midrate commercial hotel— Midwest	117	—	20 years with two 10-year options	Greater of 5.3% net receipts or \$53,781 (in 1986) or \$139,532 (in 2024)	2.5
Midrate commercial hotel— Midwest	120	—	20 years with four 5-year extensions	5.5% net room revenue or fixed \$75,000 (in 1986) or \$169,396 (in 2024)	2.75
Midrate commercial hotel— Northwest	123	—	20 years with four 10-year extensions	Year 1: \$82,250 Year 2: \$82,250 Thereafter: 5% of net revenue, buy-out option between 27th and 48th months at \$780,000	1.6
Airport hotel— Southwest	272	1984	50 years	5% of room revenue, 4% of beverage revenue, 2% of food revenue	10.3
Proposed midrate commercial hotel— Northeast	230	1986	60 years	Greater of 3% of room revenue plus 1% of F&B revenue or \$150,000 (years 1- 10) or \$200,000 (years 11-60); \$50,000 added to percentage rent in year 11 and thereafter; \$150,000 per year is fixed rent for first 4 years	2.55
Luxury hotel— Southeast	500	1982	99 years	\$150,000 per year until constructed or 42 months, whichever is first; upon completion, \$425,000 for 10 years during the succeeding 10-year period, rent fixed for 10 years at lesser of 10% FMV of land as vacant or greater of 2.5% of room revenue or 1.75% of gross revenue never to be less than \$425,000	1.0

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Commercial hotel— Southeast	285	1984	50 years with two 20-year renewals	Greater of percent rent or base rent is paid Year 1: \$300,000 (1%) Year 2: \$300,000 (2%) Year 3: \$300,000 (3.5%) Year 4: \$315,000 (3.5%) Year 5: \$331,000 (3.5%) Year 6: \$447,000 (3.5%) Year 7: \$365,000 (3.5%) Year 8: \$383,000 (3.5%) Year 9: \$402,000 (3.5%) Year 10: \$422,000 (3.5%)	6.89
Motel— Southeast	130	1983	40 years with two 15-year options	Minimum: \$120,000 Years 1–2: \$125,000 Year 3: \$130,000 Years 4–10: \$135,000 Years 11–40: \$145,000 Years 41–55: \$155,000 Year 56 through end of term: 3% of gross in excess of \$2,100,000	3.5
Hotel— Northeast	300	1985	—	4% of total revenue each year (loss in any one year may not be applied to other years' fees)	11.0
First-class hotel— Southeast	312	—	—	3% rooms, 1% F&Bs, \$96,000 minimum	—
Motel— Southeast	130	1983	45 years plus option on two 15-year terms	Annual rent of \$22,500 before opening, \$45,000 annually first 5 years of operation, 15% increase every 5 years	3.4
Conference center— South Central	300	1986	99 years	Ground rent \$300,000 per year plus 1% of gross revenues in excess of \$150,000 up to \$30,000,000	8.7
First-class hotel— Southwest	414	—	—	3.5% of room revenue, \$155,000 minimum	—
First-class commercial hotel— South Central	300	1980	30 years with 20- and 10-year renewals	Greater of \$5,000 per month or 5% of room revenue, 4% of beverage revenue, 2% of food revenue and 6% of miscellaneous income	8.65
Extended-stay hotel— South Central	—	1982	30 years with 20- and 10-year renewals	5% of room revenue, 4% of beverage revenue, 2% of food revenue, 6% of miscellaneous income; \$79,540 minimum, adjusted in 10 years with increase to provide return on appraised value of land; maximum increase 20%	—

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
First-class commercial hotel— Southeast	—	1981	60 years with two 10-year renewal options	Greater of base rent or 4% of room revenue and 2% of alcohol sales. Years 1-10: \$120,000 Years 20-30: \$180,000 Years 21-30: \$240,000 Years 31-40: \$300,000 Years 41-50: \$360,000 Years 51-60: \$420,000 Capital improvements escrow escalating from 1% to 5%	10
First-class commercial hotel— Southwest	—	1981	75 years	\$200,000 per year for 18 months, \$400,000 per year thereafter, .3% of gross sales, applied against \$400,000 per year base 7% of gross sales if lease is subordinated	5
Resort hotel— West Coast	—	1983	99 years	Years 1-2: \$260,000 per year Years 3-11: \$520,000 per year Thereafter: 10% of fair market value plus 15% of net cash flow	7.33
Midrate commercial hotel— West	—	1971	50 years	Year 1: \$25,000 Year 2: \$30,000 Years 3-8: \$45,000 per year Thereafter: 7% of fair market value Percentage: 5% of room revenue, 3% of alcohol sales, 1.5% of food revenue	6.69
First-class commercial hotel— Southeast	—	1981	99 years	Years 1-2: \$550,000 per year Year 3: \$650,000 Year 4: \$950,000 Thereafter: \$1 million per year	16.5
Midrate commercial hotel— Southeast	136	—	—	5% rooms, \$18,000 minimum	—
Resort hotel— West Coast	—	1970	55 years	Years 1-25: Minimum rent equals \$50,000 or \$250/room, greater of two renegotiated every 10 years thereafter, plus 5% room revenue, 1% food revenue, 3% beverage revenue, 5% other income, and 25% of sublease and concession	12
First-class commercial hotel— Northeast	—	1977	99 years, 275 days	Greater of \$96,000 per year or 5% room revenue	14.30
First-class commercial hotel— Northeast	—	1985	49 years plus five 10-year renewals	\$200,000/year or 3% of room revenue subordinate to first and second mortgages	—
First-class commercial hotel— Southeast	302	—	—	2.25% room revenue, 2% beverage revenue, 1% food revenue, \$90,000 minimum	—

