

APPENDIX 3

Management Contract Clauses

This appendix is a compilation of clauses from a number of actual management contracts. These clauses have been selected to provide a representative sample of the types of provisions included in a typical management contract. In addition to serving as a guide for an attorney drafting such an agreement, these clauses can help the parties negotiating the agreement by showing them how other contracts have been structured.

The clauses have been arranged topically into 11 different sections. In many cases, a number of differ-

ent clauses are contained under one title in order to provide the reader with optional or alternative language. At the beginning of each clause is an indicator showing the orientation of the clause. Clauses can be owner-oriented, operator-oriented, or neutral. This identification of orientation should allow the reader to select the clauses that best represent his interests. Finally, many of the clauses are followed by editorial notes that provide additional insight into the content of the clause.

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Section 1 PREOPENING MANAGEMENT SERVICES

1.1 Preopening Services—General

NEUTRAL In general, Operator will perform all activities necessary or reasonably required to open the Hotel for business, to see that the Hotel is properly staffed and equipped, and to see that there is in place, well prior to the Opening Date, a coordinated program for selling the room facilities and services of the hotel to the public.

NOTE: The contract should set forth in detail the preopening duties and responsibilities of the Operator.

[*Alternate Clause*] As part of the Preopening Services, Operator will:
OWNER

- A. Recruit, train, direct, and employ an initial staff for the Hotel;
- B. Initiate and conduct such promotion, publicity, and other like programs as Operator may deem necessary to attract guests to the Hotel on and after the Formal Opening Date;
- C. Negotiate for and enter into agreement for leases, licenses, and concessions for stores, office space, and lobby space at the Hotel, in Owner's name subject to Owner's prior written approval, as agent for Owner;
- D. Apply for, process, and take all necessary steps to procure, in Owner's name or in name of an operator or an individual on its behalf or any combination thereof as may be required by the issuing authority, all licenses and permits required for the operation of the Hotel and its related facilities, including, but not limited to, liquor and restaurant licenses;
- E. Purchase or contract for the purchase of all initial inventories and operating supplies, which shall be paid for out of the Initial Working Capital furnished by Owner;
- F. Assist in coordinating the efforts and activities of the architect, interior designer, and all other consultants retained by Owner in connection with the planning and development of the Hotel;

- G. Supervise the Hotel's sales staff and conduct the sales and marketing efforts through its sales and marketing staff as Operator shall deem appropriate for the Hotel;
- H. Do all other things Operator deems necessary for the proper opening of the Hotel, including, but not limited to, arranging for suitable inaugural ceremonies; and
- I. Coordinate all Preopening Services.

1.2 Payment of Preopening Fees

OPERATOR Owner shall pay Operator a fee equivalent to two and one-half (2½) times Operator's direct personnel costs, including related fringe benefits and payroll costs for those personnel who are directly engaged in performing Preopening Services for the time such personnel are performing such services (excluding (a) personnel at other hotels managed by Operator and from Operator's corporate offices who are temporarily assigned to the Hotel to provide preopening and opening assistance in connection with the opening of the Hotel to the general public ("Preopening Personnel"), and (b) the Operator personnel assigned to the Hotel on a permanent basis in order to perform the services provided for under this clause ("Permanent Employees")). "Direct personnel costs" pursuant to this Section shall be based on Operator's mean grade salary level for personnel in each job classification, which may change from time to time; provided however, that Operator agrees to assign personnel without regard to their actual salary level.

1.3 Reimbursement for Preopening Expenses

OPERATOR Preopening expenses incurred or paid by Operator, not to exceed One Hundred Fifty Thousand Dollars (\$150,000), shall be promptly reimbursed by Owner upon receipt of a statement of account for such expenses.

1.4 Preopening Plan and Budgets

NEUTRAL On or before _____, 19____, Operator shall submit for Owner's approval, not to be unreasonably withheld, a preopening budget ("Preopening Budget") to Owner. Such budget shall not exceed One Hundred Fifty Thousand Dollars (\$150,000).

1.5 Owner's Approval of Preopening Plan and Budgets

NEUTRAL Within thirty (30) days from the date of submission of the initial Preopening Plan to Owner or submission of any additional information requested by Owner in connection with its review of the initial preopening Plan, Owner shall submit to Operator, in writing and in reasonable detail, its objections to and comments on the initial Preopening Plan. A failure to do so shall be deemed an approval thereof by Owner. If Owner and Operator are not able to reach an agreement concerning any modifications to the initial Preopening Plan resulting from Owner's objections and comments within sixty (60) days after such comments and objections are received by Operator (it being expressly understood that the inability of Owner and Operator to agree on such modifications shall not be subject to arbitration), then this Agreement and the Management Agreement shall terminate, unless Operator, by notice given to Owner prior to such date, shall elect to continue them in full force and effect for such period or periods of time, not to exceed forty-five (45) days from the date of Operator's notice as Operator shall, in its sole discretion, determine by so stating in said notice.

1.6 Operator to Prepare Staffing and Wage Schedules

OWNER Prior to the Opening, Operator will prepare for Owner an organization chart of Operator's corporate personnel who will perform the services to be provided by Operator under this Agreement; a proposed organization chart of job positions for the people to be employed by Operator and Owner in connection with the operation of the Hotel under this Agreement; and a preliminary staffing plan providing positions, schedules of employment, and average salaries or wages of persons to be employed by Operator and Owner in connection with the operation of the Hotel under the Management Agreement ("Staffing Plan").

[Alternate Clause] OWNER Prior to the Opening, Operator will prepare staffing tables, employment time tables, hiring and training guidelines for employees, and other programs relating to staffing of the Hotel.

1.7 Operator to Assemble a Task Force of Experts

OWNER The Operator will provide for a task force of experts and personnel to supervise and assist with certain Preopening and Opening operations.

1.8 Consultants

NEUTRAL Pursuant to the services provided by Operator in this Agreement, Owner will not be required to hire separate, outside consultants for special systems (including Hotel computer systems and the Hotel telephone system) and front desk layouts.

Operator will assist Owner in determining what outside consultants are necessary for the design of the project.

Owner will submit to Operator a list of consultants proposed to be used for the design of project, which shall include the names of architect; structural, mechanical, and electrical engineers; interiors and lighting designers; food service and laundry designers; life safety, elevator, and audio-visual consultants; landscaping designer; and any other design consultants required. Operator will either approve, if acceptable, such consultants or suggest alternate consultants. All consultants to be used for the design of the project must be approved by Operator. Such approval shall not be unreasonably withheld.

1.9 Operator to Hire Executive Staff

OWNER At an appropriate time prior to the Opening, Operator will hire and retain, on behalf of Owner, a General Manager, director of sales, head housekeeper, and other department heads, and thereafter, with the assistance of such department heads, Operator will engage on behalf of Owner a full staff of employees for the Hotel.

1.10 Operator to Recruit and Train Staff

OWNER Prior to the Opening, Operator will recruit, train, direct, and employ an initial staff for the Hotel in the name of and on behalf of Operator or a wholly owned subsidiary of Operator.

1.11 Operator to Perform Preopening Sales and Marketing

OWNER Operator will prepare and coordinate, on behalf of the Hotel, preopening advertising, public relations, and sales budgets, and may hire outside advertising and public relations firms, and will manage and coordinate all activities so as to develop a cohesive and coordinated preopening program for advertising, public relations, and sales, all subject to Owner's approval.

Such sales and marketing services will include the following:

- A. Developing a mission statement for the Hotel;
- B. Developing three-year revenue goals for major business segments of the Hotel;
- C. Developing direct sales plans for the Hotel, including backlog goals, room rate guidelines, and sales strategies;
- D. Developing a corporate rate program for the Hotel;
- E. Developing catering market segment and sales goals;
- F. Preparing and recruiting a sales organization necessary to support the goals and objectives developed in items A through D;
- G. Developing a monthly reporting system to monitor sales progress;
- H. Developing appropriate sales promotion strategies; and
- I. Developing preopening plans for advertising, public relations, and marketing.

[*Alternate Clause*] OWNER Operator will, on behalf of Owner, hire and retain sales personnel and establish a sales program for the purpose of "selling" the rooms of the Hotel and the use of meeting rooms and other Hotel facilities, prior to the opening of the Hotel.

1.12 Inaugural Ceremonies

OWNER In cooperation with Owner, Operator will arrange for suitable opening and/or inaugural ceremonies.

1.13 Model Room

OPERATOR Owner shall construct, at Owner's expense and Operator's direction, a model room or rooms in the city in which the Hotel is to be located or at some other site mutually acceptable to Owner and Operator. Said model room or rooms shall be constructed pursuant to those sections of Operator's Project Standards Manual that Operator deems appropriate, and shall be used for marketing purposes and to illustrate the Hotel guest rooms, the concept, the detail of construction, and the furniture, fixtures, and equipment (F,F&Es) therein.

1.14 Operator to Negotiate Loans

OWNER In cooperation with Owner, Operator will negotiate leases, licenses, and concession agreements for stores, office space, and lobby space at the Hotel (exclusive of retail space adjacent to the Hotel), subject to Owner's approval. All leases, licenses, or concessions shall be in Owner's name and executed by officers of Owner on its behalf.

1.15 Operator to Secure Licenses

OWNER Operator will assist Owner in securing all licenses necessary to open and operate the Hotel, including, but not limited to, occupational licenses, liquor licenses, Health Department licenses, and the like.

1.16 Operator to Perform Purchasing Services

OWNER Operator will negotiate contracts for the design, specification, and purchase of Operating Equipment, Furnishings and Equipment, and Consumable Supplies. Such contracts shall be subjected to the approval of Owner.

1.17 Operator to Supervise Delivery and Installation

OWNER Operator will supervise and coordinate the delivery, installation, and acceptance of Operating Equipment, Furnishings and Equipment, and Consumable Supplies.

1.18 Soft Opening Period

NEUTRAL If agreed upon by Operator and Owner there may be a period during which the Hotel is open to paying guests, although not on a substantially fully operational basis (the "Soft Opening Period"). Any operation of the Hotel during the Soft Opening Period, which shall not exceed three (3) months in duration, shall be treated as part of the Preopening Period, and any excess of Operating Expenses and Other Expenses over Total Revenue during such period shall not be considered in the determination of Net Operating Profit for any Fiscal Year and shall be distributed to Owner pursuant to the provisions of this Agreement.

1.19 Monies Invested by Operator

NEUTRAL Operator shall lend to Owner upon the terms and conditions hereinafter described the sum of Eight Hundred Thousand Dollars (\$800,000), which represents a part of the estimated cost of Preopening Services (exclusive, however, of (a) all costs in connection with obtaining all licenses and permits, including attorney and consultants fees, and (b) the fee payable to Operator in accordance with the provisions of this Agreement in relation to partial operations prior to the Opening Date), according to the following schedule:

- A. Ten percent (10%) thereof within thirty (30) days of the date the construction loan is committed;
- B. Fifteen percent (15%) thereof upon notice to Owner from Operator on the earlier of (i) three (3) months after the construction loan is committed or (ii) fifteen (15) months prior to the Estimated Opening Date (as defined hereinabove);
- C. Twenty-five percent (25%) thereof upon notice to Owner from Operator twelve (12) months prior to the Estimated Opening Date; and
- D. Fifty percent (50%) thereof upon notice to Owner from Operator (6) months prior to the Estimated Opening Date.

Owner shall execute in favor of Operator a promissory note in the Original principal amount of Eight Hundred Thousand Dollars (\$800,000) with interest thereon at the prime rate as set by the parties agreed upon bank from time to time, such interest to accrue on the unpaid balance until paid. The note shall be due and payable in one balloon installment five (5) years following the Opening Date of the Hotel but shall allow Owner to pre-pay without penalty. Owner shall execute a deed of trust securing the construction-term loan. Operator agrees to subordinate its deed of trust to the construction-term loan upon request to Owner.

Section 2 OPENING DATE

2.1 Opening Date

NEUTRAL The Opening Date is the date of the formal opening of the Hotel and shall be the earliest date after the Completion Date on which each of the following criteria has been met, as thereupon confirmed by Operator's issuance of a Certificate of Operational Readiness in the form annexed hereto as Exhibit E [omitted]:

- A. Eighty-five percent (85%) of guestrooms are permanently available for sale;
- B. Lobby area is equipped and functional;
- C. Front desk is equipped and functional;
- D. Food and beverage outlets are equipped and functional;
- E. Kitchens are equipped and functional;
- F. Elevators and escalators are installed and operating;
- G. Public spaces, banquet rooms, and meeting rooms are equipped and functional;
- H. Telephone Department is equipped and functional;
- I. Parking facilities are available;
- J. Heat, light, power, and air conditioning are available and operating;
- K. Laundry and Valet (dry cleaning) Departments are available and functional;
- L. Adequate Room status and Front Office systems equipment are installed and functional;
- M. Cashiering equipment is installed and functional;
- N. All necessary licenses and permits (including, without limitation, liquor licenses) required for the operation of the Hotel have been obtained;
- O. Necessary operating inventories are on hand;
- P. Necessary inspections by regulatory body have been completed and approvals have been received;
- Q. Municipal Statement of Occupancy has been issued (temporary or permanent);
- R. All required insurance coverage is in force; and
- S. The Complex is capable of rendering deluxe, first-class service to guests on a substantially fully operational basis.

[Alternate Clause]
NEUTRAL The Opening Date is the date of the formal opening of the Hotel. It shall occur on a date to be specified by Operator with the approval of Owner after Operator deems the Hotel to be substantially completed and the Furniture and Equipment and Operating Equipment have been substantially installed therein, all in accordance with the provisions of this Agreement, after all licenses and permits required for the operation of the Hotel (including a certificate of occupancy and liquor and restaurant licenses) have been obtained, adequate working capital has been furnished by Owner in accordance with this Agreement, and the Hotel has been accepted by Operator and is ready to render first-class service to guests on a fully operational basis. Operator may, without accepting the Hotel and with Owner's consent, conduct partial operations of the Hotel prior to the Opening Date.

[Alternate Clause]
NEUTRAL The date for the opening of the Hotel to the public (the "Opening Date") shall be the date specified by Owner in a written notice to Operator (given at least thirty (30) days prior to the Opening Date), provided that in no event shall the Opening Date occur prior to the date on which all of the following conditions shall have been satisfied: (a) The construction of the Hotel shall have been substantially completed in accordance with the Final Plans, (b) the installation of the Furniture and Equipment and Operating Supplies in the Hotel shall have been substantially completed in accordance with the provisions of this Agreement, and (c) all certificates, approvals, licenses, and permits required for the legal use and operation of the Hotel, including liquor and restaurant licenses and certificates of occupancy, shall have been obtained from the appropriate governmental authorities. The parties hereto agree to execute an Addendum to this Agreement setting forth the Opening Date, at such time that the Opening Date is finally determined, and a counterpart of such Addendum shall be attached to and become a part of each counterpart of this Agreement.

Section 3 GENERAL COVENANTS OF OWNER AND OPERATOR

3.1 Owner to Provide Supplies

OPERATOR Owner agrees to provide, at its expense, sufficient initial inventories of operating supplies for the uninterrupted and efficient operation and maintenance of the Property.

3.2 Owner Responsible for All Expenses

OPERATOR Owner shall be solely liable for the costs and expenses of maintaining and operating the property and shall pay all costs and expenses of maintaining, operating, and supervising the operation of the property, including, without limitation, the salaries of all of its personnel.

NOTE: The preceding provision makes the agreement a management contract rather than an operating lease.

3.3 Owner's Right of Inspection

OWNER Duly authorized representatives of Owner shall have the right to enter the Hotel upon reasonable notice at all reasonable times during the Operating Term for the purpose of inspecting the Hotel. Such inspections shall be done with as little disturbance to the business of the Hotel as possible.

All books, accounts, and records maintained for the operation of the Hotel (whether maintained at the Hotel or elsewhere by Operator) shall be open at all reasonable hours upon reasonable notice for inspection, examination, copying, and audit by Owner or any qualified accountant experienced in Hotel matters selected by Owner for that purpose, at Owner's expense.

Owner, brokers, and prospective tenants, managers, and/or purchasers shall have the right to enter the Hotel at all reasonable times upon reasonable notice during the Operating Term, for the purpose of inspecting the Hotel; but the same shall be done with as little disturbance to the business of the Hotel as possible.

[Alternate Clause]
OPERATOR Owner or its agents shall have the right to free access to the Hotel and all of its facilities at all reasonable times, but only for the purpose of inspecting or having others inspect or view the premises either to determine its condition or as prospective purchasers, investors, or lenders. Any concern, comment, or question Owner may have during or after any such visit shall only be directed to Operator or its specified representatives, and not to any other Hotel Employees. In all respects, Owner shall seek to minimize any disruptions to the operation of the Hotel resulting from its access thereto.

[Alternate Clause]
OPERATOR Owner may consult only with the General Manager, or if he is unavailable, the manager on duty, concerning any aspect of the management of the Hotel by Operator.

[Alternate Clause]
OWNER Owner may at any time converse with the General Manager or Operator's Vice-President in charge of the Hotel regarding any subject, and Operator shall instruct them to disclose fully to Owner upon Owner's request all information regarding the operation of the Hotel.

