

# 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

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**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.

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## 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.

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## 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	<u>\$8,800,000</u>

[*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.

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## 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.

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## 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 affirmation of this Agreement and waiver of the right to terminate.

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**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.

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**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.

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### 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.

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**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.

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## **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.

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**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.

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## **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.

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## **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.

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## **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.

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## 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.

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## 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.