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
First-class commercial hotel— Southwest	417	—	—	3% room revenue up to \$15,000,000, 3.25% room revenue greater than \$15 million, \$160,000 minimum	—
First-class commercial hotel— Midwest	384	1978	100 years	Years 1–3: \$174,250 per year Thereafter: \$29,750 additional rent Option to purchase in year 12, with 6- month notice, for \$1.7 million plus 6% net proceeds from refinancing	—
Resort inn— Southeast	175	1985	20 years	Base rate \$193,500 plus 3% gross sales	—
Beach resort— Southeast	160	1985	99 years	Base rent \$100,000 per year Year 1: 2% quarterly gross earnings over \$1.25 million Years 2–3: 2.5% quarterly gross earnings over \$1 million Year 4: 3% quarterly gross earnings over \$833,333 Renegotiate base rent after year 10	1.4
Budget hotel— Southwest	130	1976	20 years, amended 1977 and 1986, 2 successive 10-year options	Minimum rent \$77,200 per year plus 6% gross sales greater than \$125,000 per month exercise first option, increase base rent to \$100,000 per year exercise second option, increase base rent to \$125,000	1.88
Midrate commercial hotel— Northeast	62	1970	15 years with two 10-year extensions	Minimum rent: \$65,100 Percentage rent: 25% gross room revenue exceeding four times minimum rent, 5% cocktail lounge receipts	3.6
Midrate commercial hotel— northeast	104	1986	10 years with three 10-year extensions	Minimum rent: \$360,000 Percentage rent: 30% gross room revenue in excess of \$1.2 million, 5% cocktail lounge receipts	3.6
Midrate commercial hotel— Southeast	253	1984	4 years with 1-year renewal	\$1,862.69 per month	—
Midrate commercial hotel— Northeast	—	1971	15 years with three 10-year extensions	Minimum rent \$79,200 plus 25% room revenue greater than four times minimum rent	—
Suite hotel— Midwest	266	1972	51 years with two 25-year options	Base rent: \$53,120 Percentage rent: 4% room and F&B revenue	—
Resort hotel—Southeast	205	1972	41.5 years	Years 1–10: \$31,500 per year Years 11–20: \$42,525 Thereafter: 8% fair market value Minimum rent \$26,000 and no less than 3.5% gross income	—
Suite hotel—Southwest	183	1979	51 years with one 10-year extension	7.5% gross sales	—

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel— Southeast	225	1969	20 years with three 20-year extensions	Minimum rent: \$108,000 (increasing by \$6,000 per year, reaching a ceiling limit of \$245,000) Additional rent of 31% room revenue less real estate taxes and insurance payments	—
Midrate commercial hotel— Midwest	149	1969	21 years with seven 10-year renewals	Base rent: \$119,819 annually, or 28% room revenue, 5% F&B revenue, and 25% other revenue	6.12
Suite hotel—Southeast	232	1988	10 years with a 5-year renewal	\$5,000 per month plus 2% gross sales (minimum of \$3 million)	3.6
Airport hotel— Northeast	293	1971	10 years with two 10-year options	Minimum rent: \$30,000 year, plus percentage rent of 3% gross room revenue and 1% gross F&B revenue	7.84
Midrate commercial hotel— Northeast	117	1962	30 years with four 15-year extensions	\$78,000 per year	8.5
Midrate commercial hotel— Northeast	152	1967	—	\$45,000 per year	4.7
Midrate commercial hotel— Northeast	—	1964	5 years with nine 5-year options	Years 1–20: \$12,000 per year Years 21–40: \$13,000 per year Years 41–50: \$14,000 per year	1.67
Midrate commercial hotel— Northeast	72	1977	8 years with one 12-year renewal and two 5-year renewals	Minimum rent: \$79,000 Percentage rent: 20% gross receipts in excess of five times minimum fixed rent	—
Midrate commercial hotel— Northeast	557	1958	56 years	Minimum rent: \$13,700, or 10% of room revenue, 10% of first \$548,620 in food revenue, 5% of excess food revenue, and 10% of beverage and other revenue (excluding telephone)	5.25
Convention hotel— Northeast	557	1958, amendment 1983	55 years, extended 25 years	9% of room revenue and 10% of food revenue (up to \$548,620), then 5% of remaining food revenue and 5% beverage revenue	5.25
Proposed beach hotel— Northeast	163	1988	99 years	Years 1–3: \$25,000 Year 4: \$75,000 Years 5–10: \$100,000 Years 11–15: \$100,000 plus average percentage increase of the CPI from years 5–10 (not to exceed 5%)	3.5
Convention hotel— Midwest	887	1975	99 years	\$12,000 per year, increased by the CPI every 5 years	21,804 square feet
First-class commercial hotel— Northeast	350	1985	30 years	Payment of bond interest	.74

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acres
Suite hotel— South Central	261	1985	open ended	\$69,116 per year, adjusted every 3 years by CPI	48.896
Resort hotel— Caribbean Islands	—	1984	5 years with two 5-year options	Minimum rent \$25,000 plus percentage of gross revenue: \$2 million to \$5 million at 3% \$5 million to \$8 million at 5% \$8 million and greater at 6%	—
Resort hotel— Midwest	393	1974	25 years with five 10-year renewal terms	5% of gross room revenue plus a percentage of theater revenue: \$400,000 to \$900,000 at 4% \$900,000 to \$1 million at 5% \$1,000,001 and greater at 9%	160
First-class commercial hotel— Midwest	316	1983	100 years	\$100,000 per year	1.21
Midrate commercial hotel— Midwest	159	1985	15 years	\$103,500 per year	—
Budget hotel— South Central	48	1982	30 years with one 10-year renewal and two 5-year renewals	\$14,400 per year	0.8
Commercial hotel— Northeast	392	1979	75 years	Years 1–3: \$50,000 per year if positive cash flow Years 4–40: \$70,000 per year plus additional rent of \$135,000	—
Suite hotel— Northeast	300	1986	—	Year 1: \$48,000 Year 2: \$48,000 plus 1% room revenue, 1% F&B sales, 1% net income, and 5% rentals Year 3: Increase room and F&B revenue to 1.5% Year 4: increase room revenue to 2%	—
Budget hotel— Southeast	149	1987	—	Years 1–5: The greater of \$234,700 or 5% of room revenue Thereafter: The greater of \$352,051 or 6% of room revenue	—
Budget hotel— Southeast	145	1960	99 years with option to purchase in year 6 for \$300,000 or in year 11 for the greater of \$300,000 or fair market value of land	\$24,000 per year	2.57
Budget hotel— Northeast	146	1961, amended 1967	50 years with two extensions of 20 years each	\$15,000 per year	—
Downtown hotel— North Central	225	1963	25 years	The greater of \$112,500 per year or 25% of room revenue and 5% of F&B revenue	0.48