3.4 Reserve for Replacement of Furniture, Fixtures, and Equipment

NEUTRAL Owner shall establish and maintain a separate account to be known as "Reserves for Capital Improvements and Replacements of and Additions to Furniture, Fixtures, and Equipment," for use solely for capital improvements and replacement of, and additions to, furniture and equipment so as to maintain the Hotel in a first-class condition.

[Alternate Clause] Operator shall establish one (1) interest-bearing account (the "Replacement Fund") for use in connection with the Hotel, for the benefit of Owner, with a bank selected by Operator and approved by Owner. The monies from time to time included in the Replacement Fund shall be the property of Owner and shall be kept separate and apart from the Operating Accounts. Operator shall have the sole and exclusive power to designate the persons authorized, by manual or facsimile signature, to withdraw funds from the Replacement Fund shall be excluded from Gross Revenues and in computing Gross Operating Profit for any period and shall remain part of the Replacement Fund. To the extent Operator shall be required to pay any income taxes on the income as a fiduciary or otherwise, the same shall be payable out of such Replacement Fund.

NEUTRAL

NOTE: If operator receives an incentive fee calculated on the basis of net income less a Reserve for Replacement, then part of the Reserve has actually been funded by the operator. This point becomes important when the Operating Agreement terminates.

3.5 Funding the Reserve for Replacement of Furniture, Fixtures and Equipment

NEUTRAL During each fiscal year (and proportionately for any fraction thereof), there shall be reserved and deducted in the determination of adjusted Gross Operating Profit an amount equal to the following percentages of Gross Operating Income: one and one-half percent (1.5%) in the second and third full fiscal year and two percent (2%) in any later years until the amount reserved for the replacement of furniture, fixtures, and equipment equals One Thousand Dollars (\$1,000) multiplied by the number of rooms in the Hotel. After the amount reserved equals this sum, no further amount will be reserved, except that as expenditures are made they will be replaced at the two percent (2%) rate.

NOTE: The objective for funding a reserve for replacement of FF&E is to accumulate a sufficient amount for required replacements, but not so much as to create an excessive balance. Most formulas are based on a percentage of total revenue ranging from two to five percent (2% to 5%).

[Alternate Clause] Funds shall be paid from the Operating Accounts into the Replacements Fund for each Monthly Accounting Period of the Operating term in the following amounts:

NEUTRAL

- A. An amount equal to one percent (1%) of the Gross Revenues of the Hotel for each full Monthly Accounting Period during (i) the Fractional Year in which the Effective Date occurs, if the Effective Date does not occur on the first day of a Fiscal Year, and (ii) the first full Fiscal Year of the Operating Term;
- B. An amount equal to two percent (2%) of the Gross Revenues of the Hotel for each Monthly Accounting Period during the second full Fiscal Year of the Operating Term; and
- C. An amount equal to three percent (3%) of the Gross Revenues of the Hotel for each Monthly Accounting Period of the term of this Agreement following the end of the second full Fiscal Year of the Operating Term.

Notwithstanding the foregoing, no such payment shall be made to the extent that it would cause the balance in such fund to exceed the sum of Three Thousand Dollars (\$3,000) per room for the Hotel. Operator shall be entitled to withdraw from such Replacement Fund to pay for assets in the Equipment Budget and the Capital Expenditures Budget. The items so replaced or added shall be and become, forthwith upon acquisition and installation and without further act or action, the property of Owner.

[Alternate Clause] For each Fiscal Year, an annualized amount initially fixed at ten percent (10%) of the original installed cost of the Furnishings and Equipment shall be set aside for the reserve for replacement of said Furnishings and Equipment. However, whenever Operator shall, from

NEUTRAL

time to time, determine that the replacement value of the Furnishings and Equipment has increased to a degree that makes it necessary to increase the said deduction in order to preserve the standards of the Hotel, Operator shall be entitled to obtain an independent appraisal of the said replacement value, the cost of which appraisal shall be an operating expense, and the amount of the deduction hereunder shall thereafter be fixed at ten percent (10%) of the replacement value as so determined. The said deduction shall be made by a monthly charge equal to one twelfth ($1/12$) of the annualized amount determined as above.

3.6 Reserve for Structural Repairs

NEUTRAL Operator shall establish, in respect of each Fiscal year during the term of this Agreement, a reserve cash amount from which shall be drawn funds for structural or extraordinary equipment repairs, replacement, or maintenance at the discretion of Owner. During each Fiscal Year of this Agreement, funds shall be transferred into the Structural Component Reserve in Accordance with the following percentages: (a) None (0%) for all Fiscal Years through and including the Fiscal Year in which the Renovation Program is completed; and (b) One half of one percent (0.5%) in each full Fiscal Year thereafter.

3.7 Insufficient Reserves

NEUTRAL The percentages for the Replacement Fund described hereinabove are estimates. If, in good faith, Operator believes, at any time during the term of this Agreement, that such percentages have become excessive given the needs of the Hotel, such percentages shall be reduced at the option of Owner. On the other hand, if, in good faith, Operator decides that these percentages may not be sufficient to keep the Replacement Fund at the levels necessary to make the expenditures required for the Hotel as a high quality, first-class facility, and if the Equipment Budget and Capital Expenditures Budget prepared in good faith by Operator exceeds the available funds in the Replacement Fund, Owner shall in good faith consider reasonable proposals made by Operator, in keeping with the need to maintain the position of the Hotel in its competitive geographical market. Owner will have final say in any change to the amounts specified.

3.8 Operator's Use of the Reserve fund

OPERATOR On or after the Formal Opening Date and during each Fiscal Year, Owner will make available to Operator, within thirty (30) days after receipt of Operator's request, for capital improvements and replacements of and additions to furniture and equipment, from the reserve account established therefor, the amount provided in the Annual Capital Budget therefor.

[Alternate Clause]
OPERATOR Any expenditure for replacement, substitution, and additions during each fiscal year may be made by Operator without Owner's consent up to the then-remaining balance in such reserve fund.

3.9 Disposal of Furniture and Equipment

OWNER It is expressly understood that nothing contained in this Agreement shall be construed to give Operator any right to dispose of furniture, furnishings, fixtures, equipment, machinery, or any other personal property used in the operation of the Hotel without the prior written approval of Owner.

However, if such disposal is in accordance with the Annual Plan approved by Owner, prior written approval of Owner shall not be required.

3.10 Reserve Funds Upon Termination

OPERATOR Any amounts remaining in the Reserve upon termination of this Agreement, less (a) the cost to complete any projects which have been previously committed and (b) aggregate deposits to the Reserve of proceeds from sale(s) of FF&E, shall be included in the computation of Total Revenue for the sole purpose of computing Incentive Earnings in the year of termination.

3.11 Operator's Right of Offset

OPERATOR Operator shall have the right at any time, but not the obligation, to withdraw from the Agency Account any amounts owed by Owner to Operator that are not paid by Owner in accordance with the terms hereof, but no failure or forbearance by Operator to deduct any such amounts shall be or shall be deemed to be a waiver of Operator's rights to deduct such amounts subsequently or to collect such amounts from Owner in any other manner available to Operator hereunder or at law or in equity.

3.12 Owner to Indemnify Operator

OPERATOR Owner shall indemnify and hold operator harmless from all liability, loss, damage, cost, or expense relating to, arising, or incurred by reason of or in connection with the operation of the Hotel, including any act or omission, negligent, tortious, or otherwise, of any agent or employee of Operator or its Affiliates unless such act of omission constitutes fraud, gross negligence, or willful misconduct. Owner shall, at Owner's sole cost and expense and at Operator's request or upon Operator's demand, assume the defense of any legal proceeding arising out of the allegation of any such act or omission.

NOTE: Both owners and operators usually seek some form of indemnity from the other party. The key phrases in the preceding clause are "gross negligence" and "willful misconduct," which limit the extent of the provision. The use of the phrase "negligence," (as opposed to "gross negligence") would limit this clause even further.

[Alternate Clause]
OWNER Notwithstanding the foregoing, Owner shall not be required to indemnify Operator against damages suffered as a result of gross negligence or intentional or willful misconduct on the part of Operator, its agents, or its employees, or on the part of any agents or employees selected or engaged Operator on the account of Owner.

The indemnification provided by this provision shall not extend to any liabilities or claims of Owner that may arise out of the breach, intentional or otherwise, of this Agreement by Operator.

No recovery under this indemnification provision will be allowed if the liability or claim of Operator has been paid in full, or if, and to the extent that, it has been paid in part, by any insurance maintained by Owner or Operator.

3.13 Operator to Indemnify Owner

OWNER Operator shall indemnify and hold harmless Owner from all liability, loss, damage, cost, or expense (including, without limitation, attorney fees and expenses) caused by Operator's breach of this Agreement, actions outside the scope of this Agreement, gross negligence, willful misconduct, fraud, or breach of trust, whether during or after the term of this Agreement. Operator's duty to indemnify Owner shall be binding upon all successors and assigns of Operator. In case of any action, suit, or proceeding brought against Owner with respect to which Owner is entitled to indemnification pursuant to this provision, Owner will notify Operator of such action, suit, or proceeding, and of the extent to which Owner is to be indemnified. Operator may, and upon Owner's request will, at Operator's expense,

defend such action, suit, or proceeding, or cause the same to be defended by counsel designated by Operator and approved by Owner.

3.14 Operator Not Liable to Owner

OPERATOR Operator shall not, in the performance of this Agreement, be liable to Owner for any action or omission, negligent, tortious, or otherwise, of any agent or employee of Operator or its Affiliates, unless its act or omission constitutes fraud, gross negligence, or willful misconduct and the damages resulting therefrom are not covered by insurance that Operator is required to maintain hereunder.

[*Alternate Clause*] OPERATOR Notwithstanding any other provisions of this Agreement, in no event shall Owner make any claim against Operator or its Affiliates on account of any alleged errors of judgment made in good faith in connection with the operation of the Hotel hereunder by Operator or its Affiliates or the performance of services provided for herein, nor shall Owner object to any expenditure made by Operator in good faith in the course of its management of the Hotel or in settlement of any claim arising out of the operation of the Hotel (other than claims involving a settlement of excess of Ten Thousand Dollars (\$10,000), which must be approved by Owner) unless such expenditure is specifically prohibited by this Agreement.

[*Alternate Clause*] OPERATOR Operator is not liable to Owner or others for any act or omission on the part of its employees, unless Operator has failed to use reasonable diligence in the hiring, discharge, or supervision of such employees so as to maintain a staff of qualified, competent, and trustworthy employees.

3.15 Noncompetition Covenant

OWNER Except with the written consent of Owner, Operator shall not manage or have any equity interest in any other hotel or motel within the radius of five miles of the Hotel during the term of this Agreement.

[*Alternate Clause*] OWNER For the first five (5) years of the Operating Term, neither Owner, Operator, nor any of their subsidiaries shall either own, lease, manage, or franchise a hotel, motor inn, or similar facility within Area A outlined in red on Exhibit F attached hereto [*omitted*]. Thereafter for the balance of the Operating Term, the size of the noncompetition area shall be reduced to the area designated Area B on Exhibit F attached hereto [*omitted*], it being understood that such ownership, leasing, management, or franchising outside of said area shall be totally unrestricted.

[*Alternate Clause*] OWNER Neither Operator, its parent, nor any subsidiary or entity related to Operator or its parent shall at any time during the Operating Term own any interest in or manage a hotel or motel that is located within seven miles of the Hotel. Except as provided hereinabove, nothing in this Agreement shall deprive or otherwise affect the right of either party to own, invest in, manage, or operate property or business activities that are competitive with the business of the hotel. Operator covenants and agrees that even though it may have either an ownership interest in or a management responsibility for other similar properties that, from time to time, may be competitive with the hotel, Operator always shall represent the hotel fairly and deal with Owner on an equitable basis.

[*Alternate Clause*] OWNER Operator agrees that, during the first ten (10) years of this Agreement (the "Restricted Period"), Operator shall not hold an interest in any hotel operated under a name of Operator that is located within a ten-mile radius of the Hotel (the "Restricted Area"), provided, however, that if Operator acquires, or is acquired by, a publicly held company (the "Constituent Company") through a merger, consolidation, acquisition of assets, or similar transaction and the Constituent Company holds an interest in a hotel or hotels in the Restricted

Area, the foregoing prohibition shall not apply to the hotel or hotels wherein the Constituent Company holds an interest.

3.16 Arbitration

NEUTRAL In the event that the parties fail to agree on a matter as provided in this Agreement, the matter involved shall be resolved by arbitration. An arbitrator shall be selected by mutual agreement of the parties, or if they cannot agree, by appointment made by the American Arbitration Association from among the members of its panels who are qualified and who have experience in resolving matters of a nature similar to the matter to be resolved by arbitration. Each party shall submit to the arbitrator a detailed and complete statement of terms and conditions that such party considers to be a fair and reasonable resolution of the dispute and that such party considers its "last and best offer." The arbitrator shall decide the dispute by selecting the proposal made by one (1) party that such arbitrator, after consideration of the parties to this Agreement and the economic benefits the parties intend to derive from this Agreement, considers to be the most reasonable and equitable resolution of the dispute. The decision of the arbitrator shall be final and conclusive and shall be binding upon the successors and assignees of the parties.

[Optional Additional Clause] The arbitrator or arbitrators shall have the right only to interpret and apply the terms of this Agreement, and may not change any such terms or deprive any party to this Agreement of any right or remedy expressly or implicitly provided in this Agreement.

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3.17 Legal Costs

NEUTRAL In the event that either party shall institute legal or equitable proceedings to enforce any provision of this Agreement, the prevailing party, in addition to any other remedy to which it may be entitled, shall be entitled to recover as a part of such judgment or otherwise, and the non-prevailing party shall pay, all costs and expenses incurred in such proceedings, including reasonable attorney fees and disbursements.

3.18 Operator Shall Not Pledge Credit of Owner

OWNER Operator shall not, except in the purchase of Furnishings and Equipment, Operating Supplies, and services reasonably required in the ordinary course of business in the operation of the Hotel, or as may be otherwise required in the performance of its obligations under this Agreement, pledge the credit of Owner, nor shall Operator in the name of or on behalf of Owner borrow any money, execute any promissory note, or pledge, mortgage, or otherwise encumber any real or personal property used in connection with the Hotel or otherwise without the prior written consent of Owner.

3.19 Confidential Information

OPERATOR Owner agrees, for itself and its agents and employees, during the term of the Management Agreement and after its termination, not to reveal to any person (except as required hereunder or as authorized by Operator) any confidential or proprietary information or any other information belonging to Operator, its parent company, or their subsidiaries or affiliates relating to the business contemplated by the Management Agreement and not generally known to the trade and to the public, including, but not limited to, trade secrets, business and financial information, and know-how. Owner further agrees not to use at any time any such confidential or proprietary information belonging to Operator or its parent company or their subsidiaries or affiliates in competition with any of them.

3.20 Owner's Right to Mortgage Property

OWNER Nothing herein contained shall prevent Owner from encumbering the Hotel by mortgage, deed of trust, or trust deed in the nature of a mortgage (the first, unsubordinated mortgage, deed of trust, or trust deed and any instruments secured thereby or collateral thereto shall be herein collectively referred to as the "Mortgage," and the holders of any such Mortgage, or of the indebtedness secured thereby, are herein referred to as "Mortgagee"), provided that Mortgagee shall be subject to the approval of Operator, unless such Mortgagee is a bank, savings and loan association, savings bank, insurance company, mortgage bank, pension fund, educational institution, welfare or retirement or endowment fund, real estate investment trust, or other like institution that is regularly engaged in the business of making loans secured by mortgages on real property, in which case no such approval shall be required.

Owner agrees that, in the event of such refinancing, Owner shall provide Operator notice of such appraised value along with the name, address, telephone number, and résumé of the person who performed said appraisal ("First Appraiser") which person shall be an MAI Appraiser who specializes in the appraisal of hotels. Within ten (10) days of receipt thereof, Operator shall either accept the findings of said appraisal or notify Owner that it disputes said amount, in which event the following shall occur:

- A. Operator shall within ten (10) days of the serving of such notice of dispute to Owner, select an MAI Appraiser ("Second Appraiser").
- B. The First Appraiser, whose fees shall be paid by Owner, and Second Appraiser, whose fees shall be paid by Operator, shall, within ten (10) days of the selection of the Second Appraiser, jointly select a third MAI Appraiser ("Third Appraiser"), whose fees shall be split equally between Owner and Operator.
- C. The Second Appraiser and Third Appraiser shall each independently perform an appraisal of the Hotel, which appraisals shall be delivered to Owner and Operator within ninety (90) days of the date the Third Appraiser is selected.
- D. The value of the Hotel shall be determined by calculating the average of the two appraisals closest in value to each other.

Upon the execution of any Mortgage, Owner shall furnish Operator with a duplicate copy thereof and shall designate the post office address where notices may be served upon Mortgagee. Operator agrees that, so long as any such Mortgage shall constitute a lien on the Hotel, when Mortgagee shall request in writing copies of any and all financial or other information, Operator, pursuant to the terms and provisions of this Agreement, is obligated to deliver same to Mortgagee as often as Mortgagee may reasonably request. Moreover, Operator shall allow, upon request of Owner, any person designated in writing by Mortgagee to examine, audit, inspect, and transcribe all books of account and all other records relating to or reflecting the operation of the Hotel.

