

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 exceed .....dollars 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 within ....days 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 to .....A.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 to .....A.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.