Property	Rooms	Date	Terms and Renewals	Rental	Acreege
First-class hotel— Midwest	621	1983	30 years	\$500,000 annually plus percentage rent according to debt structure tied in with operating income	—
First-class commercial hotel— Southwest	—	1989	50 years	Minimum rent as follows: Year 1: \$400,000 Years 2–10: \$800,000 Thereafter: \$1.2 million, plus a percentage of operating revenue	366,235 square feet
First-class hotel— Southwest	—	1986	50 years	Minimum rent as follows: Year 1: \$200,000 Years 2–10: \$400,000 Thereafter: \$600,000, plus a percentage of operating revenue	734,741 square feet
First-class commercial hotel— Southwest	—	1968	60 years	Minimum rent: \$68,500 per year, plus a percentage of operating revenue	325,910 square feet
Resort hotel— Southwest	—	1969	60 years	Minimum rent as follows: Years 1–10: \$250,000 Years 11–20: \$625,500 Thereafter: \$825,000, plus a percentage of gross income	1,030,408 square feet
First-class convention hotel— Southeast	1,074	1972	99 years	Base rent at \$309,363 per year, increasing \$2,000 per year after year 25; reset base rent at \$477,363 in year 26, increasing by \$4,000 per year through year 40; base rent adjusted to \$460,000 in year 41, increasing by \$4,000 per year until year 50; thereafter, base rent will be determined through market appraisals performed every 25 years	—
First-class commercial hotel— Southwest	803	1973, amended 1977	40 years	\$5,249,124 plus 10.25% repair costs; in years 5–15, an additional 15.86% of any excess expended over the reserve accounts	1.9
Midrate commercial hotel— Northeast	119	1988	45 years	\$855,000 per year	3.0
Midrate commercial hotel— Northeast	71	1961	60 years	Minimum rent: \$137,000, plus 10% of gross income in excess of \$252,000 per year	—
Midrate commercial hotel— Northeast	71	1968	20 years	\$200,000 per year plus 15% of gross income in excess of \$786,534	3.0
Midrate commercial hotel— Southeast	—	1969	20 years with one option of 15 years	\$138,000 per year plus 25% of annual gross sales in excess of four times the fixed rental	—

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acres
Suite hotel— Midwest	237	1986	50 years with five 10-year renewals	The greater of \$225,000 or percentage of suite revenue as follows: Years 1–3: X% Years 4–6: .3% Thereafter: 3.6%	6.55
Luxury commercial hotel— Southeast	497	1981	75 years	\$555,556 paid in full	1.1
Motel— Southeast	—	1967	35 years with four 15-year options	\$183,000 per year plus 25% of gross sales	—
Airport hotel— Southeast	—	1965	22 years with two 15-year options and two 10-year options	Years 1–15: \$69,952 per year plus 10% gross sales in excess of \$224,000 Years 16–22: Increase gross sales percentage to 25%	—
Midrate commercial hotel— Southeast	—	1971	22 years with three 10-year options	The greater of \$40,000 per year or 7% of gross income from food and 5% from beverages, 25% of receipts from conference facilities rental, and 7% from other revenue	—
Midrate commercial hotel— Southeast	—	1982	10 years with two 5-year options	Minimum rental: \$2,160,000 per year plus a percentage of gross sales starting at 5% for \$750,000 to \$1.5 million and increasing by 1% for every \$150,000 increase in gross sales (maximum of 12% at \$1.95 million in sales)	—
Midrate commercial hotel— Southeast	72	1968, amended 1969	25 years with six 10-year options	Minimum rent: \$79,200 per year Percentage rent: 25% of annual gross room revenue exceeding \$316,800	—
Convention hotel Midwest	1215	1988	50 years	Base rent as follows: Years 1–5: \$150,000 per year Year 6: \$975,000 Year 7: \$2,100,000 Thereafter: \$2,100,000 plus percentage of the CPI (between 5% and 10%).	80,000,000 square feet
Commercial hotel Northeast	—	1971	50 years with two 25-year options	Years 1–10: \$15,000 plus .75% of gross receipts Thereafter: \$20,000 plus 1% of gross receipts	—
Airport hotel Southwest	210	1974	30 years	Years 1–6: \$144,000 per year Thereafter: Adjusted by CPI	6.61
Proposed first class commercial hotel Southeast	371	1985	30 years with two 10-year extensions	\$220,000 to opening date; \$440,000 to 1992; \$528,000 thereafter or 3% of gross sales (whichever is greater)	1.76

Property	Rooms	Date	Terms and Renewals	Rental	Acreeage
Budget hotel Midwest	130	1990	29 years	Minimum rent as follows: Years 1-5: \$50,000 Years 6-10: \$65,000 Percentage rent as follows: Years 1-4: 3% Years 5-10: 3.5% Thereafter: 5.5%	—
Budget hotel Midwest	130	1990	29 years	Minimum rent as follows: Years 1-5: \$38,000 Years 6-10: \$58,000 Percentage rent as follows: Years 1-5: 3% Years 6-12: 3% Thereafter: 5%	—
Budget motel— Midwest	129	1990	29 years	Minimum rent as follows: Years 1-5: \$45,000 Years 6-10: \$55,000 Percentage rent as follows: Years 1-12: 3% Thereafter: 5%	—
Budget hotel— Midwest	131	1990	29 years	Minimum rent as follows: Years 1-5: \$60,000 Years 6-10: \$67,000 Percentage rent as follows: Years 1-12: 3% Thereafter: 5%	—
Budget hotel— Midwest	134	1990	29 years	Minimum rent as follows: Years 1-5: \$55,000 Years 6-10: \$68,000 Percentage rent as follows: Years 1-5: 3% Years 6-12: 3.5% Thereafter: 5.5%	—
Budget hotel— Southeast	135	1990	29 years	Minimum rent as follows: Years 1-5: \$90,000 Years 6-10: \$101,000 Percentage rent as follows: Years 1-5: 3% Years 6-12: 4.5% Thereafter: 6.5%	—
Budget hotel— Southeast	133	1990	29 years	Minimum rent as follows: Years 1-5: \$50,000 Years 6-10: \$72,000 Percentage rent as follows: Years 1-5: 3% Years 6-12: 4% Thereafter: 6%	—
Commercial hotel— North Central	336	1981	25 years with five 25-year options	The greater of \$135,000 or 3% of gross room revenue	7.11
International commercial hotel— Europe	223	1958	99 years	40,000 pounds sterling	26,643 square feet