[Alternate Clause]
OWNER Owner shall have the right to incur indebtedness in favor of one or more Institutional Lenders for which the Hotel or any part thereof or any interest therein may be used as collateral, so long as the Cash Flow Available for Debt Service for the Fiscal Year immediately preceding the Fiscal Year in which such indebtedness is proposed equals one hundred fifteen percent (115%) of regular annualized debt service on all indebtedness secured and/or to be secured by the Hotel.

3.21 Operator to Periodically Meet With Owner

NEUTRAL After each fiscal quarter, Operator and Owner shall, if deemed necessary by Operator or Owner, meet at a mutually agreeable time and place to review operating results for the Fiscal Year to date and operating plans for the balance of the Fiscal Year.

3.22 Owner Responsible for Debts, Liabilities, and Expenses

OPERATOR All debts and liabilities to third persons incurred by Operator in the course of its operation and management of the Hotel and within the scope of its authority hereunder shall be the debts and liabilities of Owner only, and Operator shall not be liable for any such obligations by reason of its management, supervision, direction, and operation of the Hotel for Owner or for any other reason whatsoever, unless such obligations were incurred by Operator beyond the scope of its authority.

[Alternate Clause]
OPERATOR In performing its duties hereunder during the Operating Term, Operator shall act solely for the account of Owner. All expenses incurred by Operator in performing its said duties shall be borne exclusively by Owner. To the extent the necessary funds are not generated by the operation of the Hotel, they shall be supplied by Owner to Operator upon demand.

Section 4 OPERATOR'S DUTIES**4.1 Operator's Overall Duties and Responsibilities**

OWNER Operator shall be responsible for and have full power, authority, discretion, and control in all matters relating to the operation, management, and maintenance of the Hotel, including, without limitation, (a) rental and occupancy of rooms and commercial space and setting of charges therefor; (b) food and beverage services (including menu development and pricing); (c) employment policies; (d) credit policies; (e) the receipt, holding, and disbursement of funds; (f) accounting; (g) budgeting; (h) maintenance of bank accounts; (i) procurement of inventories, supplies, and services; (j) promotion, sales, marketing, and publicity; (k) maintenance, repairs, and cleaning of all improvements and equipment; and (l) generally, all activities necessary for the operation, management, and maintenance of the Hotel.

4.2 Operator's Duties—Maximization of Profits

OWNER Operator shall use its best efforts in the management and operation of the Hotel so that the Hotel and its services will be operated and maintained in such a manner as to maximize profits and provide a first-rate environment.

NOTE: The preceding clause deals with a duty sometimes overlooked by management companies: the maximization of profits. Operator-oriented contracts usually omit this clause.

[Alternate Clause] Operator shall implement policies and practices to achieve the following goals:

- OWNER**
- A. To facilitate effective and efficient discharge of its obligations under this Agreement;
 - B. to create and enhance goodwill among existing and prospective guests and patrons; and
 - C. to establish and maintain a favorable reputation for the Hotel.

[Alternate Clause]
OWNER Operator shall manage and operate the Hotel and its businesses, services, and sales and shall exercise its best efforts to do so at all times in a manner of a high-quality hotel, consistent with the Franchise Agreement, and within the requirements of the applicable laws. Operator will use its best efforts to maximize to Owner the profits that can be derived from the Hotel and, upon its own initiation, with reasonable frequency, shall consult with and advise Owner and otherwise bring to Owner's attention opportunities to obtain and increase such profits. Operator shall not cause or knowingly permit to occur any act or omission that would violate the Franchise.

4.3 Operator to Maintain a Specific Level of Quality

OWNER Operator shall operate the Hotel throughout the entire Operating Term at a "First-Class Level" and shall provide or cause to be provided all amenities in connection therewith that are customary and usual to such an operation, and shall perform all of the functions and services, including those that are customary and usual for such an operation, so long as Owner does not impair Operator's ability to maintain such First-Class Level by withholding sufficient funds in violation of Owner's obligation to provide funds.

NOTE: When used in an operating agreement, the preceding clause should include a definition of the desired level of quality. The last sentence releases operator from responsibility to maintain this standard if the owner withholds necessary funds.

[Alternate Clause]
OWNER Operator agrees to diligently operate the Hotel as a deluxe hotel throughout the Operating Term and in accordance with the high standards of the hotels operated by Operator and its subsidiary companies. The term "deluxe hotel" as used herein refers to the classification listed in the official Hotel and Restaurant Guide issued July 1977, published by the Public Transportation and Travel Division, Ziff-Davis Publishing Company, annexed to this Agreement [omitted]. Operator agrees further to provide in the Hotel all services that are customary and usual to such an operation, while at all times attempting to maximize the revenues and operating profit of the Hotel consistent with the maintenance of the standards set forth hereinabove.

NOTE: The reference cited in the preceding clause can be replaced with other sources, such as provided by the Mobil Travel Guide and AAA.

[Alternate Clause]
OWNER The term "luxury hotel" shall mean a luxury hotel as currently exists in the United States of America comparable in size to the Hotel, with the Hyatt Union Square hotel in San Francisco being used as an example of a luxury hotel at the date of this Agreement.

NOTE: The quality level in the above clause is defined by reference to a specific property. However, this practice can sometimes be difficult for long-term management contracts because the level of quality of the comparable hotel can be altered.

4.4 Operator to Advise Owner of Major Policy Matters

OWNER Operator shall submit outlines, in reasonable detail, to Owner setting forth its plans for and/or any major changes in its management and operation of the Hotel that are likely to have a material effect upon the profitability of the Hotel prior to Operator's institution of such changes.

[Alternate Clause]
OWNER Operator shall consult with and advise Owner concerning all policies and procedures affecting all phases of the conduct of business at the Hotel and will give consideration to suggestions made by Owner. To the extent possible and where required under this Agreement, such consultation and advice shall take place prior to the institution of any major policies and procedures.

[Alternate Clause]
OWNER Operator agrees that it will not make any major policy changes not reflected in the applicable Annual Business Plan that would have a potentially substantial material effect on the operations of the Hotel without first obtaining Owner's approval of such policy change. Notwithstanding any provision herein set forth to the contrary, in the event that it shall ever be determined that Operator has made a major policy change not reflected in the applicable Annual Business Plan without obtaining Owner's approval, and that such change actually has had a substantial material adverse effect upon Hotel operations, Owner may require that Operator reinstate the policy from which Operator departed without Owner's approval, and may seek such other remedies as may be available hereunder.

NOTE: The first part of the preceding clause ties into the Annual Business Plan, which should incorporate specific Owner approvals. The last part of this clause gives the owner the ability to correct mistakes of the operator. This is a strongly owner-oriented clause.

4.5 Operator to Have Absolute Operational Control

OWNER Operator shall have absolute control and discretion in the operation, direction, management, staffing, supplying, and supervision of the Hotel, including, without limitation, performance of the following activities:

- A. Determination of labor policies (including the hiring and firing of all employees);
- B. Granting and limiting credit and establishing credit in connection with the operation of the Hotel (including entering into policies and agreement with credit card organizations);
- C. Determining the terms of admittance for guests and users of the Hotel, including charges for rooms;
- D. Deciding entertainment, amusement, food, and beverage policies;
- E. Instituting such legal proceedings in the name of Owner or Operator as Operator shall deem appropriate in connection with the operations of the Hotel;
- G. Arranging, in cooperation with the Owner, for all advertising, promotion, and publicity relating to the Hotel;
- H. Entering into such contracts, concession agreements, and other undertakings as Operator shall from time to time consider appropriate;
- I. Purchasing operating supplies and other services for the Hotel; and
- J. Undertaking such other and further matters as Operator shall deem consistent with the good order and management of the Hotel.

4.6 Operator to Comply With Franchise Requirements

OWNER Operator agrees to operate and manage the Hotel in compliance with any franchise agreement Owner may have with, and with the rules, regulations, and requirements of, any major hotel franchisor.

[Alternate Clause] **OWNER** Operator shall administer compliance with the Franchise, and shall, in connection therewith, communicate with Franchisor, purchase such supplies and services as may be required by the franchise, conduct the business of the Hotel in compliance with the Franchise, and prepare any and all writings and make all payments required by the Franchise. Operator shall forward to Owner copies of all notices, correspondence, and other writings received from or sent to the franchisor immediately following such receipt or dispatch. Upon Owner's request, Operator shall cause an appropriate employee of Operator to attend any and all meetings administered by Franchisor or held by or for the Franchisees and to prepare reports of such meetings for Owner.

4.7 Operator to Comply With Terms of Mortgage

OWNER Operator shall cause the operation of the Hotel to comply with all terms, conditions, and obligations contained in the Mortgage Instruments of which Operator is made aware (provided that Operator shall be under no obligation to ensure that sufficient funds for payment thereof are generated from Hotel operations) and with any leases or other agreements of which Operator is made aware that are executed by Owner and that relate to the Hotel. Operator shall execute and deliver promptly any agreements and documents that Owner or lender may reasonably request to provide for or verify operation of the Hotel in such manner.

4.8 Operator to Establish Prices

OWNER As part of the Annual Business Plan, Operator will submit to Owner for its approval the rates to be published and charged to members of the general public for normal transient occupancy of the various categories of rooms and suites in the Hotel (hereinafter referred to as the "Rack Rates") during such fiscal year. The Rack Rates, as approved by Owner, may not be changed without Owner's further approval. However, it is understood that the said rates will not apply to group business or other categories of business to which Operator may extend a lower rate and that in its discretion Operator may from time to time permit individuals to occupy rooms or suites at the Hotel at rates lower than the said published rates. Operator will also provide Owner with price schedules for all other products and services of the hotel, such as food, beverage, meeting rooms, and commercial space.

4.9 Operator to Establish Credit Policies

NEUTRAL Operator shall establish and implement policies and procedures for verifying, accepting, limiting, and rejecting the credit of guests and patrons of the Hotel. In connection with the foregoing, Operator shall make appropriate arrangements to honor American Express, Visa, MasterCard, such credit cards as may be required or provided by Franchisor, and such other credit cards as Operator or Owner may deem desirable. Operator shall utilize its best efforts to make such arrangements on the most favorable terms available.

4.10 Operator's Collection Practices

OWNER Operator shall employ its best efforts to collect any and all credit card charges, checks, traveler's checks, drafts, and other accounts receivable. Operator shall employ collection agencies and legal counsel, where appropriate, to pursue such claims. If, during any three-month period, more than three percent (3%) of the Gross Revenue is not collected when due, Operator shall promptly explain to Owner, in writing, the reasons therefor and shall revise the credit policies and practices pursuant to Owner's reasonable suggestions.

4.11 Operator to Submit Annual Plan

OWNER Operator shall submit to Owner for Owner's approval an annual plan for the Hotel in form reasonably satisfactory to Owner. Such plan shall be submitted to Owner no later than sixty (60) days prior to the scheduled Effective Date and at least forty-five (45) days prior to the beginning of each Fiscal Year thereafter.

NOTE: The deadline for submission of the annual plan can range from thirty (30) to one hundred twenty (120) days prior to the beginning of the fiscal year. The owner should have sufficient time to review the plan and negotiate modifications.

4.12 Operating Budget

NEUTRAL The operating budget should contain a Profit and Loss Statement on a monthly and yearly basis that is generally in accordance with the *Uniform System of Accounts for Hotels* promulgated by the Hotel Association of New York City, Inc., as adopted by the American Hotel Association of the United States and Canada (the "Uniform System of Accounts"). This statement should include detailed departmental and supporting schedules for each line item. Such budget estimates shall be presented on the form of pro forma operating statement attached hereto [omitted].

The operating budget shall also include the following items:

- A. Projected occupancy and average room rate by month;
- B. Projected gross revenue, detailed by source;
- C. Leasing plan with respect to commercial or retail spaces that will be vacant;
- D. Projected expenses, detailed by type;
- E. Detailed proposed scheduling of staff, salaries, and wages;
- F. Hotel room rates and charges for other services;
- G. Insurance premiums and property taxes;
- H. Property operations and maintenance (non-capital);
 - I. Advertising, promotional, and marketing expenses;
- J. Calculation of base and incentive fees; and
- K. Narrative overview of all budgeted revenue and expense levels and an analysis of budgeted levels to the previous year's actual results. Any differences should be explained.

4.13 Capital and Equipment Budgets

NEUTRAL As part of the Annual Plan, Operator will prepare a Capital Expenditures Budget setting forth in reasonable detail Operator's best estimate of capital expenditures to be made for major building improvements, renovation, repairs, and expansion for such period. Operator will also prepare an Equipment Budget setting forth Operator's estimate of the capital expenditures for additions and replacement of FF&E.

4.14 Submission of Annual Plan to Owner

OWNER Operator shall submit the Annual Plan to Owner for its approval, and Owner shall have the right to make any changes thereto or to refuse to expend any money suggested by the Annual Plan. Owner shall inform Operator in writing of any such change or refusal before the commencement of the period covered by the Annual Plan. Except as so changed by Owner, the Annual Plan shall be final for all purposes hereunder.

NOTES: The owner should have at least thirty (30) days from receipt of the Annual Plan to make changes. The above clause is strongly owner-oriented.

4.15 Settlement of Disputes Regarding the Annual Plan

NEUTRAL In the event that Owner and Operator shall not agree on any item of any Annual Plan, the terms or items included in such Annual Plan that have been agreed to by both Owner and Operator shall become operative immediately. In regard to the terms or items over which the parties are in dispute, pending the settlement thereof, operator may continue to operate the Hotel at the levels of expenditures agreed to in the most recently approved Annual Plan increased by a percentage equal to the increase in the Consumer Price Index for the calendar year preceding the calendar year for which the dispute has arisen. In the event that Owner and Operator cannot reach agreement on any term or item of the Annual Plan within sixty (60) days of its submission to Owner, such dispute shall be resolved by arbitration.

[Alternate Clause]
NEUTRAL Pending resolution of any dispute over any item or term of an Annual Plan, the specific disputed items shall be suspended and replaced for the fiscal year in question by an amount equal to the lesser of (a) the amount proposed by Operator for such fiscal year or (b) such budget item for the fiscal year prior thereto, subject to escalation per item by the percentage increase in the Consumer Price Index over the twelve (12) -month period immediately preceding the start of the fiscal year in question.

[Alternate Clause]
OWNER If any of the items in the Annual Plan are disapproved by Owner, Operator and Owner shall enter into negotiations in an attempt to determine mutually satisfactory budgets and programs. Owner shall make final determination with respect to the budgets and programs.

NOTE: The preceding clause gives the owner total veto power over all Annual Plans. Operator-oriented contracts omit any clause calling for owner approval of Annual Plans.

4.16 Operator Must Comply With Annual Plan

OWNER Operator shall comply with the Annual Plan, once it is approved by Owner, and shall not deviate substantially therefrom as to any item, incur additional expense or capital expenditure or obligation, or change the manner of operation of the Hotel without the written consent of Owner, except where such deviation is due to and is in direct proportion to an increase in business at the Hotel in excess of the pro forma operating statement, or in case of an emergency, or where failure to take a particular action would expose Owner to the imminent danger of criminal liability other than the payment of fines.

[Alternate Clause]
OWNER Operator may deviate from the Annual Plan under the following conditions and for the following reasons:

A. The actual expenditures for the Department within which any given expense is allocable will not exceed one hundred ten percent (110%) of the total budgeted expenditures for such Department approved in the Operating Budget (for the purpose of this Agreement, the term "Department" shall mean each of the following twelve (12) general expense categories along with all of the individual expenses included therein as set forth in the Chart of Accounts: (1) Food, (2) Beverage, (3) Rooms, (4) Food and Beverage, (5) Telephone, (6) Golf, Pool, and Health, (7) Laundry, (8) Other Costs, (9) Heat, Light, and Power, (10) Repair and Maintenance, (11) Advertising and Promotion, and (12) Administrative and General);

B. Such expenditure is expressly authorized in this Agreement;

C. Operator obtains Owner's prior approval of such expenditure;

D. Such expenditure is warranted by increased levels of business;

E. Such expenditure is required to meet emergency conditions and Owner is promptly advised thereof;

F. Additional costs are incurred because of the occurrence of an event(s) not reasonably foreseeable by Operator; or

G. Such expenditure is caused by the occurrence of an event(s) outside Operator's reasonable control.

[Alternate Clause]
OWNER Operator's sole right to deviate from the planned expenditures on a line-item basis within the accounts for Administration and General, Advertising and Business Promotion, and Property Operations and Maintenance shall be to exceed such planned expenditures on a line-item basis within the foregoing accounts by an amount not to exceed the greater of Fifty Thousand Dollars (\$50,000) (adjusted in accordance with changes in the Consumer Price Index) or ten percent (10%) of the line-item amount. Any substantial deviations from the overall direction of the Marketing Plan portion of the Annual Plan contemplated by Operator shall be submitted to Owner, for its prior approval. Operator shall make no material changes in material business policies affecting the Hotel without Owner's prior approval.

4.17 Operator Does Not Guarantee Financial Projections

OPERATOR Owner hereby represents that in entering into this Agreement Owner has not relied on any projection of earnings ("Projections"); statements as to the possibility of future success, or other similar matters that may have been prepared by Operator. Any Projections made by Operator in contemplation of or in the course of implementing this Agreement will not take into account, nor make provisions for, any rise or decline in local or general economic conditions, and Owner understands that (a) no guaranty is made or implied by Operator as to the cost or the future financial success of the Hotel, and (b) Operator does not warrant or guarantee the Projections in any way whatsoever. Any use of this information is based on this understanding.