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel—Northeast	154	1970	50 years with two 15-year options and one 10-year option	\$26,500 per year, inflated every 7.5 years by the corresponding CPI change, beginning in 1979	—
Independent—Southeast	309	1984	99 years	\$1,200,000 per year plus 75% operating income above \$9 million	3.48
Airport hotel—Northwest	141	1970	21 years with six 5-year options	Years 1–6: \$16,000, adjusted every five years to fair rental value as determined by an independent appraiser	189,051 square feet
Budget—Southwest	129	1983	30 years	Minimum rent: \$60,000 Percentage rent: Amount by which 5% gross revenue exceeds minimum rent	3.2
Airport hotel—Southwest	750	1984	70 years, not to exceed 99 years	Minimum rent: \$540,000, adjusted every five years by the CPI increase	3.7
First class commercial hotel—South Central	338	1975	25 years with two 5-year options	Minimum rent: \$1,172,000 Percentage rent: 25% operating profit under \$800,000 per year and 40% operating profit in excess of \$800,000 per year	1.68
Limited service—Northeast	189	1987	49 years with one 49-year renewal	Fixed leverage attached plus 5% gross receipts exceeding the fixed	—
First class commercial hotel—Southeast	401	1982	49 years with five extensions not to exceed 99 years	Minimum rent: \$600,000 per year	1.8
Suite hotel—Northeast	112	1986	16 years with one 15-year option	Commencement to completion date: \$62,000 Thereafter: \$124,000 fixed rent, increased by 4% annually	—
Commercial hotel—Northwest	248	1985	55 years	\$40,000 per year, increasing at 5-year intervals to reflect the fair market rental	66.76
Suite hotel—Southeast	214	1985	50 years with an option to purchase	Years 1–7: 138,000 per year Years 8–13: 396,000 per year Thereafter: \$600,000 per year, adjusted by CPI	8.7
Independent—Northeast	190	1981	26 years	Triple net plus \$15,000 per year for easement rental; option to terminate in year 16	—
Budget hotel—Northeast	368	1986	30 years	\$125,000 deposit plus annual payments as follows: Years 1–5: \$1.5 million Years 6–9: \$1.65 million Years 10–12: \$1.7 million Years 13–18: \$1.75 million Thereafter: \$2 million, with a purchase option after year 8	—
Independent—Northeast	183	1978	15 years with eight 5-year extensions	Minimum rent: \$252,000 annually Percentage rent: 1% of gross food sales, 2% of gross alcoholic beverage sales, and 3% of gross room revenue	3.5

Property	Rooms	Date	Terms and Renewals	Rental	Acres
Commercial hotel— Southwest	—	—	20 years	Minimum rent as follows: Year 1: \$200,000 Year 2: \$400,000 Thereafter: \$600,000 or the cumulative total of percentage rents	—
Convention center hotel— Midwest	1,200	1987	50 years with one 25-year extension and one 24-year extension	Base rental as follows: Year 1: \$75,000 Years 2–7: \$150,000 Year 8: \$1.6 million Year 9: \$1.8 million Thereafter: \$2 million, increased by the CPI and capped at a minimum of 5% and a maximum of 10% total percentage rent is equal to the excess of the sum of percentages of gross revenue over base room F&B, and other revenue	—
Commercial hotel— Midwest	247	1983	65 years with seven 5-year options	Year 1: \$29,430 Thereafter: \$82,000	1.525
Resort hotel— Southeast	1,500	1991	99 years	Special fee of 3% total revenue Base rent as follows: Years 1–7: X% rooms, 5% beverage, 3% food Year 8: 7.5% rooms, 5% beverage, 3% food Year 9: 8% rooms, 5.5% beverage, 3.5% food Thereafter: 8.5% rooms, 6% beverage, 4% food, plus 25% of all sublease income and 7% other revenue	38.54
Casino hotel— South Central	150	1982	10 years with purchase option	Years 1–2: 27,564 Years 3–5: 30,324 Years 6–8: 33,072 Thereafter: \$35,832	1.05
Casino hotel— South Central	150	1983	23.5 years with two 25-year extensions	First 6 months: \$26,496 Second 6 months through year 2: \$39,750 Year 3: \$53,000 Years 4–10: 66,250 Thereafter: Appraised every 5 years, rent determined at 10% of appraised value but not less than 5-year rent	1.52
Midrate commercial hotel— Southeast	206	1981	17 years, renewable for 80 years	Interest and principal on bonds \$60,468.75 monthly until 1997, \$100 per year thereafter	14.57
Midrate commercial hotel— Southwest	149	1988	55 years	The greater of \$100,000 or 7% of room revenue	3.0
Midrate commercial hotel— Southeast	203	1970	25 years with three 20-year renewals	\$290,800 per year, payable in advance monthly installments of \$24,233.33	—

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Midrate commercial hotel—Southeast	170	1963	28 years and 10 months with one 20-year renewal option	Years 1–3: 6,333.30 per month Years 4–6: \$6,500 per month \$6,666.66 per month for the life of the lease, increased to \$7,500 per month upon completion of additional facilities in year 15	—
Midrate commercial hotel—Southeast	304	1965	15 years with option of eight 5-year renewals	Tracts 1–5 as follows: Years 1–10: \$1,800 per acre Years 11–X: \$2,300 per acre 152,500 per acre yearly during renewal option Tracts 6–8: \$900 per acre	12.72
First class commercial hotel—Southeast	126	1977	20 years with option to purchase by year 15 for \$2,200,000	\$11,333.34 per month	5.44
Midrate commercial hotel—South Central	313	—	30 years with two 10-year renewals	The greater of 2.5% of room revenue, 1% of FEB revenue, and 2% of other revenue (not including telephone) or \$150,000 annually	0.71
First class commercial hotel—Southeast	756	1980	25 years with five 10-year renewal options	60% of operating profit	5.79
First class commercial hotel—Southwest	746	1980	25 years with five 10-year renewal options	60% of operating profit	10.76
First class commercial hotel—Southeast	400	1981	25 years with five 10-year renewal options	60% of operating profit	15.01
First class resort hotel—Southeast	759	1980	25 years with five 10-year renewal options	60% of operating profit	189.39
First class resort hotel—Southwest	348	—	25 years with five 10-year renewal options	60% of operating profit	24.63
First class hotel—Northeast	444	1981	25 years with five 10-year renewal options	Years 1–39: 60% of operating profit Thereafter: 80% of operating profit	15
Conference center hotel—Northeast	209	1984	50 years with option to buy	Percentage of gross revenue that is contingent upon sales volume and mortgage interest rate	12.8
Proposed suite hotel—Northeast	120	1987	75 years with 25-year extension	Year 1–5: \$125,000, with increase for each 5-year period calculated as basic annual rent + (basic annual rent × .4% increase in local CPI)	5.0
Proposed suite hotel—Northeast	460	1988	49 years, with three 33-year renewal options	Base rent of \$1,009,040 with fixed annual increases of \$10,090.40	16,924

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
Proposed suite hotel— Northeast	460	1988	49 years with three 33-year renewal options	Base rent of \$230,000 with fixed annual increases of \$2,300	1.600
Midrate commercial hotel— Southwest	309	1967	55 years	Greater of \$4,583,33 or 6.375% of gross room revenue plus 5% of F&B revenue	12.28
Proposed resort hotel— Southeast	760	1991	99 years	Special fee of 3% total revenue Base rent as follows: Years 1–7: 7% room revenue, 5% beverage revenue, 3% food revenue Year 8: 7.5% room revenue, 5% beverage revenue, 3% food revenue Year 9: 8% room revenue, 5.5% beverage revenue, 3.5% food revenue Thereafter: 8.5% room revenue, 6% beverage revenue, 4% food revenue, plus 25% of all subleased income and 7% of all other revenue payable monthly in arrears Incentive rent: 15% annual room revenue exceeding base projection	24.59
Midrate commercial hotel— Northeast	117	1973	25 years with five 15-year renewal options	\$20,500 per month plus percentage rent of 33% of room revenue in excess of \$210,000	4.7
Proposed midrate commercial hotel— Northeast	168	1986	50 years with two 10-year options	Years 1–5: \$100,000 fixed rent, increasing 20% for each 5-year increment Percentage rent: 3% of room revenue	0.368
Resort inn— Southeast	276	1971	—	8% fair market value, 3% of gross income	14.53
Medical center hotel— South Central	389	1984	25 years plus five 10-year renewal options	\$160,000 plus 3% of the first \$15 million annual gross room revenue and 3.25% of room revenue in excess of stated amount	0.54
First-class resort hotel— Midwest	393	1974	25 years plus five 10-year renewal options	5% of gross room revenue plus percentage of revenue as follows: \$400,000 to \$900,000 at 4%; \$900,001 to \$1 million at 5%; 9% thereafter	160
First-class commercial hotel— Midwest	316	1983	100 years, after which all improvements become the lessor's	\$100,000 annually plus rental of 100 parking spaces in lessor's adjacent parking garage	1.21
Midrate commercial hotel— Midwest	159	1985	15 years	\$103,500 total rental, at \$575 monthly	—
Budget hotel— Southwest	48	1982	30 years with one 10-year renewal and two 5-year renewals	\$14,400 per year or 4.25% of room revenue, whichever is greater	0.8

HOTEL GROUND LEASES

Property	Rooms	Date	Terms and Renewals	Rental	Acreage
First class commercial hotel— Northeast	392	1979	75 years	Years 1–3: \$50,000 annually if positive net cash flow Years 4–40: Net rentable square foot area × \$0.50, ground rent of \$70,000 per year, and 12% of any monies loaned on convertibles	—
Suite hotel— Northeast	300	1986	—	Year 1: \$48,000 Year 2: \$48,000 plus 1% total room revenue, 1% F&B sales, 1% net income, and 5% office and retail rentals Year 3: increase to 1.5% room revenue and 1.5% F&B revenue Thereafter: 2% room revenue, 1.5% F&B revenue, 1% net income, and 5% rental revenue	—
Budget hotel— Southeast	149	1987	—	Years 1–5: The greater of \$234,700 or 5% gross revenue Thereafter: The greater of \$352,051 or 6% of gross room revenue	—
Midrate commercial hotel— Southeast	—	1971	25 years with one 25-year renewal option	\$3,333 per month against 7% gross income derived from 5% beverage revenue, 25% of gross rental receipts, and 7% of other revenue; minimum increases for extended terms to 75% of average annual rent paid for previous 10 years, never less than paid in last year of preceding period	—

APPENDIX **6**

Selected Provisions of Lease of Land Only

A. Demise; Description and "Subject to" Provisions

Lessor hereby leases to Lessee, and Lessee hereby hires, on the terms and conditions hereinafter set forth, the following (which is hereinafter called the "Leased Property"):

All that certain lot, piece or parcel of land, *without the buildings or improvements thereon erected*, situate, lying and being in the, City of, County of and State of, bounded and described as follows;

Beginning at a point (Include here a complete survey description of the Leased Property.)

Together with all the right, title, and interest, if any, of Lessor, in and to any streets and roads abutting the above-described premises to the center lines thereof.

There is not included in this lease the following, Title to which today has been conveyed, sold, and assigned by Lessor to Lessee: Any buildings, structures and improvements, or the furnishings, fixtures, personal property and equipment of every kind whatsoever located therein, now or at any time hereafter erected or situated on the Leased Property. Subject, nevertheless, to:

1. Rights of all tenants, licensees, concessionaires and occupants now in possession of portions of the Building pursuant to leases, licenses of agreements heretofore made by Lessor or any former owner of the Leased Property.
2. State of facts shown on survey made by, dated, 19..... and to any additional state of facts an accurate survey since that date, or an inspection, would show;
3. Any presently existing defects of title, easements, restrictions, and agreements affecting the Leased Property; but this lease is not subject to the lien of any mortgage which may have affected the fee title to Leased Property on the date hereof.

B. Initial Lease Term

To have and to hold the Leased Property unto Lessee, its successors and assigns, for a term of 25 years, commencing on December 1, 19..... and expiring at 12:00 noon on November 30, 20, unless this lease shall terminate sooner, as hereinafter provided.

C. Acknowledgment of Split Ownership of Land and Building

The parties acknowledge that Lessee holds title to the Building. It is the intention of the parties that such separation of title to the Leased Property from title to the Building is not to change the character of the Building as real property, except that the furnishings and other personal property which constitutes part of the Building shall continue to be treated as the personal property of Lessee.