NOTE: The preceding clause refers to projections performed by the operator made prior to commencing the management contract. A similar clause should be used to state that the Operator makes no guarantee, warranty, or representation with respect to the budget.

4.18 Minimum and Maximum Budget Expenditures

NEUTRAL At a minimum, the Annual Plan will provide for an expenditure of an amount equal to four percent (4%) of gross revenues of the Hotel (determined in accordance with the Uniform System of Accounts for Hotels) for repairs and maintenance.

NOTE: Some contracts also provide for minimum and maximum amounts for advertising, repairs, and maintenance based on a percentage of total revenue, a specific dollar amount per room, or a specific total dollar amount. Any deviation must be approved by the Owner.

4.19 Revised Operating Budgets

OWNER In addition to the Operating Budget, Operator shall prepare a Revised Operating Budget within thirty (30) days after the end of the third (3rd), sixth (6th), and ninth (9th) Accounting Periods if the Hotel's income before fixed charges for any fiscal quarter is less than ninety percent (90%) of the Gross Operating Profit set forth in the Operating Budget for such fiscal quarter.

4.20 Duty of Operator to Supervise Hotel Operations

OWNER Operator shall reasonably employ the resources of its home office and regional facilities and personnel to supervise and assist the operation of the Hotel. Operator shall cause appropriate officers and employees of Operator to visit and inspect the Hotel and the operation thereof with reasonable frequency, and in any event Operator's regional executive in charge of hotel management shall visit the Hotel no less frequently than once each sixty (60) days.

4.21 Cost of Supervisory Services

OWNER The overall supervisory and management services to be rendered by the home office personnel and staff of Operator in connection with the operation of the Hotel shall be provided by Operator at its own expense and not charged to Owner.

NOTE: When the preceding clause is used, the contract should specify who pays travel expenses and what mode of travel should be utilized.

[*Alternate Clause*] Upon commencement of operations after the Opening Date, the supervisory services of Operator's corporate officers and employees other than those regularly or tempora-

rily employed on a full-time basis at the Hotel, and specifically including its home office administrative heads of maintenance, housekeeping, decoration and design, public relations, advertising, food and beverage operations, entertainment, sales promotion, forecasting and operations analysis, staff planning, accounting, and reservations, shall be provided by Operator at its own expense and not charged to Owner, except as otherwise specifically provided for in this Agreement, including, without limitation, the out-of-pocket expenses as may be chargeable to the operations of the Hotel. Without limiting the generality of all of the foregoing, Owner shall not be charged with the salaries or wages of any officers, directors, or employees of Operator or any of its affiliated or subsidiary companies except as otherwise specifically provided in this Agreement, or except with such personnel who shall be regularly or temporarily employed on a full-time basis at the Hotel.

[Alternate Clause] Operator may charge to the Hotel (a) the tourist-class travel expenses and meals, for its
NEUTRAL home office personnel, to the extent reasonably allocable to the Hotel and not to other businesses, and (b) the salaries of such personnel only if and for such time as the subject employees are located at the Hotel and are performing full-time services as substitutes for regular Hotel Employees.

[Alternate Clause] Operator may find it desirable to assign one or more of its employees to the Property on a
NEUTRAL temporary basis to perform hotel-related business. Owner agrees to reimburse Operator for all actual expenses to and from the Property and for all room and board while at the Property for such employees.

4.22 Cost of Special Services

OPERATOR Extraordinary types of expenses incurred for projects, such as labor negotiations, renovation or rehabilitation programs, and special market studies, that involve a substantial time commitment of Operator's personnel or the engagement of outside professionals will be reimbursed as a hotel expense, provided, however, that Operator shall not, without Owner's prior approval, incur expenses for such projects in excess of Twelve Thousand Dollars (\$12,000) per project, as such amount may be increased by changes in the Consumer Price Index.

4.23 Duty of Operator to Consult With Owner

OWNER Upon request by Owner, from time to time, Operator shall provide the services of qualified personnel to consult with Owner regarding such subjects relating to the Hotel as Owner may designate, provided that Operator shall have no obligation to provide consulting services of any persons other than employees of Operator or other persons whose services are provided to other hotel owners by Operator.

4.24 Operator to Enter Into Leases

NEUTRAL Operator will use its best efforts and due diligence in entering into leases and concession agreements for stores, commercial space, and services at the Hotel. Any lease or concession for a period in excess of six (6) months (including any renewal options) shall be subject to the prior written approval of and be executed by Owner. Leases or concessions of a term of six (6) months or less may be executed by the Operator in the name of Owner without its consent. Operator shall, subject to the limitations of such leases and concession agreements and general hotel practice, also supervise and control the activities of tenants, concessionaires, and other persons in possession, and their employees and agents.

4.25 Operator to Enter Into Service Contracts

NEUTRAL Operator is authorized to make and enter into all such contracts, equipment leases, and agreements as are required in the ordinary course of business and as are budgeted in the approved Operating Budget for the operation, maintenance, and service of the Hotel, and to make payment for the same when payment is due. However, Operator shall be required to obtain the consent of Owner before entering into any contract for the account of Owner, of whatever nature, if the total amount payable under such contract exceeds One Thousand Dollars (\$1,000), as such amount may be adjusted to reflect changes in the Consumer Price Index, unless such contract is made under circumstances that the Operator reasonably considers to constitute an emergency or such contract is budgeted and approved by Owner. Notwithstanding the foregoing, Operator shall use its best efforts to contact and secure the approval of Owner should any such emergency expenditure be likely to exceed One Thousand Dollars (\$1,000), as such sum may be adjusted pursuant to changes in the Consumer Price Index. Operator shall use its reasonable best efforts to secure for Owner all possible rebates, discounts, and other benefits to be derived from every contract. Any rebate, discount, or other benefit derived under any such contract, lease, or agreement shall accrue to the benefit of the Hotel. Operator shall not be responsible to Owner for the performance of any contract that is not recommended or approved by Operator; however, Operator shall make every effort to ensure the success of Owner's decision with respect thereto.

NOTE: The \$1,000 limit on service contracts in the preceding clause is on the low end of the range. Large properties should have higher limits.

[Alternate Clause] Operator will negotiate and enter into, on behalf of the Owner, service contracts required in the ordinary course of business in operating the Hotel, including, without limitation, contracts for electricity, gas, telephone, detective agency protection, vermin extermination, water, steam, cleaning, elevator and boiler maintenance, air-conditioning maintenance, master television service, laundry and dry-cleaning, and other services that Operator deems advisable. However, no contract with a duration in excess of one (1) year or involving an expenditure of more than Five Thousand Dollars (\$5,000) per annum in the aggregate shall be entered into without Owner's approval.

NOTE: For purposes of the preceding clause, dollar limit on service contracts can range from \$1,000 to \$25,000 over terms of one to five years.

4.26 Operator to Enter Into Entertainment Agreements

NEUTRAL Operator will negotiate and enter into, on behalf of Owner, agreements for entertainment within the Hotel facilities for one hundred twenty (120) days or less.

4.27 Purchasing by Operator

OWNER Operator shall purchase such Consumable Supplies and other expendable items as are necessary to operate the Hotel, and shall pay for such supplies out of the General Account. When taking bids or issuing purchase orders, Operator shall be under a duty to use its reasonable best efforts to secure for and credit to Owner any discounts, commissions, or rebates obtainable as a result of such purchase.

[Alternate Clause] Operator shall promptly remit to Owner all discounts, rebates, profits, commissions, or other emoluments received by Operator or by any "Affiliate" of Operator, which term shall mean any corporation or other entity related to Operator or any officer, director, employee, or shareholder of Operator or of such related corporation or other entity, in connection with any purchase of materials or supplies delivered to or for the Hotel or in connection

with any contracts or agreements entered into on behalf of Owner or in connection with the Hotel. This clause is intended to ensure that neither Operator nor any Affiliate of Operator shall receive, directly or indirectly, any compensation other than that to be paid by Owner to Operator hereunder.

4.28 Purchasing From Operator

OWNER Whenever Operator shall contract with any company controlled by or under common control with Operator, the terms thereof shall be no less favorable to Owner than what Operator could have obtained in the public marketplace for materials or services of the same quality and quantity from independent third parties and on terms no less favorable to Owner than those pursuant to which the Affiliate provides similar services to any other Hotel owned or operated by Operator. Operator shall advise Owner of the substance of any such agreement.

4.29 Repairs, Replacements, and Improvements

OWNER Operator shall make or install, at Owner's expense, all necessary or desirable repairs, decorations, renewals, revisions, alterations, replacements, additions, and improvements in and to the site, building, furnishings, and equipment of the Hotel; provided, however, that such are included in the budget or do not exceed One Thousand Dollars (\$1,000) per item.

NOTE: For purposes of the preceding clause, dollar limitations can range from \$500 to \$100,000. It is important to specify what is a repair and what is a capital replacement.

[Optional Additional Clause] Owner shall at all times have the right to do or arrange for any of such work itself. All such work done or arranged for by Operator involving a payment in excess of Ten Thousand Dollars (\$10,000) shall be contracted for on a competitive bid basis. Operator shall not receive from Owner or from any contractor any markup or payment from any such contract.

OWNER

[Alternate Clause] In accordance with the requirements of the Franchise and the standards applicable to a high-quality hotel, Operator shall (a) maintain the Hotel in good condition and repair generally and (b) maintain, repair, and replace when necessary the Operating Equipment and the FF&E, all out of funds made available for such purposes by Owner. Operator will keep the Hotel and surrounding property in a safe, neat, clean, and sanitary condition at all times and will promptly remove all garbage and trash and ice and snow from the sidewalks, adjoining driveways, and parking areas.

OWNER

4.30 Cost of Maintenance and Repairs

NEUTRAL It is accepted in principle that over the term of this Agreement, expenditures on maintenance and repairs will average not less than five percent (5%) of gross revenue.

NOTE: The preceding clause provides a minimum amount of maintenance and repairs. However, this approach can cause problems, because operations and maintenance do not always vary as a percentage of total revenue. Many other factors, such as the property's age, ratio of food and beverage to rooms, location, and occupancy should be considered.

4.31 Operator to Provide Licenses and Permits

OWNER Operator will seek, on behalf and in the name of Owner (unless the law requires that a particular license be in the name of Operator), the necessary licenses and permits as may be required for the conduct and operation at the Hotel of the business herein contem-

plated, including licenses and permits relating to signage and to the sale of alcoholic beverages. Owner agrees to cooperate fully with Operator in applications for such licenses and permits.

NOTE: Some contracts allow the owner or operator to terminate in the event certain licenses or permits cannot be obtained. It is very important for all licenses to revert to the owner at end of the operating term.

[Alternate Clause]
OPERATOR Owner agrees to execute and deliver any and all applications and other documents and to otherwise cooperate to the fullest extent possible with Operator in applying for, obtaining, and maintaining such licenses and permits.

[Alternate Clause]
OWNER Operator will maintain at all times throughout the term of this Agreement all licenses and permits required of Owner or Operator in connection with the operation and management of the Hotel.

4.32 Compliance With Government Rules and Regulations

OWNER Operator shall exercise its best efforts to conduct the business of the Hotel in compliance with all applicable laws and to ensure that no activity or condition occurs on or about the Hotel in violation of any laws. In the event that Operator shall have reason to believe that any laws may be violated on or about the Hotel, Operator shall promptly so notify Owner.

4.33 Contesting Government Regulations

NEUTRAL Owner shall have the right to contest or to cause Operator to contest any alleged violation of any law and to postpone compliance with the law pending the determination of such contest as permitted by law. In such event, Owner shall indemnify Operator and its employees from any resulting loss, cost, damage, or expense (including fees of attorneys approved or selected by Owner).

4.34 Operator's Bank Accounts

NEUTRAL Operator, on behalf of Owner, shall establish two bank accounts (the "Operating Accounts") for the Hotel in Operator's name, in banks approved by Owner (which approval shall not be unreasonably withheld), with Operator being the only party authorized to draw from the Operating Accounts unless otherwise agreed upon by the parties. One of the Operating accounts for the Hotel shall be known as the Depository Account and shall be used to deposit all cash and rental receipts generated by the Hotel. Operator shall deposit all funds collected from the operation of the Hotel in the Depository Account. The other account shall be known as the General Account and from it all disbursements for the Hotel shall be made. At the end of each Monthly Accounting Period, the amount in the Depository Account shall be drawn down to a minimal balance, and the excess funds shall be transferred to the General Account. Additionally, Operator regularly may draw funds from the Depository Account and deposit them in the General Account. In the event a nearby bank can be used to deposit funds directly into the General Account, the Operator may elect to not use a Depository Account. Funds from the General Account shall be disbursed by the Operator to pay its Base Management Fee, as well as to pay the normal and reasonable expenses of the Hotel incurred in the operation and maintenance of the Hotel pursuant thereto, including all expenses of the type deducted from Gross Revenues in determining Gross Operating Profit hereof and all expenditures of the type deducted from Gross Operating Profit in determining Cash Flow. It is understood and agreed that to facilitate the payment in expenses for the Hotel, Operator may elect to make such payments from an account maintained by Operator for making such payments with regard to

the Hotel and other properties operated by it and shall be entitled to withdraw from the General Account and to deposit to such other account, from time to time, an amount equal to the checks drawn upon such other account for the payment of expenses of such Hotel. All bank accounts shall be owned by Owner and shall be controlled and operated by Operator as the agent of Owner. The agency status of Operator shall be designated on the checks and drafts drawn on such bank accounts.

4.35 Transfer of Funds to Owner

OWNER Subject to maintaining adequate reserves for replacements and working-capital requirements, Operator, at Owner's request, shall transfer such funds as Owner shall specify to a bank account opened and maintained solely by Owner.

[Alternate Clause]
NEUTRAL Within twenty-five (25) days after the end of each calendar month, and simultaneously with the delivery of the financial statements, Operator shall remit to Owner the balance in such bank accounts, less disbursements and advances made on behalf of and for the account of Owner, and less also such reasonable sums as Operator may reasonably deem necessary or appropriate to meet obligations that will or that Operator reasonably believes may become due thereafter, taking into account estimated future income. Operator is also authorized to draw as an advance on its Basic Fee for the preceding month directly from the bank account(s), provided all statements required by this Agreement have been delivered by Operator to Owner.

4.36 Owner to Furnish Working Capital

NEUTRAL On the formal Opening Date and thereafter from time to time throughout the Operating Term, Owner shall furnish to Operator (by deposit into the Agency Account) funds in the amounts requested by Operator to cause the Working Capital to be and remain at a level reasonably sufficient for the uninterrupted and effective operation of the Hotel. All such Working Capital shall be funds of Owner and shall be kept in the Agency Account to be utilized by Operator in Operator's sole discretion in a manner consistent with the practices of the hotel industry.

[Alternate Clause]
NEUTRAL Owner shall provide to Operator the sum of Fifty Thousand Dollars (\$50,000) as Initial Working Capital for use by Operator for initial inventories and operating supplies during the Preopening Period.

[Alternate Clause]
NEUTRAL On or before the Effective Date, Owner agrees to deposit in the General Account the sum of Fifty Thousand Dollars (\$50,000) (the "Initial Minimum Working Capital Balance"). Thereafter, at any time when the balance in the General Account shall be less than the Initial Minimum Working Capital Balance and the balance in the Depository Account is not sufficient to fund such deficit, Owner agrees to deposit to such General Account, as needed, an amount equal to such deficiency (the "Operator Advance"). The total of such deposits is not to exceed Eighty Thousand Dollars (\$80,000) at any given time. Notwithstanding anything herein to the contrary, if, at any time, Owner deposits an Operator Advance to fund any such deficit, such Operator Advance shall be repaid to Owner by Operator without interest out of the General Account at such times when the amounts in the General Account exceeds the Initial Minimum Working Capital Balance.

4.37 Repayment of Funds Advanced by Operator

OPERATOR Operator shall in no event be required to advance any of its own funds for the operation of the Hotel, nor to incur any liability in connection therewith, unless Owner shall have furnished Operator funds necessary for the discharge thereof. If Operator shall at any time advance funds in payment of any expenditure of the Hotel, which Operator shall have the

right but not the obligation to do, Owner shall repay Operator immediately upon demand all or any part thereof with interest, at the prevailing prime rate of the bank or trust company serving as the depository for the Agency Account, which amount Owner hereby promises to pay.

[Optional Additional Clause] If Owner does not provide the Initial Working Capital funds within said thirty (30) days, Operator may elect to provide such funds, and shall be reimbursed therefor by Owner out of Owner's separate funds (not those of the Hotel) with interest at a rate equal to four (4) percentage points over the prime rate.

OPERATOR

NOTE: In the preceding clause, the operator may want to add a sentence stating that it can withdraw reimbursable funds from operating cash flow.

4.38 Operator to Provide Cash Management

OWNER Operator shall provide cash management for the cash portion of the Working Capital. For the purpose of this Agreement, the term "cash management" shall mean expediting cash inflows, controlling cash outflows, and, if reasonably possible, investing the difference between cash inflows and outflows at a market rate.

4.39 Insurance Coverage

NEUTRAL Concurrently with the submission of the Annual Plan, Operator shall furnish Owner with a schedule setting forth the kinds and amount of insurance Operator intends to procure in connection with the operation of the Hotel. This schedule shall specify the kinds and amounts of insurance required to be maintained pursuant to any mortgage, lease, or other agreement, as well as such other kinds and amounts of insurance as Operator shall deem necessary or advisable for the protection of Operator and Owner. Promptly following the receipt of such schedule, Owner shall notify Operator of any changes that Owner shall elect to make in such schedule, and Operator shall thereupon forthwith apply for and obtain, if obtainable, all such insurance from such companies and through such brokers as Owner shall direct.

4.40 Types and Amounts of Insurance

NEUTRAL Owner shall also provide and maintain the following insurance throughout the Operating Term:

A. Public liability insurance having a minimum per occurrence limit of One Hundred Million Dollars (\$100,000,000) against all claims that may be brought anywhere in the world for personal injury (including bodily injury), death, or damage to property of third persons. This insurance shall include coverage against liability arising out of the ownership or operation of motor vehicles, as well as coverage in the said amount against all claims brought anywhere in the world arising out of alleged (i) sale and/or sale of intoxicating beverages ("Dram Shop" coverage); (ii) assault or battery; (iii) false arrest, detention, or imprisonment or malicious prosecution; (iv) libel, slander, defamation, or violation of the right of privacy; (v) wrongful entry or eviction; and (vi) contractual liability.

B. Workers' compensation insurance or insurance required by similar employee benefit acts as mandated by law, as well as insurance against all claims that may be brought for personal injury or death of Hotel Employees, such insurance to have a minimum limit of not less than One Hundred Thousand Dollars (\$100,000) per occurrence.

C. Business Interruption Insurance covering loss of income to both Owner and Operator for a minimum period of one (1) year resulting from interruption of business caused by

the occurrence of any of the risks insured against under the property damage insurance referred to in item A.

D. Crime insurance, including bonds covering Hotel Employees for a minimum of One Million Dollars (\$1,000,000) per loss.

E. Boiler and machinery insurance, including use and occupancy (loss of income) for all direct loss or damage to property caused by failure of boilers or breakdown of machinery, in minimum limits of One Million Dollars (\$1,000,000).

Operator may reasonably require Owner to increase the limits of insurance coverage set forth hereinabove and may reasonably require Owner to carry other or additional insurance, it being reasonable for Operator to require insurance of the types and in the amounts generally carried on hotels owned or operated by Operator or its affiliates. Owner shall pay all premiums on the insurance required by items A, B, C, D, and E, but the cost of insurance required under items A, B, C, and D shall be an Operating Expense.

4.41 Insurance Policies

NEUTRAL Operator shall deliver to Owner, at the commencement of the Operating Term or promptly thereafter, original insurance policies or certificates covering all insurance required or authorized to be maintained under this Agreement, and not less than five (5) days prior to the expiration of the then existing policies shall deliver to Owner such policies, renewals of policies, or certificates.

4.42 Disputes Over Insurable Value

NEUTRAL Any dispute between Owner and Operator as to full insurable value shall be determined as an expense of the Hotel by an appraiser jointly selected by the parties. The value determined by the appraiser so selected shall be binding upon both parties until changed by a subsequent appraisal, but neither party shall have the right to require another appraisal within two (2) years after an appraisal has been made in accordance with this provision. If the parties are unable to agree upon an appraiser within thirty (30) days after the request by one of them for such agreement, the matter may be submitted for arbitration.

4.43 Insurance Claims

NEUTRAL Owner shall give to Operator, and Operator shall give to Owner, prompt notice of any claims in excess of Ten Thousand Dollars (\$10,000) made against Owner or Operator, and each party shall cooperate fully with each other and with any insurance carrier to the end that all such claims will be properly investigated and defended. Operator shall promptly engage legal counsel to defend any such claim against Owner, which counsel shall be approved by Owner.

4.44 Owner to Assume Liability for Inadequate Insurance

OPERATOR Owner assumes all risks in connection with the adequacy of any insurance or self-insurance program, and waives any claim against Operator and its Affiliates for any liability, cost, or expense arising out of any uninsured claim, in part or in full, of any nature whatsoever except for the gross negligence or willful misconduct of Operator, its servants, and employees.

4.45 Owner and Operator Waive Claims Against Each Other

NEUTRAL Provided that Operator shall procure and keep in force all of the insurance required to be obtained by Operator pursuant to this Agreement, neither Owner nor Operator shall assert against the other any claims for any losses, damages, liabilities, or expenses (including attorney fees) incurred or sustained by either of them, to the extent that the same are covered by such insurance, on account of damage or injury to person or property arising out of the ownership, operation, or maintenance of the Hotel. The parties agree that all policies of insurance to be procured by Operator shall permit the foregoing waiver.

4.46 Operator to Keep Books of Accounts

NEUTRAL Operator shall keep full and adequate books of account and such other records as are necessary to reflect the results of the operation of the Hotel. Such books and records shall be kept in all material aspects in accordance with the Uniform System of Accounts for Hotels (The Uniform System of Accounts for Hotels, 8th rev. ed. 1986).

NOTE: The Uniform System of Accounts is updated periodically. The contract should specify the current edition. It is very difficult to sell and refinance hotels that do not follow this system.

[*Alternate Clause*] OPERATOR shall establish and operate accounting and internal audit control systems reasonably acceptable to Owner, and in connection with the foregoing, Operator shall establish and maintain for the benefit of Owner complete, proper, current, and accurate records and books of account reflecting all transactions of the Hotel and of Operator with respect to the Hotel. Such books and records shall be prepared on an accrual basis and otherwise in accordance with generally accepted accounting principles and the Uniform System of Accounts, consistently applied within each accounting period and from year to year. Operator shall store safely such books and records for a minimum of three (3) years following the Fiscal Year to which they are applicable, and Operator shall not destroy or dispose of the same except by delivery to Owner for further storage or destruction as Owner may determine.

4.47 Storage and Inspection of Books and Records

NEUTRAL Except for the books and records that may be kept in Operator's home office or other suitable location pursuant to the adoption of a centralized billing system or other centralized service, the books of account and all other records relating to or reflecting the operation of the Hotel shall be kept at the Hotel. All books and records relating to the Hotel shall be available to Owner and its representatives at all reasonable times after each notice from Owner to Operator of Owner's desire to examine, audit, inspect, and transcribe same.

4.48 Books and Records Upon Termination

NEUTRAL Upon any termination of this Agreement in accordance with its terms, all books and records shall be forthwith turned over to Owner so as to ensure the orderly continuance of the operation of the Hotel, but such books and records shall thereafter be available to Operator at all reasonable times for inspection, audit, examination, and transcription for a period of not less than seven (7) years from the date of said termination.

4.49 Operator's Monthly Financial Reports

NEUTRAL Operator shall deliver to Owner at or prior to the end of each month an accounting for the operations of the Hotel, including a detailed profit and loss statement and balance sheet and cash forecast showing the results of the operation of the Hotel for the preceding month and for the fiscal year to date and the cash needs, if any, for the subsequent six (6) months. Such statement shall: (a) be in the customary form with the schedules annexed and in the same detail as generally prepared by Operator for other hotels it owns or operates, (b) be taken from the books and records maintained by Operator in the manner hereinabove specified, and (c) follow the general form set forth in the Uniform System of Accounts for Hotels (8th rev. ed. 1986), unless Owner reasonably specifies a different form, and shall be calculated on the accrual method.

NOTE: The timing for submission of the financial reports discussed ranges from 15 to 30 days after the cease of the accounting period.

4.50 Operator's Annual Financial Reports

NEUTRAL Within ninety (90) days after the end of each fiscal year, Operator shall deliver to Owner financial statements including a detailed balance sheet, a statement of sources and uses of funds, an income and expense statement, and a computation of the Incentive Management Fee, certified by the Independent Certified Public Accountant, showing the results of operations of the Hotel during such fiscal year. Such financial statements shall be calculated on the accrual method. Any disputes as to the contents of any such statements or any accounting matter hereunder shall be determined by the Independent Certified Public Accountant.

4.51 Operator to Prepare Additional Reports

NEUTRAL Operator shall render to Owner, and any persons so designated by Owner, at Owner's expense, any additional financial statements reasonably required by Owner.

[Alternate Clause]
OWNER Upon request by Owner, from time to time, Operator promptly shall prepare or cause to be prepared additional reports showing aging of receivables, schedules of payables, schedules of supplies and inventory, detailed cash flow information, occupancy reports, reports on insurance claims, reports on the physical condition of the Hotel, information regarding marketing outlook, and information regarding other matters of interest to Owner. Owner shall pay Operator's reasonable expenses incurred in preparation of such reports. Upon Owner's request, from time to time, the General Manager and Owner (or its agents) shall meet and discuss the operations of the Hotel.

4.52 Annual Audit

OWNER Following the close of each Fiscal Year, Owner shall have the right to cause an audit of the books, records, and operations of the Hotel to be made by an independent certified accounting firm. Operator shall cooperate fully with such auditors and shall make available to them any and all information concerning the Hotel. Owner shall deliver to Operator copies of all financial reports regarding the Hotel promptly after they are received from such auditors. Any adjustments to the Management Fee required because of the results of such audit shall be made by the parties within ten (10) business days. The cost of any such independent audit shall be an administrative and general expense of the Hotel for the succeeding Fiscal Year, provided that such cost shall be an expense of the subject year in the event that such year is the last year of the term hereof.

4.53 Operator to Pay All Bills

NEUTRAL Operator will pay all proper bills and expenses incurred in the operation of the Hotel and will file and pay all sales and use, property, franchise, income, and other tax records and returns relating to the Hotel. Operator shall pay as a part of the operating expenses of the Hotel, when due, all charges for water, gas, electricity, and all other public services furnished to the Hotel. Operator likewise shall pay as part of the operating expenses of the Hotel the replacement cost of the Consumable Supply, Other Supply, and other type of supplies; all wages; and all other costs incurred for the property operation of the Hotel in accordance with the provisions hereof. Operator will furnish centralized computing services for the efficient processing of payroll services, financial statements, accounts receivable, and accounts payable.

[Alternate Clause]
NEUTRAL Operator shall cause its accounting department to prepare and timely file all necessary reports with respect to withholding taxes, social security taxes, unemployment insurance, disability insurance, the Fair Labor Standards Act, and all other statements and reports pertaining to labor employment on Owner's payroll in or about the Hotel.

[Alternate Clause]
NEUTRAL Operator shall maintain all required records and prepare and file all forms related to the collection and payment of all sales and use taxes. Operator shall make required payments to the appropriate taxing authority from funds collected therefore by the Hotel. Operator's responsibilities hereunder specifically exclude the preparation or filing of local, state, or federal income tax returns.

[Optional Additional Clause]
OWNER Provided that Owner has timely furnished sufficient funds for the payment thereof, Operator shall indemnify Owner from any penalties incurred as a result of Operator's failure to file sales tax, payroll tax, or local tax returns on behalf of the Hotel, other than income tax returns, for any tax period commencing on or after the date hereof. Any penalties incurred by reason of such failure or Operator's part shall not be considered an expense of the Hotel.

4.54 Operator to Provide Centralized Accounting

NEUTRAL Operator shall make available, in connection with the operation of the Hotel, its complete system of central financial services utilizing Operator's home office financial staff and computer equipment for so long as Operator shall provide such services for at least ten (10) other hotels in this chain.

Such services shall include, without limitation, cash management; verification of daily work; preparation of payroll and benefits administration; preparation of payroll tax returns; handling of accounts receivable (including normal in-house collection activities) and accounts payable; billing under national credit cards; cash management; preparation of monthly internal operating statements; verification of financial controls; advice and monitoring of accounting and reporting systems and internal controls (relating to cash, inventories, and accounts receivable); and training and supervision of cashiers, front desk, and inventory personnel. Such services shall not include the cost of a certified audit or the preparation and filing of state and federal tax returns, other than payroll and sales tax returns.

[Optional Additional Clause]
OPERATOR In addition to all other fees due hereunder, Owner agrees to pay to Operator an Accounting Fee of Two Thousand Dollars (\$2,000) per month to reimburse Operator for the expense of off-premise central office bookkeeping and accounting services, including, without limitation, the cost of issuance of checks and preparation of payroll statements; provided, however, that such Accounting Fee shall, in accordance with Operator's current standard fee schedule therefore be subject to increase annually by the lesser of ten percent (10%) or the percentage of increase in the Consumer Price Index as specified hereinabove.

[Alternate Additional Clause] For so long as Operator provides the Centralized Accounting Servers described herein-above, Operator shall receive a Centralized Financial Service Charge, in an amount equal to one and one-half (1 1/2%) percent of Total Revenues, payable monthly in the same manner as the Basic Fee.

OPERATOR

[Alternate Additional Clause] Operator will be paid a fee of \$750, to be adjusted to reflect the Consumer Price Index, on January 1, 1989 and annually thereafter, as an administrative and general expense of the Hotel, for each Monthly Accounting Period as a non-allocatable reimbursement for centralized computer, payroll processing, checks, accounting, and bookkeeping services. It is expressly understood that no outside accounting services will be hired as an expense of the Hotel for any reason whatsoever, except for the annual audit.

OPERATOR

4.55 Inventory

NEUTRAL Operator shall, on or before the Opening Date, and for every third Year of Operation thereafter, conduct an inventory of all Furnishings and Equipment and maintain complete records of such at the Hotel.

4.56 Internal Audits

OWNER At Operator's sole option, Operator may perform internal audits of the operation of the Hotel. The cost of each audit shall be borne exclusively by Operator and shall not be an Expense of Operation of the Hotel; provided, however, that the out-of-pocket travel costs of Operator's employees engaged in the performance of such audit(s) shall be considered a Reimbursable Expense.

4.57 Legal Actions for Guest or Tenant Default

NEUTRAL Operator may institute, in its own name or in the name of Owner, as required by the law, at the expense of Owner, any necessary legal actions or proceedings to collect charges, rent, or other income for the Hotel or to oust or dispossess guests, tenants, or other persons in possession, and concessionaires, or to cancel or terminate any lease or concession for the breach thereof or default thereunder by the tenant or concessionaire; provided that Operator shall not institute any legal actions with respect to any lease of one (1) year or more or involving more than Ten Thousand Dollars (\$10,000) without the prior written consent of Owner. Any legal counsel engaged under this provision shall be designated by Owner.

4.58 Legal Actions Against the Property

NEUTRAL Operator may, but shall not be obligated to, take at Owner's expense appropriate steps to protest or litigate final court decisions for any violation, order, rule, or regulation affecting the property.

[Alternate Clause] Operator and Owner shall use their best efforts to prevent any liens from being filed against the Hotel that arise from any maintenance, changes, repairs, alterations, improvements, renewals, or replacements in or to the Hotel. They shall cooperate fully in obtaining the release of any such liens. If such a lien arises that was not occasioned by the fault of either party, it shall be treated as an expense of the Hotel. If the lien arises as a result of the fault of either party, then the party at fault shall bear the cost of obtaining the lien release.

NEUTRAL

4.59 Operator to Provide Advertising, Promotion, and Sales

OWNER Operator will plan, prepare, and contract for advertising and promotions for the Hotel designed to publicize the Hotel and attract guests in accordance with the standards set by other high-quality first-class hotel operations. To this end, Operator shall arrange and make contracts for such advertising and promotion as it may deem advisable from time to time for the successful operation of the Hotel.

[Alternate Clause] OWNER Operator shall provide the Hotel with such advertising, public relations, and promotional services as are judged by it to be reasonably necessary and appropriate in order to promote the name and facilities of the Hotel and to maintain its identity as one of the Operator's Hotels. Such services shall include but not be limited to assistance in the following areas:

A. Developing and implementing the Hotel's communications plan following the Operator's guidelines. This task includes planning, publicity and internal communications, and organizing and budgeting the Hotel's advertising and public relations programs;

B. Selecting and providing guidance as required for the public relations personnel;

C. Preparing and disseminating news releases for trade and consumer publications, both national and international; and

D. Selecting an advertising agency.

Operator shall coordinate the Hotel's communications program with Operator's corporate communications program and shall include the Hotel in Operator's corporate identity programs and in its national advertising programs as appropriate.

4.60 Operator to Prepare a Marketing Plan

OWNER Operator will prepare on an annual basis a marketing plan that shall include, but not be limited to, projected occupied room-nights and average daily rate by market segment, a detailed program for advertising and promotion, a detailed program for sales strategies, and a competitive hotel analysis.

4.61 Operator to Utilize Franchisor's Marketing and Reservation Services

OWNER Operator shall cooperate with Franchisor to cause the Hotel to be included in the national advertising programs and central reservation system for all hotels franchised by Franchisor. Operator shall use its best efforts to secure bookings for the Hotel through the sales and reservations systems of Franchisor and Operator and shall encourage the use of the Hotel by and for travelers, organizations, groups, meetings, conventions, travel agencies, and other recognized sources of hotel business.

4.62 Operator's Centralized Marketing and Reservations

OWNER Operator shall provide, or shall cause an Affiliate to provide, in the operation of the Hotel and for the benefit of its guests, inter-hotel reservations, convention and business meeting marketing and promotions, sales promotions, publicity, public relations, and all other group marketing benefits, services, and facilities, including joint advertising programs to the extent appropriate (all herein collectively called "Centralized Services"), similar to those furnished to other hotels owned and operated by Operator. Owner shall pay Operator monthly, as an expense of the Hotel deducted in calculating Hotel Net Income, a Cen-

tralized Services Fee of one and one-half percent (1 1/2%) of Hotel Gross Revenue for the preceding month.