D. Nonseparability of Ownership of Leasehold Estate From Ownership of Building

It is also the intention and agreement of the parties that Lessee's ownership of the leasehold estate created hereby and the Building shall be nonseparable, and that any attempt to transfer title to the Building shall be void and ineffective unless accompanied by a valid transfer of this leasehold estate to such grantee; and likewise, any attempt to transfer this leasehold estate without a simultaneous conveyance of the Building to such assignee shall be void, and either event shall constitute an Event of Default under this lease.

E. Automatic Transfer of Building to Lessor at End of Lease

Lessee covenants that upon the expiration or earlier termination of this lease, Lessee shall without payment therefor execute, acknowledge, and deliver to Lessor a quitclaim deed and bill of sale conveying and transferring to Lessor all of the right, title and interest of Lessee in and to the Building and the furnishings, and personal property therein, and Lessee hereby appoints Lessor irrevocably as its attorney in fact, with an interest, to execute, acknowledge, and deliver on Lessee's behalf said deed and bill of sale.

F. Basic Rent

Section 1. Lessee shall pay to Lessor, at such place as Lessor shall from time to time designate, a rental (hereinafter called the "basic rent") as follows:

- a. For the period commencing December 1, 19....., and continuing for 15 years at the rate of \$375,000 per annum, in equal monthly payments of \$31,250 each on the first day of each month in advance.
- b. During the last 10 years of the initial lease term a rental in each year equal to the higher of:
 - i. 7.5 percent of the fair market value of the Leased Property, determined as of the end of the fifteenth year in the manner provided in Section 3 below; or
 - ii. The rent payable during the fifteenth lease year.

G. Basic Rent for Renewal Terms as Percentage of Reappraised Value of Land

Section 2. Lessee may extend the term of this lease for eight separate and successive periods (renewal terms) of 10 years each, upon the same terms and conditions as herein contained, except that (a) there shall be no further right of renewal for any period beyond November 30, 20....., and (b) the basic rent during each year of each renewal term shall be at an annual rate equal to the greater of (i) 7.5 percent of the *fair market value of the land exclusive of the Building* thereon, determined as of November 30 of the last year of the then immediately preceding lease term, in the manner provided in Section 3 below, or (ii) the basic rent payable for the last year of the preceding term.

H. Manner of Determining Fair Market Value for Setting Rent

Section 3. The fair market value of the Leased Property shall be determined as if the Leased Property were then free and clear of all liens, encumbrances and leases and were capable of being devoted *solely to hotel use*; provided, however, that if at the time of such determination the Building is not

SELECTED PROVISIONS OF LEASE OF LAND ONLY

being operated as a hotel, the fair market value of the Leased property shall be determined as if it were capable of being devoted to the highest and best use permitted under the then-applicable zoning laws and regulations.

At least 60 days before the start of the sixteenth year of the initial term, and, if notice of renewal has been given, at least 60 days before the end of each lease term, Lessor and Lessee shall endeavor to agree on the then fair market value of the Leased Property. If they have not reached agreement by the thirtieth day before the start of the sixteenth lease year or by the thirtieth day prior to the end of the then-current lease term, Lessor and Lessee shall each appoint a qualified and experienced appraiser, who shall be a member of a professional association of independent real estate appraisers. The two appraisers so appointed shall then jointly appoint a third appraiser similarly qualified, or if they cannot within 30 days after their appointment agree on the selection of the third appraiser, either Lessor or Lessee may apply to the President of the County Board of Realtors, Inc. to appoint the third appraiser. A majority of the appraisers shall determine the fair market value of the Leased Property as soon as practicable, and the rent computed in accordance therewith shall be effective from the start of the relevant lease period, as provided in the preceding subdivisions of this Article Until such new rent is fixed, Lessee shall continue to pay basic rent at the rate it had most recently been paying. If the new rent is higher, the deficiency shall be paid in a single payment by Lessee within 20 days after the decision of the majority of the appraisers shall have been rendered. Each party shall pay the fees and disbursements of the appraiser it selects, and each party shall pay one-half of all other fees, disbursements, and expenses of the appraisal process. The written decision of the majority of the appraisers shall be binding upon the parties as if Lessor and Lessee had themselves agreed on such fair market value. If either party fails to appoint a qualified appraiser, it shall have waived its right to do so and shall be bound by the sole decision of the appraiser appointed by the other party.

Section 4. The basic rent shall be paid to Lessor without notice or demand and without abatement, deduction or setoff, except as may be expressly allowed hereinbelow.

I. Limitation of Assignability of Lease

Lessee shall not assign this lease, unless the assignee simultaneously acquires fee title to the Building. Nor shall any total sublease be valid unless the total subtenant simultaneously acquires the leasehold estate in and to the Building.

J. Lessee's Right to Mortgage Lease and Building, But Not Without Building

Lessor hereby consents to Lessee from time to time mortgaging this lease and the Building (but not the fee title to the Leased Property), on the following terms and conditions:

- a. No mortgage of this lease shall be effective unless such mortgage also encumbers the Building.
- b. The leasehold mortgage shall provide that any condemnation proceeds which may be payable shall be applied in the manner set forth in this lease, and not otherwise.
- c. There shall not be more than one leasehold mortgage in existence at any time.

K. Leasehold Mortgagee's Right to Receive Copy of Notice of Lessee's Default Under Lease and Opportunity to Cure Default

If Lessor shall have received written notice of the existence of a leasehold mortgage, together with a conformed copy of the note and mortgage, Lessor thereafter shall simultaneously send to the holder thereof a copy of any default notice or demand which Lessor shall send to Lessee. Such holder shall have an additional period of 15 days after the expiration of the applicable grace period allowing in Article above in which to cure Lessee's default. In the event that this lease shall have been terminated by Lessor in accordance with the terms hereof and either (i) such leasehold mortgagee shall within said

additional 15-day period cure the default, or deposit with Lessor the cost of effecting such cure, or (ii) if the Event of Default which resulted in such termination shall have been any event which also constitutes an event of default under the leasehold mortgage, then, and in any such case, Lessee promptly upon the demand of the leasehold mortgage shall execute (1) a new lease to the leasehold mortgagee or its nominee upon the same terms and conditions contained herein, for a term equal to what otherwise would have been the balance of the then term hereof, together with options for renewal terms equal to the then-remaining renewal terms hereunder, and (2) a quitclaim conveyance to the new lessee of the Building, which conveyance shall recite that the grantee holds title to the Building which title shall revert to Lessor automatically, without payment, upon the termination of this lease or its replacement.