[*Alternate Clause*]
NEUTRAL Owner shall be charged for all costs of reservation equipment, communication facilities, and credit card company charges, and for its pro rata share of all central reservation services payable to third parties, on the same basis as other hotels owned or operated by members of Operator.

[*Alternate Clause*]
NEUTRAL Operator shall process reservations for the Hotel through Operator's reservations system. Any charges payable to third parties in connection with the securing of reservations for the Hotel shall be an operating expense of the Hotel.

[*Alternate Clause*]
OWNER Owner's obligation to participate in the reservation system and related programs shall be conditioned upon the charges therefor being in an amount satisfactory to Owner. In the event the charges therefor are not satisfactory to Owner, Owner may elect not to participate in said system.

4.63 Joint Advertising and Sales Promotion

OPERATOR It is understood and agreed that where advertising or sales promotion for the Hotel is supplied in conjunction with advertising for other of Operator's owned, operated, or affiliated hotels or motels, the cost of such advertising or sales promotion shall be prorated to the Hotel and the other hotels and motels benefitted thereby on a per-room basis; provided, however, that within the total advertising and promotion budget for such fiscal year the cost of such joint advertising and sales promotion allocated to the Hotel shall not exceed one third (1/3) thereof. It is agreed that the Hotel is not benefitted unless its name and location appear in the advertising.

4.64 Operator's Regional Sales Offices

OPERATOR As a result of the growth of the number of hotels owned and/or operated by Operator, Operator is planning to establish regional sales offices in major metropolitan areas throughout the United States. Owner agrees to pay its pro rata share of the expenses of such regional sales offices to be allocated on a per-room basis in the same method as the joint advertising and sales promotion expenses are allocated. The expenses to be allocated to Owner shall not exceed one half of one percent of the Gross Operating Income of the Hotel in any one fiscal year and the per-room charge shall not include any profit for Operator.

4.65 Operator's Credit Card System

NEUTRAL Operator may, from time to time, at its sole discretion implement a charge card system for the convenience of guests and for the promotion of Operator's Hotels. At any time when such a charge card system is in effect, Operator shall make such system available to the Hotel, and Owner hereby authorizes Operator to accept such charge card and all other charge or credit cards designated by Operator for all Hotel charges authorized in accordance with Operator's credit card billing policies, as they may be amended from time to time. Operator shall retain the right at any time during the term of this Agreement to discontinue utilization of its charge card system.

4.66 Operator's Logotype and Symbols

OPERATOR Owner acknowledges that the Hotel's communications plan must be in accordance with Operator's sales, advertising, and public relations philosophies and must adhere to Oper-

ator's corporate identity requirements. In furtherance thereof, Owner acknowledges that Operator's logotype shall be the only logotype or symbol used to identify the Hotel.

4.67 Public Statements by Owner and Operator

NEUTRAL Owner and Operator shall coordinate with one another on all public statements, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this Agreement and/or the performance by either of them of their respective obligations hereunder.

NOTE: Many management contracts are confidential and the terms cannot be released by either party.

4.68 Operator to Provide Centralized Group Services

NEUTRAL Operator may, at the request of Owner and with Owner's approval in each instance, cause its affiliates or subsidiary companies to provide for the Hotel and its guests the full benefit of any reservation system hereafter established by Operator and its affiliates and, with Owner's approval, may cause any such companies to so provide such aspects of any accounting services or other group benefits and services as are made available generally to properties managed by Operator, all of which are collectively referred to herein as "Centralized Services." Owner hereby agrees that the Hotel may participate in all such Centralized Services on the terms and conditions hereinafter specified.

4.69 Cost of Group Services

NEUTRAL Operator shall not charge any profit for group services but shall be entitled to reimbursement for the cost of those specific services elected by Owner to be performed centrally and for the property's pro rata share of all costs and expenses incurred in connection with the rendition of group advertising, business promotion, and reservations services, allocated on the same basis as allocated to other properties owned or operated by Operator.

[Alternate Clause]
NEUTRAL Operator's affiliated or subsidiary companies that provide Centralized Services shall be entitled to be reimbursed for the Hotel's share of the total costs incurred in providing such services on a system-wide basis to hotels and motor inns owned or managed by Operator or its affiliates or subsidiaries. Such costs may include, without limitation, salaries (including payroll taxes and employee benefits) of employees and officers of Operator and its affiliated and subsidiary companies, costs of all equipment employed in the rendition of such services, and a reasonable charge for overhead that does not include any profit. The Hotel's share of said costs shall be determined in an equitable manner by Operator as certified by Operator's chief financial officer taking into account, to the extent possible, differing cost factors relating to the individual properties covered. The Hotel's costs shall be an operating expense of the Hotel.

[Optional Additional Clause]
OWNER Each time that Operator shall charge the operation of the Hotel for its pro rata share of Allocable Chain Expense for any period, it shall furnish to Owner a statement in sufficient detail to provide Owner with data supporting such charge. Owner may, in connection with any such statement for any period, cause an audit to be made of the books and records of Operator and its affiliates relating to the data furnished in such statement, including, without limitation, the Chain Expense and Allocable Chain Expense incurred during such period in the average number of key guestrooms during such period in hotels opened to the public and situated in the United States and operated by Operator or its affiliates.

[Optional Additional Clause] If Operator shall at any time institute major changes in the character or cost of its Group Services, the increased costs shall not be charged to Owner unless those changes have been implemented and the costs thereof allocated among at least two thirds (2/3) of the other hotels Managed by Operator in which Owner has no equity interest.

OWNER

4.70 Emergencies

NEUTRAL In the event that any circumstance shall occur that Operator reasonably and in good faith judges to be an emergency threatening the safety of persons or property (an "Emergency"), then Operator shall take such action and shall cause such things to be done as Operator reasonably and in good faith believes necessary. Operator shall inform Owner of any and all Emergencies as soon as practicable. If practicable, Operator shall obtain Owner's prior approval of any action in response to an Emergency.

4.71 Taxes and Assessments

OWNER Operator shall obtain bills for real estate and personal property taxes, improvement assessments, and other like charges that are or may become liens against the Hotel and recommend to Owner payment thereof or appeal therefrom. Operator annually shall review and submit all real estate and personal property taxes and all assessments affecting the property to Owner and shall file all personal property tax returns.

Section 5 MANAGEMENT FEES

5.1 Management Fees—General

NEUTRAL As consideration for the services to be rendered by Manager as set forth in this Agreement, Owner agrees to pay to Manager a basic management fee (the "Basic Fee"), an incentive fee (the "Incentive Fee"), and an accounting fee (the "Accounting Fee"), each to be determined and paid in accordance with the terms set out herein during each Operating Year of the Operating Term (and, unless otherwise provided, proportionately for a fraction of an Operating Year).

5.2 Amount of Management Fees—Basic Fee

NEUTRAL Commencing on the Effective Date, Owner shall pay Operator a Basic Management Fee equal to five percent (5%) of the Gross Revenues of the Hotel. The Basic Management Fee shall be calculated for each Monthly Accounting Period during the Operating Term and three percent (3%) shall be payable by Operator to itself out of the Operating Accounts (as defined herein) prior to any distributions to Owner and prior to payment of any mortgage Indebtedness or obligations under any Equipment Leases, the remaining two percent (2%) being subordinated to the payment of principal and interest on the initial permanent or take-out loan on the Hotel, accrued without interest, and repaid.

5.3 Amount of Management Fees—Incentive Fee

NEUTRAL Commencing on the Effective Date, Owner shall pay Operator an Incentive Management Fee equal to fifteen percent (15%) of:

- A. The annual Gross Operating Profit, less (i) annual ad valorem taxes, (ii) property insurance, (iii) the amounts paid into the Replacement Fund, and (iv) Nine Hundred Thousand Dollars (\$900,000) (hereinafter call "Net Cash Flow"). In the event the hotel is refinanced, Net Cash Flow shall be adjusted by the difference

between Nine Hundred Thousand Dollars (\$900,000) and the then actual annual principal and interest payments.

- B. Sale or refinancing proceeds in excess of Eight Million Five Hundred Thousand Dollars (\$8,500,000), including the distribution of funds related to the Replacement Fund and initial Reserve Fund.

NOTE: If the incentive fee is based on profits, then the method used to calculate profits should be clearly defined.

[Alternate Clause] The payment of Incentive Management Fees shall be made only to the extent of Cash Flow during such fiscal year. In any year in which Cash Flow is not sufficient to pay Operator the Incentive Management Fee, such unpaid Incentive Management Fee shall accrue and be paid from Cash Flow available in later years until such time as all accrued and unpaid Incentive Fees have been paid.

5.4 Payment of Management Fees

NEUTRAL On or before the twenty-fifth (25th) day following the expiration of each three (3) -month period of the Operating Term, Operator shall receive out of the Operating Account its Incentive Fee for the said three (3) -month period just ended. The Incentive Fee for each three (3) -month period subsequent to the prior three (3) -month period or periods of each Operating Year hereof shall be equal to the excess of the Incentive Fee, calculated on a cumulative basis from the commencement of the then current Operating Year to the end of such three (3) -month period in respect of which the Incentive Fee is being paid, over the aggregate of the Incentive Fee theretofore paid in respect of such Operating Year. To the extent that there may be insufficient funds in the Operating Account for such payment, Owner shall pay to Operator forthwith, on demand, such Incentive Fee. To the extent the cumulative Incentive Fee paid to Operator in any then current Operating Year exceeds, at any time, the actual cumulative amount of Incentive Fee to which Operator is entitled, Operator shall promptly refund the excess to Owner.

NOTE: The incentive fee can also be paid on a monthly basis.

5.5 Disputes Over Management Fees

OWNER If Owner questions any of the amounts or computations for any period (a) as shown by the Annual Statement of Operator's Fee, or (b) in determining Net Distributable Cash, or (c) as shown in statements submitted, and if Owner and Operator are unable to agree thereon, the matter in dispute shall be submitted for a binding decision by a Certified Public Accountant selected by the parties from the following list *[omitted]* in the order listed, subject only to their availability and to their independence, at the time, with reference to Owner, Operator or any affiliate or either:

[list parties]

Any expenses incurred in connection with such a resolution shall be treated as an expense of the Hotel. Owner shall be conclusively deemed to have accepted the accuracy and correctness of each Annual Statement of Operator's Fees unless Owner notifies Operator that Owner questions specific items therein within ninety (90) days after the later of its receipt by Owner or discovery of facts not reasonably in Owner's knowledge at the time it was received, but in any event not later than one (1) year from the date of the report.

5.6 Management Fee Definitions

NEUTRAL The term "Gross Income" shall mean all revenues, sales, or income of any kind, including service fees, resulting from the operation of the Hotel and over which Operator has any direct or indirect responsibility, including, but not limited to the following:

A. Rental of rooms (excluding sales tax, hotel tax, and any other tax relating to room rental);

B. Rentals and other payments from licenses, sublessees, concessionaires, and others occupying space or rendering services at the Hotel (but not including the gross receipts of such licensees, sublessees, concessionaires, or others);

C. Food and beverage sales (excluding sales taxes and gratuities) from meeting rooms, restaurants, bars, and/or room service, if such services are conducted by Operator;

D. Subsidy payments;

E. Proceeds of use and occupancy insurance received or business interruption insurance payments (after deducting therefrom necessary expenses in connection with the adjustment or collection thereof); and

F. Any other form of income, from any source whatsoever, that is directly attributable to the Hotel, but not including the proceeds of any financing or refinancing, casualty or liability insurance proceeds, or condemnation proceeds.

The following amounts shall not be included in determining Gross Income:

A. Gratuities or payments in the nature of gratuities that the Owner is obligated to pay over to employees;

B. Sums and credits received in settlement for loss, theft, or damage to property unless in excess of the cost of settlement of such loss, theft, or damage to property;

C. Excise, sales, or use taxes or similar charges that are required by law to be collected directly from patrons or guests or as part of the sale price of any goods or services or displays, and that must be remitted to governmental authorities; and

D. Credits or refunds to guests not previously deducted.

NOTE: The contract should contain specific definitions for all accounting terms used that are not clearly defined in *The Uniform System of Accounts for Hotels* or for which the parties require a modified definition.

[Alternate Clause] Gross Operating Profit for the Hotel for any period shall mean and refer to Gross Revenues of the Hotel for such period, less the following expenses for such period incurred or authorized by Operator in operating the Hotel:

NEUTRAL

A. All wages and salaries of all employees (exclusive of salaries paid to corporate executive personnel of Operator, but including such wages, salaries, and other compensation chargeable to such employees used by Operator in connection with the operation and management of the Hotel) and all other payroll costs, fringe benefits, employer taxes, and similar charges related to employment; provided, however, that if any employee is also employed elsewhere by Operator, such compensation shall be equitably prorated among the Hotel and such other properties where such employee also is employed.

B. All departmental, administrative, and general expenses relating to the Hotel, including, without limitation, payments to the Marketing Fund and other advertising, promotional, and entertainment expenses; commissions; and the cost of heat, light, power, and other utilities.

C. All costs and expenses of routine maintenance, repairs, and minor alterations to keep the Hotel in good operating condition, which under generally accepted accounting principles are expensed currently rather than capitalized.

D. All license fees and permits relating to the Hotel or the operation thereof.

E. All amounts due under service contracts relating to the Hotel or the operation thereof.

F. The cost of all Consumable Supplies consumed in the operation of the Hotel.

G. A reserve for uncollectible accounts receivable in a reasonable amount determined by Operator and adjusted from time to time to reflect actual experience.

H. All costs and fees of accountants, attorneys, and other third parties who perform services required or permitted hereunder, which under generally accepted accounting principles are expensed currently rather than capitalized.

I. All costs and fees of technical consultants and operational experts for technical or specialized services in connection with non-routine hotel work or matters that under generally accepted accounting principles are expensed currently rather than capitalized.

J. The Base Management Fee (as hereinafter defined).

K. All franchise royalties and other fees or expenses paid or payable by Operator under and pursuant to the Franchise Agreement pursuant to which the Hotel is operated or under or in connection with any renewal or extension thereof.

Section 6 EMPLOYMENT PRACTICES

6.1 Operator's Personnel Duties

NEUTRAL Operator shall select, employ, promote, terminate where appropriate, supervise, direct, train, and assign the duties of all personnel that Operator reasonably determines to be necessary or appropriate for the operation of the Hotel (collectively, the "Hotel Employees"). Operator shall employ its best efforts and exercise reasonable care to select qualified, competent, and trustworthy employees. To the extent possible, Operator shall use local labor in the operation of the Hotel.

6.2 Employee Training

OWNER Operator shall provide appropriate training for all Hotel Employees. Operator also shall cause the appropriate employees to attend any program required by Franchisor pursuant to the Franchise Agreement. The costs of attending any such meetings or seminars, including the cost of tourist-class travel, accommodations, and food, shall be an expense of the Hotel, but shall not unreasonably exceed the amount provided for such purpose in the Operating Budget.

6.3 Employee Conduct

OWNER Operator shall require each Hotel Employee to be at all times (to the greatest extent possible within the scope of his duties) clean, neat, well-groomed, well-postured, unobtrusive, and dignified and to conduct himself at all times and in all contacts with guests, patrons, other Hotel Employees, and members of the public in a friendly, cooperative, helpful, and responsive manner and otherwise in such a way as to contribute to the comfort and goodwill of the guests and patrons of the Hotel and other Hotel Employees and to enhance the reputation of the Hotel generally. Operator shall employ its best efforts to create and maintain among the Hotel Employees a business-like but congenial atmosphere, a spirit of cooperation and goodwill, and a sense of pride associated with providing quality products and services and performing their jobs well.

NOTE: The preceding clause asserts the Owner's interest in maintaining top quality employees. The attitude and conduct of employees is an important factor in the success of a hotel venture.

6.4 Employees Are Employed by Owner

OPERATOR Each Hotel Employee shall be the employee of Owner and not of Operator, and every person performing services in connection with this Agreement, including any agent or employee of Operator or its Affiliates or any agent or employee of Owner hired by Operator, shall be acting as the agent of Owner.

[Alternate Clause]
NEUTRAL The General Manager (or other such Hotel Employees as designated by Operator) shall be an employee of Operator, and Owner shall reimburse Operator monthly for the General Manager's salary and fringe benefits.

[Alternate Clause]
OPERATOR All Hotel Employees and agents shall be on Owner's payroll. Manager shall not be liable to such employees for their wages or compensation.

6.5 Operator to Negotiate Labor Contracts

NEUTRAL Operator will negotiate on Owner's behalf, after consulting with Owner or, if Owner is not available, with Owner's attorney, with any labor union lawfully entitled to represent the Hotel Employees. However, Owner, in its discretion, may participate in such negotiations. No collective bargaining agreement or labor contract resulting from such negotiations shall be valid unless executed by Owner.

[Optional Additional Clause]
NEUTRAL Owner's approval will not be withheld in any case if such contract is consistent with similar agreements commonly in effect in the area.

NOTE: When using the preceding clause, Owner should verify Operator's ability to conduct labor negotiations prior to signing the management contract.

6.6 Limits on Employee Compensation

OWNER Subject to the restrictions imposed by the Operating Budget, Operator shall set the salaries and fringe benefits of all Hotel Employees. Operator shall not permit such compensation to exceed by a substantial amount the compensation paid to employees with similar skills and responsibilities at comparable hotels in and about the area.

NOTE: The annual plan should contain a wage survey of area lodging facilities.

[Alternate Clause]
OWNER No Hotel Employee shall receive compensation in excess of Sixty Thousand Dollars (\$60,000) per year without Owner's prior approval of the pay rate.

NOTE: The preceding clause provides ownership control over employee compensation. The \$60,000 base should be adjusted to reflect local conditions.

[Alternate Clause] In determining employee salaries, Operator may pay such incentive salaries and bonuses to department heads and sales staff as Operator may deem appropriate, provided that such payments are pursuant to an incentive compensation plan that has been previously approved by Owner.

6.7 Limits on Employment Contracts

OWNER Operator shall not enter into, institute, or grant employee benefits or employment agreements with respect to Hotel Employees that (a) require more than thirty (30) days' notice of cancellation, (b) require more than a thirty (30) -day grace period for termination of funding or participation, or (c) require a penalty or extraordinary payment on cancellation or any such termination, except those benefits or agreements required pursuant to union contracts, as the same may be changed from time to time to comply with applicable laws.

6.8 Selection of General Manager

OWNER The selection of the General Manager, as well as his salary, shall be subject to Owner's prior written approval, which shall not be unreasonably withheld.

[Alternate Clause] The General Manager shall be selected by Operator, but his employment, termination, or transfer to another Hotel shall be subject to the prior approval of Owner. In the event that the General Manager shall resign or be terminated or shall be absent from the Hotel for any period in excess of ordinary vacations and leave time, Operator shall replace the General Manager with a qualified person as soon as reasonably practicable.

6.9 Replacement of General Manager

OWNER If the General Manager shall not prove satisfactory to Owner, Owner may, in writing, request Operator to discharge the General Manager, setting forth therein the reasons for such action. If the grounds for removal set forth by Owner shall be sufficient to constitute a violation of the terms of this Agreement, Operator must discharge the General Manager.

[Alternate Clause] Operator may change or replace the General Manager of the Hotel at any time. The decision in regard to any change or replacement shall be at the sole discretion of Operator.

6.10 Owner May Not Rehire General Manager

OPERATOR Owner agrees that if the General Manager of the Hotel leaves the employ of Operator for any reason, Owner shall not hire the General Manager in any capacity for at least one (1) year following such termination.

NOTE: The preceding clause prevents the Owner from terminating the management company and retaining the General Manager, a practice that can sometimes be tempting from the Owner's point of view. Time periods for such clauses range from one to three years.

6.11 Salary for General Manager

OWNER Owner shall be given prior written notification, subject to its approval, of the appointment and total compensation package of the General Manager. Owner's approval of such compensation package shall not be unreasonably withheld or delayed.

6.12 Fringe Benefits for General Manager

OPERATOR The General Manager is entitled to annual holidays as well as reasonable time off from regular duties for the purpose of attending professional development seminars, managers' meetings, and industry conferences and conventions, and for the purpose of attending to such other business as may be reasonable in the hotel industry. Owner shall pay all reasonable expenses of the employee in attending such meetings, seminars, conferences, and conventions.

6.13 Owner May Not Give Orders to Hotel Employees

OPERATOR Owner may at any time consult or communicate with Operator regarding any of the Hotel Employees, but Owner shall not give orders to or otherwise interfere in the day-to-day activities of the Hotel Employees.

Section 7 TRADE NAMES

7.1 Use of Trade Name

OPERATOR In its operation of the Hotel, Operator may utilize trade names or trademarks that, in whole or in part, may be the same as or similar to the trade names or trademarks now or hereafter used by it or other members of Operator's Group, in connection with the operation of other hotels. The exclusive rights to the use of the trade names and trademarks will belong to Operator, and are not in any way to be considered appurtenant to the Hotel, irrespective of whether any of the trade names and trademarks are used by Operator for the first time at the Hotel or elsewhere. Upon the termination of this Agreement for any reason, all further rights to use the trade names and trademarks shall remain with Operator, and neither Owner nor any other occupant of the Hotel shall have any rights thereto.

[Alternate Clause] After termination of this Agreement, neither Owner nor any other owner or operator of the Hotel shall have the right to use the trade name or any trademarks, emblems, insignia, slogans, or distinguishing characteristics in connection with the operation of the Hotel or in any other manner.

[Alternate Clause] OPERATOR Operator has registered the name, trade name, trademark, and service mark of certain names for restaurants that are used in hotels owned and/or operated by Operator. Owner agrees that any such name, trade name, trademark, or service mark registered by Operator shall remain the exclusive property of Operator; provided, however, that Owner shall have the right to approve the name of any restaurants in the Hotel.

Section 8 SUCCESSORS AND ASSIGNS

8.1 Assignment by Operator

OWNER This Agreement, or any rights and duties expressed herein, shall not be assigned or transferred by Operator without the prior written consent of Owner. Transfer or issuance of the stock of Operator resulting in any change of control thereof shall be deemed a transfer of this Agreement by Operator.

[Alternate Clause] OPERATOR Operator, without consent of Owner, shall have the right to assign this Agreement to any successor or assignee of Operator that may result from any merger, consolidation, or

reorganization, or to any corporation or firm, fifty percent (50%) or more of whose voting stock or control is owned directly or indirectly by Operator, or to another corporation that shall acquire all or substantially all of the business and assets of Operator.

[Alternate Clause]
OPERATOR Operator shall have the right to assign its rights and obligations under this Agreement, or any portion thereof or interest therein, to any person or entity that acquires all or substantially all of the assets of Operator, or the partnership interest of any partner of Operator, without the consent of Owner; provided, however, that any such assignee shall expressly assume in writing the obligations of Operator (or the obligations, if any, of such former partner or Operator) hereunder, in which event the liability of Operator (or of such former partner of Operator, as the case may be) hereunder shall terminate. Operator shall not have the right otherwise to assign its rights and obligations under this Agreement, except with the prior consent of Owner, which consent may not be unreasonably withheld. It is understood and agreed that any approval given by Owner to any assignment shall not be deemed a waiver of the covenant herein contained against assignment in any subsequent case. Any assignee who succeeds to the interest of Operator hereunder (or to the interest of an assignee of Operator hereunder) shall be deemed to be Operator hereunder for all purposes.

[Optional Additional Clause]
OWNER Any consent granted by Owner to any such assignment shall not be deemed a waiver against assignment in any subsequent case.

8.2 Assignment by Owner

OWNER Owner shall have the absolute right to assign this Agreement to any person or entity acquiring all of Owner's right, title, and interest in and to the Hotel without the consent of Operator, provided, however, that any such assignee shall expressly assume in writing the obligations of Owner hereunder in which event the liability of Owner shall terminate hereunder and the assignee who succeeds to the interest of Owner hereunder (or to the interest of an assignee of Owner hereunder) shall be deemed to be Owner hereunder for all purposes.

[Alternate Clause]
OWNER Owner can sell or lease the property provided that the purchaser expressly assumes in writing all of the Owner's obligations under this Agreement.

8.3 Acceptable Purchaser

OPERATOR Operator shall not terminate this Agreement if the proposed purchaser of the property from Owner is an "Acceptable Purchaser," which shall mean one that has (a) total assets of at least Twenty Million Dollars (\$20,000,000) in 1989 dollars, (b) a financial net worth at least equal to twenty-five percent (25%) of the then fair market value of the Hotel (or such proportion if less than all of the Hotel is to be sold), (c) a reputation in the business world generally at least equal to that of Owner and its constituent transferors, (d) no significant part of its business in competition with Operator as a national or regional hotel chain (whether or not in direct competition with the Hotel), and (e) an agreement with Owner to execute at the closing of such proposed sale a document in writing assuming all of the Owner's obligations pursuant to this Management Agreement.

[Alternate Clause]
OWNER If Owner's interest in the Hotel is contracted to be sold or leased, this Agreement shall remain in full force and effect and binding upon Operator, except that Operator shall have the right to terminate this Agreement effective upon transfer of ownership of the Hotel if the purchaser or lessee is: (a) in the reasonable and good faith opinion of Operator, not of sufficient net worth to comply with the obligations reasonably anticipated at such time to be incurred by Owner hereunder, (b) a party who is generally reputed to be controlled by

persons known to be engaged in criminal activities or an associate or agent of criminals, or (c) not an operator of hotels or motels. Operator shall notify Owner of its election to terminate this Agreement within fifteen (15) days of receipt by Operator of notice of any proposed sale of the Hotel. Operator shall not be entitled to exercise the right of termination if Owner shall have notified Operator in writing of the identity of the proposed purchaser or lessee with reasonable supporting background information pertaining thereto, and within fifteen (15) days of such notification, either (a) Operator does not signify in writing to Owner the manner in which any of such purchaser(s) or lessee(s) fall within any of the categories listed hereinabove, or (b) if, having signified as aforesaid, such objections are thereafter resolved to Operator's reasonable satisfaction, or if not so resolved, determined not to be valid pursuant to an arbitration proceeding.

[Alternate Clause]
OPERATOR Owner and Operator recognize that certain Operator Affiliates are now engaged, and will in the future be engaged, in various gaming or casino business activities that are strictly regulated by governmental authorities, and that, by virtue of applicable licensing requirements and other regulations, such activities may be adversely affected by the character and reputation of persons with whom Operator does business. Accordingly, Owner agrees to notify Operator in writing of the identity of any of the following persons or entities together, in each case, with such additional information concerning any such person or entity, and the officers and owners of such entity, as Operator may reasonably request:

- A.** Any proposed assignee of this Agreement in connection with any contemplated sale or lease of the Hotel;
- B.** Any proposed assignee/transferee of a controlling interest in Owner; or
- C.** Any proposed purchaser of a limited partnership interest in Owner in connection with the original offering of such interests or any proposed transferee of any such interest.

Operator shall have a period of ninety (90) days after receipt of such information to investigate the backgrounds and reputations of such persons or entities and shall have the right to disapprove any of the proposed transactions on the basis that it may jeopardize its gaming or casino business activities. Owner and Operator acknowledge the discretionary nature of the governmental regulations and licensing requirements imposed upon Operator Affiliates and agree that Operator shall have the widest possible discretion in withholding its approval if it determines in good faith that any proposed assignment of this Agreement is likely to have an adverse impact or would otherwise jeopardize or delay any present or future gaming or casino business venture (including, without limitation, any approvals, temporary or permanent licensing requirements, or other regulatory procedures in connection therewith) engaged in by any Operator Affiliates.

[Optional Additional Clause]
OPERATOR Any consent granted by Operator to any such sale, lease, or assignment shall not be deemed a waiver against sale, lease, or assignment in any subsequent case.

8.4 Right of First Refusal

OPERATOR Owner shall extend to Operator a first right to purchase the Hotel in the event that Owner decides to sell the Hotel, or any part thereof. Owner shall extend to Operator in writing the opportunity to buy the Hotel upon certain terms and conditions (the "Offer"). Operator shall have thirty (30) days from its receipt of the Offer to accept same. Operator's failure to accept the Offer within such thirty (30) -day period shall be deemed Operator's refusal to purchase the Hotel on the terms and conditions offered, and Owner shall have the right to sell the Hotel upon the same terms and conditions con-

tained in the Offer, or upon terms more favorable to Owner, provided that a contract reflecting such transaction is executed by Owner and the new Purchaser within nine (9) months of the date Operator declines the Offer. In the event no contract has been executed within such nine (9) -month period, or if a contract has been executed during such period but such contract later fails, Owner must resubmit to Operator a written offer to sell the hotel, or any part thereof and, Operator shall again have thirty (30) days to accept or decline such offer.

8.5 Future Owners and Operators

NEUTRAL All references to "Owner" and "Operator" throughout this Agreement shall include and apply to their respective authorized successors and assigns; provided, however, that no assignment of this Agreement shall relieve the assignor of its obligations and liabilities under this Agreement.

8.6 Assignment as Collateral Security

OWNER Nothing herein contained shall prevent Owner from assigning this Agreement to any bank, insurance company, or other financial institution as collateral security to any first mortgage on the property.

8.7 Subordination to Mortgages

OWNER It is mutually agreed that this Agreement is subject and subordinate to the lien of all and any mortgages (the term "Mortgages" shall include both construction and permanent financing as well as secondary or junior financings and personal property financing and shall include deeds of trust and similar security instruments) that may now or hereafter encumber or otherwise affect the Hotel and to all and any renewals, extensions, modifications, recastings, or refinancings thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgage, trustee, beneficiary, or secured party. However, as confirmation of such subordination, Operator shall, at Owner's request, promptly execute any requisite or appropriate certificate or other documents.

Operator agrees to negotiate in good faith with Owner with respect to any modifications to this Agreement or any ancillary agreement that may reasonably be required or requested by any such construction or permanent institutional first mortgagee. Operator agrees that the operation is expressly conditioned upon the approval hereof by such mortgagee and the satisfaction by Owner and Operator of such additional conditions and requirements as may be imposed by such construction or permanent institutional first mortgagee.

It is agreed that in the event any party shall succeed to the interest of Owner through foreclosure or through a deed in lieu thereof, no liability or outstanding obligation of Owner to Operator that arose prior to such foreclosure or deed shall bind, obligate, or become a liability of such party, but Owner shall remain liable therefore.

If requested to do so by any mortgagee, Operator shall furnish to such mortgagee a copy of any financial report, statement, schedule, or plan required under this Agreement, to be submitted by Operator to Owner.

A copy of all notices of default under this Agreement shall be provided to any mortgagee of the Hotel, and such mortgagees shall be given a reasonable opportunity to cure such default. In addition, upon the request of any mortgagee or of either party hereto, Owner and/or Operator shall provide for such requesting party or such mortgagee estoppel certificates that shall state that this Agreement is in full force and shall specify any known defaults, if any, thereunder. Operator shall certify to such mortgagee, and/or to

Owner, that all preconditions and the full effectiveness of the Agreement have been satisfied and that the Operating Term has commenced.

Section 9 CONDEMNATION, DAMAGE, OR DESTRUCTION

9.1 Partial Condemnation

NEUTRAL If only a part of the Hotel shall be taken or condemned and the taking or condemnation of such part does not make it unreasonable or imprudent, in Operator's reasonable opinion, to operate the remainder as a hotel of the same type and class as immediately preceding such taking or condemnation, this Agreement shall not terminate, but out of the award to Owner so much thereof as shall be reasonably necessary to repair any damage to the Hotel, or any part thereof, so as to render the Hotel a complete and satisfactory architectural unit as a hotel of the same type and class as immediately preceding the taking or condemnation, shall immediately be made available for this purpose, subject to the interests of any mortgagee; and the balance of the award, after deduction of the sum necessary for restoration, shall be distributed to the Owner.

In the event of a taking or condemnation of all or part of the Hotel for temporary use, this Agreement shall remain in full force and effect. Restoration, repairs, and alterations shall be commenced promptly after the termination of the taking or condemnation for temporary use and same shall be completed with diligence. Operator's fees shall be computed on the basis of actual Gross Income and Adjusted Gross Operating Profit.

To the extent that any of the provisions of this Article conflict with the terms of any mortgage or other secured financing covering the Hotel, the terms of such mortgage or other secured financing shall supersede the provisions herein.

9.2 Use of Award for Partial Condemnation

OPERATOR Any compensation or award received by Owner with respect to any taking of the property in partial condemnation shall be used first for any restoration, repair, replacement, or rebuilding required by Operator and, thereafter, any excess shall be divided between Owner and Operator in such proportion that Operator will receive twenty percent (20%) of that fraction of the excess determined by dividing the then-remaining number of years in the term of this Agreement (including partial years and assuming exercise of all options to renew) by the remaining number of years in the useful life of the Hotel (for Hotel purposes) prior to the taking.

9.3 Total Condemnation

OPERATOR If the whole of the Buildings and the Land shall be taken or condemned by reason of any eminent domain, condemnation, compulsory acquisition, or like proceeding by any competent authority for any public or quasi-public use or purpose, or if such a portion thereof shall be taken or condemned as to make it imprudent or unreasonable, in the reasonable opinion of Owner, to use the remaining portion as a hotel of the same type and class as immediately preceding such taking or condemnation, then, in either of such events, this Agreement shall terminate with respect to the Hotel as of thirty (30) days after written notice from Owner to Operator of Owner's decision to terminate this Agreement under this provision. Owner and Operator each shall have the right and authority, as to their respective interests in such hotel, to defend at their own expense against any such taking or condemnation or to sue for or appeal from any such award and, in the exercise of such right, to compromise and settle any such action or award solely as to their own interest in the Hotel, on such terms as they may deem advisable. Operator shall continue to manage

the Hotel and to perform all of the duties required hereunder until such time as this Agreement terminates as herein provided.

9.4 Award for Total Condemnation

OWNER If, in Operator's reasonable opinion, it is not possible to use the remaining portion of the Hotel as a hotel of the type and class immediately preceding such taking or condemnation, then Operator may terminate this Agreement as of the date of such event. Operator shall not be entitled to participate in any award of such taking or condemnation.

[Alternate Clause]
OWNER All proceeds of any condemnation shall belong to Owner, except to the extent that separate award is made to Operator. Operator shall have the right to seek an award in an eminent domain, condemnation, compulsory acquisition, or like proceeding only if such action by Operator is not likely to, and does not, in Owner's opinion, prejudice any of Owner's rights or diminish or adversely affect any award or proceeds sought by or awarded to Owner.