L. Prohibition Against Lessor's Acceptance of Voluntary Surrender of Lease Without Consent of Leasehold Mortgagee and Sublessee

Lessor shall not accept a voluntary surrender of this lease (even under circumstances where Lessee is herein expressly granted the right to terminate this lease) not permit a merger of the fee title and leasehold estate, nor agree to any modification of this lease without the prior consent of any leasehold mortgagee and any total subtenant. The exercise by Lessor of any right of cancellation pursuant to the terms of this lease shall not be deemed a "voluntary surrender," nor shall anything herein require that Lessor obtain the consent of any mortgagee or total subtenant before commencing any action or proceeding based upon a default hereunder by Lessee.

M. Right of Leasehold Mortgagee in Possession to Assign Lease Once Without Lessor's Consent

Notwithstanding any provision of Section..... of Article hereof to the contrary, if a leasehold mortgagee shall acquire the leasehold estate in the Leased Property and title to the Building, or possession thereof, the mortgagee in possession (or new Lessee) shall have the right to assign the lease and simultaneously convey the Building to the assignee on one occasion only without Lessor's prior, written consent, provided only that there is delivered to Lessor promptly a duplicate original of the written instrument of assignment, in recordable form, containing the name and address of the assignee, and an assumption by the assignee of the lease and of all the agreements and obligations to be observed and performed by Lessee. Any subsequent assignment of this lease or of such new lease shall be valid only if made pursuant to the provisions of Sections and of Article without reference to this section.

APPENDIX **7**

Selected Provisions of Sublease

A. Basic and Overage Rent

Section 1. Sublessee shall pay to Sublessor, at such place as Sublessor shall from time to time designate, an annual rental (hereinafter called the "basic rent"), in equal monthly installments in advance on the first day of each month as follows:

- a. For the period commencing December 1, 19..... and continuing until November 30, 20....., at the rate of \$1,745,000 per annum.
- b. For the period commencing on December 1, 19..... and continuing throughout the balance of the initial term and throughout all renewal terms of this sublease, an amount equal to the aggregate of (i) \$425,000 per annum, plus (ii) the then-current annual basic rent payable under the Ground Lease, plus (iii) the then-current annual debt service on any leasehold and building mortgage to which this sublease is subordinate. Sublessor shall give to Sublessee prompt notice, from time to time, of any increase in the basic rent under the Ground Lease.

If the basic rent under the Ground Lease shall not have been fixed at the start of the sixteenth lease year or at the date any renewal term of this sublease commences, Sublessee shall pay to Sublessor, within 20 days after demand therefore, the entire deficiency, if any, which Sublessor is required to pay to the Ground Lessor under Section of Article of the Ground Lease, together with all of Sublessor's expenses which may have been incurred in the appraisal process required under the Ground Lease. Thereafter, Sublessee shall make the payments of basic rent as required under the preceding paragraph of this subdivision (b).

- c. (i) Whenever under the Ground Lease Sublessor is entitled to appoint an appraiser or apply for the appointment of an appraiser to help determine the fair market value of the land, Sublessee shall have the sole right, acting in the name and on behalf of Sublessor, to designate such appraiser, and to make such application. Sublessee shall pay all of the costs and expenses of the Lessee under the Ground Lease in connection with any appraisal process.
- c. (ii) Except if the fair market value of the land has been determined by a majority of the duly appointed appraisers, Sublessee shall not voluntarily agree with the owner of the land as to either the fair market value of the land or the basic rent to be paid under the Ground Lease without the prior approval of Sublessee in each instance obtained.
- d. In the event Sublessor fails to observe or perform any of its obligations, under this subdivision (d), the basic rent thereafter payable by Sublessee shall not be increased by reason of any increase in the Ground Rent.

- e. The basic rent and extra rent shall be paid to Sublessor without notice or demand and without abatement, deduction, or setoff, except as may be expressly allowed hereinbelow.

Section 2. Sublessee shall keep records on a calendar year basis, commencing January 1, 19..... Within 60 days after the end of each calendar year, Sublessee shall deliver to Sublessor a certified operating report, prepared by a certified public accountant, which shall include a statement of the net profit for such preceding year derived from the operation of the Leased Property (regardless of whether Sublessee is the operator). In determining such net profit, there shall be no deduction for the following: (a) any rent other than the basic rent, (b) salaries or fees paid directly or indirectly to any individual who is an officer, director, stockholder or member of Sublessee or any operator; (c) management fees in excess of 5 percent of the gross revenues collected by Sublessee; (d) income, franchise, or related taxes of Sublessee or any operator; (e) interest, depreciation or amortization arising in connection with the present investment of Sublessee or any operator in the sublease or the Leased Property. The only deduction for interest shall be interest charges in connection with the financing of any capital improvements, alterations, or installations, at rates not exceeding those normally charged by commercial banks in similar transactions.

Sublessee shall deliver to Sublessor with such report as "overage rent," a sum equal to 50 percent of the amount by which the net profit shown on such report exceeds \$155,000. Sublessor may, during normal business hours, upon five days' written notice to Sublessee, inspect the operating books and records of Sublessee for the purpose of verifying any report within three years after the report is submitted to Sublessor.

Sublessee shall also furnish to Sublessor, within 15 days after written request is made by Sublessor, any other financial data or statements which may be required by the Ground Lessor, fee mortgagee, leasehold mortgagee, or by any bona fide prospective purchaser, sublessee, or mortgagee of the Leased Property.

Section 3. The receipt by Sublessor of overage rent shall not be deemed to create any partnership or joint venture between Sublessor and Sublessee.

B. Renewal Rights and Renewal of Ground Lease

Sublessee may extend the term of this sublease for eight separate and successive periods (renewal terms) of 10 years each, upon the same terms and conditions as herein contained, except that there shall be no further right to renew beyond November 29, 20 Written notice of each election to renew shall be given by Sublessee to Sublessor not less than 20 months prior to the expiration of the then-current sublease term. Sublessor covenants that if Sublessee gives notice of its election to renew this sublease, Sublessor shall promptly exercise its comparable option to renew the Ground Lease; and if Sublessor fails to do so within 10 days after receiving notice of renewal of this sublease, Sublessee is hereby authorized, in Sublessor's name to give notice of renewal of the Ground Lease to the Ground Lessor.

C. Subordination to Ground Lease and to Fee and Leasehold Mortgages

Section 1. This sublease is and shall be subordinate to the Ground Lease, and all renewals thereof, and to all leasehold and building mortgages and to every modification, extension, consolidation, and replacement of such leasehold and building mortgages which may now or hereafter encumber the Lease Property, provided that the aggregate payments for interest and principal (excluding the principal payment due at maturity) required to be made thereunder shall not in any one year exceed \$1,370,000, and provided further that the leasehold mortgagee shall agree not to terminate this sublease upon a foreclosure of the leasehold mortgage if Sublessee is not then in default in the performance or observance of Sublessee's obligations hereunder. Sublessee shall execute any documents to indicate such subordination which Sublessor shall submit to Sublessee.

SELECTED PROVISIONS OF SUBLEASE

Section 2. If Sublessor shall default in the payment of any rent due under the Ground Lease, or any leasehold mortgage installment of interest or principal, Sublessee may at its option pay such rent or debt service installment, and may deduct such payment, together with interest at 16 percent per annum and any costs paid by Sublessee, from the installments of basic rent next becoming due hereunder.

Section 3. Notwithstanding anything in this sublease to the contrary, Sublessee covenants that (a) it will duly comply with all of the provisions of the Ground Lease and of any leasehold and building mortgage to which this sublease is at any time subordinate, except for the payment of basic rent under the Ground Lease or interest and principal under any such leasehold mortgage; and (b) it will execute and deliver any documents which may be necessary to permit the due compliance with all the provisions of any such leasehold mortgage and the Ground Lease by the party responsible thereunder for such compliance.



Where Hotel Professionals Learn how to Make Successful Hotel Investments

Now, you can take courses with Steve without leaving your living room. He is developing a whole series of online courses covering topics such as “**How to Value a Hotel**”, “**How to Use Hotel Market Analysis & Valuation Software**”

For more information:

www.hotel-learning-online.com



The World's Only Hotel Valuation Certification

If you are an experienced appraiser looking to specialize in valuing hotels or a new valuer starting your career, you need to obtain a hotel valuation certification. By successfully completing Steve Rushmore’s course and a final project, you will become a **Certified Hotel Appraiser (CHA)** or a **Certified Hotel Valuer (CHV)** the world's only hotel valuation certification. For more information: www.chvsc.org

Learn "How to Value a Hotel" from the creator of the Hotel Valuation Methodology

Hi- I'm Steve Rushmore and I would like to tell you about my online course- "**How to Value a Hotel.**" It teaches how to perform a hotel valuation using my **Modern Hotel Valuation Methodology**. Designed for experienced appraisers looking to specialize in valuing hotels or new valuers starting their careers, this course provides all the knowledge and tools needed to evaluate hotel markets, forecast income and expense, and value all types of hotels. For the final project, students value an actual hotel.

You will be working with the latest version (6.0) of my **Hotel Market Analysis and Valuation Software**-three powerful software models that have become the hotel industry standard for hotel valuations and investment analysis throughout the world. By the end of the course, you will be able to perform your own hotel market analysis and valuation plus many other applications.

The course consists of video lectures, readings, hands-on software case studies, quizzes, and a final project valuing an actual hotel. It should take about 20-35 hours to complete.

Most importantly, I will play a vital role during your learning process- through the wonders of Zoom- you can reach out to me with your questions and I will personally assist. After completing the course, I will also be available to mentor your professional development. Hopefully, this will be the start of a long-term friendship.

Upon successfully completing the course and final project you will receive the Certified Hotel Appraiser (CHA) or a Certified Hotel Valuer (CHV) certification. These certifications recognizing your hotel valuation skills will set you apart from other appraisers and consultants. For more information: www.hotel-learning-online.com

Hotel Valuation Software- For Performing Hotel Market Analyses, Financial Projections and Valuations

Hotel Market Analysis & Valuation Software was developed by Steve Rushmore for his firm- HVS. It was then enhanced by Professor Jan deRoos of the Cornell Hotel School. This software has been the most downloaded product on the Cornell website and is used by thousands of hotel professionals around the world. It consists of three models:

- Hotel Market Analysis and ADR Forecasting Model
- Hotel Revenue and Expense Forecasting Model
- Hotel Mortgage Equity Valuation Model.

This software package also provides answers to a wide range of key hotel investment questions such as How much is my hotel worth? What can I do to maximize value? What is the likely impact of new competition? How much value will a refurbishment add? Is my market strong enough to support adding more hotel rooms? What is the impact of my brand adding another hotel to the market?

If your role includes responsibility for performing hotel valuations and associated financial analyses- you need to include this software in your business toolbox.

Hotel Market Analysis & Valuation Software v. 6.0 is written as Microsoft Excel files (which runs on both Windows and Apple OS X operating systems) and comes with a detailed users' guide and case study. Version 6.0 contains significant enhancements over Version 5.0 which is no longer distributed.

HOTEL VALUATION SOFTWARE

www.hotelvaluationsoftware.com



Steve Rushmore is the Founder of HVS and the **Creator of the Hotel Valuation Methodology**. He has authored eight textbooks on hotel valuation and investing, along with over 350 articles on similar topics. In addition, Steve has taught thousands of industry professionals around the world. His online course- "**How to Value a Hotel**" is used by the leading hotel schools and consulting organizations. Contact Steve at steve@steverushmore.com or visit his website www.steверushmore.com

Become a Certified Hotel Appraiser

If you currently appraise hotels or want to learn how, a Certified Hotel Appraiser (CHA) certification will set you apart from all other appraisers.

Created by Steve Rushmore, MAI, the CHA certification can be obtained based on your hotel valuation experience or completing Steve's online course, "How to Value a Hotel."

Over 250 hotel appraisers around the world have earned this prestigious certification which is perfect for anyone looking to specialize in valuing hotels.



For more information the the Certified Hotel Appraiser (CHA) certification Click Here

www.certifiedhotelappraiser.org

www.certifiedhotelappraiser.org