[Alternate Clause]
OWNER Owner shall receive the whole of any award for any complete expropriation; provided, however, that Operator may separately claim, prove, and receive an award for any separately compensable rights of Operator taken in such expropriation only if Operator shows, to Owner's satisfaction, that such claim may be made separately from Owner's claim, and that any award would not adversely affect the timing or amount of the award to which Owner is entitled.

[Alternate Clause]
OPERATOR Operator shall have the right, during the first ten (10) full Fiscal Years of the Operating Term, in the case of either total or partial taking or condemnation, either to institute or to intervene in any available administrative proceeding or judicial action intended to determine just compensation for such taking, for the purpose of representing Operator's compensable interest in any award thereof arising from this Agreement and more specifically from Operator's right of quiet enjoyment pursuant to this Agreement. Such award, after first paying any amounts due any mortgagee and all borrowings of the joint venture owning the property and returning Owner's initial capital contribution to Owner, shall be apportioned between the parties hereto in consideration, without limitation, of the following factors: (a) recoupment by Owner of its investment, (b) return on investment to date, (c) actual loss of income, in the event of partial taking or condemnation, (d) loss of reasonably anticipated future income, in the event of total taking, (e) length of unexpired term and any renewals thereof, and/or (f) proportion that Operator's fees under this Agreement bear to return to Owner after Operator fees. Any award that does not recognize such separate and compensable interest in Operator shall be the subject of arbitration between the parties hereto pursuant to the provisions of this Agreement. Thereafter, Operator may institute a proceeding and shall be entitled only to any separate award made to Operator that does not reduce the award otherwise payable to Owner.

[Alternate Clause]
OPERATOR In the event that this Agreement terminates owing to a full condemnation, the aggregate of the awards or other proceeds of the taking (including any interest included in or paid with respect to such award or proceeds) shall be paid to Owner; provided, however, that if such awards or other proceeds of the taking shall represent loss of income to Operator, Operator shall be entitled to a fair and equitable share of such awards or other proceeds to the extent of such loss of income.

9.5 Taking for Temporary Use

NEUTRAL In the event of a taking of all or part of the Hotel for temporary use, this Agreement shall remain in full force and effect, and the following shall be applicable:

A. If the taking is for a period not extending beyond the Operating Term, the awards or other proceeds on account of the taking (including any interest included or paid with respect to such awards or proceeds) other than any portion of such awards or proceeds specifically identified as compensation for alterations or damages to the Hotel shall be included in Gross Revenue and Operating Profit for the Operating Year or Years in which received. When and if, during the Operating Term, the period of temporary use shall terminate, Owner shall make all such restorations, repairs, and alterations as shall be necessary to restore the Hotel to its condition prior to such taking for temporary use and shall complete the same with diligence.

B. If the taking is for a period extending beyond the Operating Term, the awards or other proceeds on account of the taking (including any interest included or paid with respect to such awards or proceeds) other than any portion of such awards or proceeds specifically identified as compensation for alterations or damages to the Hotel for the period of the taking up to the stated expiration of the Operating Term shall be included in determining Gross Revenue and Operating Profit for the Operating Year or Years in which received, and the remainder of such awards or other proceeds (including interest as aforesaid) shall be paid to Owner.

9.6 Owner's Options After Fire or Casualty

OWNER If the Buildings, Operating Equipment, or Furniture, Furnishings, and Equipment for the Hotel shall be damaged or destroyed to the extent of twenty-five percent (25%) or more of its replacement cost during the Operating Term by fire or other casualty, Owner shall have the right and option, upon notice served upon Operator within sixty (60) days after such fire or other casualty (or within ten (10) days after ascertaining the amount of such proceeds of insurance, if later), to either (a) replace and restore the Hotel to the condition that existed prior to such destruction and to have the full proceeds from the insurance thereon, in which case this Agreement shall continue in full force and effect, or (b) to terminate this Agreement as to the Hotel, provided that such notice of termination shall be voidable at the option of Operator and by written notice to Owner if, within one (1) year after such notice is given to Operator, Owner (or any affiliate of Owner) shall commence to repair, restore, rebuild, or replace the destroyed Buildings, Operating Equipment, or Furniture, Furnishings, and Equipment with the intent of operating the Hotel as a hotel, motel, or other transient lodging facility. In case of such termination by Owner, the amount of any Incentive Fee due to Operator under this Agreement shall be agreed upon mutually.

9.7 Termination for Total Destruction

NEUTRAL Owner shall be entitled to elect, by written notice given to Operator within ninety (90) days after a fire or other casualty, to terminate this Agreement, if one of the following conditions is met:

- A.** The Hotel is damaged or destroyed to such an extent that the cost of repairs or restoration exceeds, in Owner's determination, eighty-five percent (85%) of the full replacement cost (excluding excavations, footings, and foundations) of the Hotel; or
- B.** The major food and beverage facilities in the Hotel are rendered substantially unusable for their intended use during the last eighteen (18) months of the Operating Term; or
- C.** The percentage of the guestrooms in the Hotel referred to in column x shall be rendered unsuitable for use by guests as a result of any damage or destruction to the whole or any part of the Hotel when the Operating Term shall have no more than the number of years to run set forth in column y, as follows:

| <i>Percentage of Rooms Rendered Unusable</i> | <i>Years</i> |
|--|--------------|
| <i>x</i> | <i>y</i> |
| 55 | Five |
| 40 | Four |
| 30 | Three |
| 20 | Two |
| 10 | One |

[Alternate Clause] If the percentage of the guestrooms in the Hotel referred to in column *a* shall be rendered unsuitable for use by guests as a result of any damage or destruction to the whole or any part of the Hotel when the term of this Agreement shall have no more than the number of years to run that is set forth in column *b* below, as follows:

NEUTRAL

| <i>a</i> | <i>b</i> |
|----------|----------|
| 50 | Five |
| 40 | Four |
| 30 | Three |
| 20 | Two |
| 10 | One |

then Owner or Operator may terminate this Agreement within thirty (30) days after the occurrence of such damage or destruction by giving notice to the other party hereto irrespective of the insurance coverage applicable to said damage or destruction.

9.8 Uninsured Casualty

OWNER If the whole or any part of the Hotel shall be damaged or destroyed by any cause for which insurance coverage was not required to be maintained by Owner, and the cost of the Casualty Restoration with respect thereto shall exceed thirty percent (30%) of the replacement value of the Hotel, as determined by an independent licensed architect selected by Operator and Owner, then Owner may terminate this Agreement by providing written notice to Operator within thirty (30) days after the occurrence of such damage.

9.9 Payment to Operator for Casualty Termination

OPERATOR If all or any part of the Hotel is damaged or destroyed to such an extent that the estimated cost of the Casualty Restoration exceeds fifty percent (50%) of the total replacement cost (without deduction for depreciation) of the Hotel, then, if Owner reasonably concludes on the basis of the factors existing at the time of such casualty that it would be uneconomic to repair and restore the Hotel, Owner shall have the right to terminate this Agreement with respect to the Hotel upon payment to Operator of a termination fee equal to five (5) times the total Base Fee and Incentive Fee (without any accrual or limitation based on Cash Available for Incentive Fee) earned by Operator with respect to the Hotel for the most recent full Operating Year. Notwithstanding such termination, the Hotel shall remain subject to Operator's right of first refusal pursuant to this Agreement.

NOTE: The termination fee included in the above clause is higher than most such fees. Usually the fee is two or three times the management fee.

9.10 Payment to Operator During Restoration

OPERATOR At all times until operations of the Hotel are fully recommenced, Owner shall pay to Operator each month an amount equal to the average total monthly payments paid to Operator for the twelve (12) months preceding the appropriation (or such lesser actual period, if the

Hotel has been managed by Operator for less than twelve (12) months) but in no event an amount that exceeds the sum of Total Revenue and the proceeds of business interruption insurance after payment or provision for payment of all other operating expenses of the Hotel, including debt service on indebtedness permitted to be incurred pursuant to this Agreement and taxes for such month.

9.11 Operator's Response to Casualties, Accidents, and Claims

OWNER Operator shall promptly investigate all accidents and claims for damage relating to the ownership, operation, and maintenance of the Hotel and related facilities and any damage or destruction to the Hotel and related facilities. Operator shall report to Owner any such incident that is material, together, if applicable, with the estimated cost of repair thereof.

[Alternate Clause]
OWNER In the event of any damage or loss to the Hotel by fire or other casualty, Operator shall give immediate written notice thereof to Owner if the damage or loss involves more than Twenty-Five Thousand Dollars (\$25,000).

[Alternate Clause]
OWNER As agent for Owner, Operator shall promptly apply for the insurance covering such damage or loss, and in the Owner's name shall prosecute and negotiate for payment of such proceeds, employing counsel (to be selected by the Owner) if necessary for such purpose.

[Alternate Clause]
OWNER Operator shall prepare any and all reports required by any insurance company as a result of any such incident and shall submit to Owner the paperwork concerning any material incident for approval prior to submission to any such insurance company.

9.12 Restoration of Hotel

NEUTRAL If the Hotel, or any portion thereof, shall be damaged or destroyed at any time or times during the Operating Term by fire or any other casualty, the Owner, at no expense or risk to Operator, shall, using diligence and dispatch, repair, rebuild, or replace the same (such repairing, rebuilding, or replacing being herein referred to as "Restoration") so that after such Restoration the Hotel shall be substantially the same as prior to such damage or destruction, and all proceeds of insurance, other than business interruption insurance, shall be made available to the Owner for this purpose. Owner shall use its best efforts to obtain the consent of any Mortgagee of the Hotel to make insurance proceeds available for application to such Restoration, and if such Mortgagee consents, Operator shall have the right to ensure that such proceeds of insurance shall be applied to such Restoration. If the Owner fails to undertake such Restoration within one hundred twenty (120) days after a fire or other casualty that affects a material portion of the Hotel, or fails to complete the same diligently, Operator may, at its option, terminate this Agreement by written notice to Owner, effective as of the date received by Owner. Operator shall supervise all aspects of the restoration at no cost to Owner, provided, however, that if the proceeds of insurance provide for a supervisory fee, such fee shall be paid to Operator.

Section 10 TERMINATION RIGHTS

10.1 Operator's Breach of Contract

OWNER Owner may terminate this agreement if Operator shall have committed a material breach of this Agreement, or otherwise failed to observe or perform any material covenant or provision of this Agreement, and Owner shall have served written notice upon Operator

setting forth the details of such alleged breach, and Operator shall not, within thirty (30) days after the mailing of such notice, have cured such breach to the reasonable satisfaction of Owner, or if such breach is of a nature that it cannot be cured within such thirty (30) -day period, Operator shall not within such thirty (30) -day period have commenced and at all times thereafter have diligently proceeded with all acts required to cure such breach and does not cure such breach to the reasonable satisfaction of Owner within sixty (60) days. Any such termination under this subdivision shall be without prejudice, however, to any and all other rights and remedies that the Owner may have for breach of this Agreement by the Manager.

[Alternate Clause] In the event that Operator violates any of its covenants and agreements herein, or fails to perform any of its obligations, undertakings, or conditions as set forth in this Agreement, and shall not cure such failure within thirty (30) days after written notice from Owner, Owner may terminate this Agreement upon ten (10) days' prior written notice to Operator.

10.2 Operator's Willful Misconduct or Fraud

OWNER Owner may terminate this Agreement if Operator shall engage in any act of willful misconduct or fraud with respect to, or the misappropriation or diversion of funds or property of, Owner for Operator's own benefit.

10.3 Operator's Bankruptcy

OWNER If Operator shall file in any court, pursuant to any statute of either the United States or any state, a petition in bankruptcy or insolvency, or for a reorganization, or for the appointment of a receiver or trustee of all or a substantial portion of Operator's property, or if Operator makes an assignment for or petitions for or enters into an arrangement for the benefit of creditors, or if a petition seeking relief under the bankruptcy laws is filed against Operator that is not discharged within ninety (90) days thereafter, then Owner may terminate this Agreement upon written notice to Operator.

[Alternate Clause] If Operator shall file a voluntary petition for reorganization or for any arrangement under any provisions of any bankruptcy code now or hereafter enacted, Owner may terminate this Agreement upon written notice to the party filing such petition.

[Alternate Clause] If a petition shall be filed by any third party for the reorganization of Operator under any provisions of any bankruptcy code now or hereafter enacted and such proceeding is not dismissed within ninety (90) days after such filing, then Owner may terminate this Agreement upon written notice to the party against whom such petition was filed.

10.4 Appointment of a Receiver for Operator

OWNER If a receiver, trustee in involuntary bankruptcy, or other similar officer shall be appointed to take care of all or a substantial portion of the property of Operator, then Owner may terminate this Agreement upon written notice to the party for whom such official has been accepted.

10.5 Operator's Assignment for Creditors

OWNER If Operator makes a general assignment for the benefit of its creditors, Owner may terminate this Agreement upon written notice to the party making such assignment.

10.6 Operator Causes Licenses to Be Revoked

OWNER If the property's licenses or permits, including, but not limited to, occupancy, food, and alcoholic beverage service, are revoked because of the wrongful acts of Operator, Owner may terminate this Agreement upon written notice to Operator.

10.7 Operator Causes Franchise to Be Terminated

OWNER If the Franchise is terminated as a result of the operation of the Hotel being in non-compliance with the Franchise requirements, Owner may terminate this Agreement upon written notice to Operator, unless such termination is due to Owner's failure to fund sums to maintain the Franchise in good standing.

10.8 Operator Not Active in Hotel Business

OWNER Operator shall be deemed to have ceased to be actively engaged in the business of operating and managing hotels and inns if less than sixty-six and two thirds percent (66 $\frac{2}{3}$ %) of the total gross income of Operator and its wholly-owned Affiliates or wholly-owned Related Entities shall be derived from the hotel, inn, catering, restaurant, beverage, and related businesses.

[Alternate Clause]
OWNER If Operator and other members of its chain collectively shall cease to own, lease, or manage at least ten (10) hotels in the continental United States, Operator shall be deemed to have ceased to be actively engaged in the business of operating and managing hotels and inns.

10.9 Operator Fails to Provide Chain Services

OWNER Owner may terminate this Agreement if Operator shall fail to maintain, at Operator's expense, at all times during the Operating Term, a toll-free operator-tended inter-hotel reservation system pursuant to which persons located anywhere in the United States can, without long distance charge to such persons, make reservations by telephone at the Hotel.

10.10 Acquisition of Operator by Criminal

OWNER Owner may terminate this Agreement if Operator shall be acquired or controlled by a party who is generally reported to be controlled by persons known to be engaged in criminal activities or an associate of criminals.

10.11 Termination of Operator for Poor Operating Performance

OWNER In the event that the Payment to Owner as provided herein shall, for any three (3) consecutive full Fiscal Years, be insufficient to meet Owner's debt service requirements for the Hotel under the original mutually agreed financing plan for the Hotel after provision for real estate taxes, or if during the extended period of operation the Gross Operating Profit of the Hotel as defined herein shall, for any two (2) consecutive Fiscal Years, average less than one hundred fifty (150) times the average room rate for each such year times the number of available guestrooms in the Hotel, Owner shall have the right to issue a Notice of Termination of this Agreement, on three (3) months' notice to Operator. If such notice is accompanied by a declaration by Owner that it has determined to cease the use of the Improvements as a Hotel, this Agreement shall automatically terminate at the end of the three (3) months' notice period, provided, however, that if at any time within five (5) years thereafter the Improvements are again to be used as a Hotel, Operator shall have the right, but not the obligation, to reinstate this Agreement and to operate the Hotel in accor-

dance with the terms and conditions thereof, except that the Operating Term shall be extended for the period in which the building has not been used as a hotel. If the Notice is not accompanied by such a declaration, Operator shall have the right to serve a notice of arbitration upon Owner pursuant to the terms of this Agreement, and the date of termination specified in the notice shall be extended until thirty (30) days after a final award has been entered that Operator has not sustained the affirmative burden of proving, by a preponderance of evidence, that the failure to meet the performance standard was due to causes or conditions beyond Operator's control. In the event that the arbitrator shall determine that Operator has sustained the aforesaid burden of proof, the aforesaid notice of termination shall be nullified and shall have no force and effect.

NOTE: The preceding clause provides for termination due to the operator's failure to achieve specific profit levels.

[Alternate Clause]
OWNER In addition to the foregoing rights of termination for default, if the Adjusted Gross Operating Profit for any two (2) consecutive fiscal years occurring after the first three (3) full Fiscal Years (i.e., Fiscal Years of not less than three hundred sixty-five (365) days) of the Operating Term of this Agreement shall be less than zero (0) for each such Fiscal Year, Owner may terminate this Agreement.

Operator shall have the right, but not the obligation, on one occasion and one occasion only, to pay Owner the difference between the actual Adjusted Gross Operating Profit for either of the two consecutive Fiscal Years that give rise to Owner's right to terminate on which Owner's said notice was based and zero (0) (or such amount to which it may have been reduced in accordance with the preceding paragraph), in which event Owner's notice of termination shall be deemed withdrawn, provided, however, that in the event the next fiscal year following such cure by Operator results in an adjusted gross operating profit of less than zero (0), Owner shall have the option to terminate.

NOTE: The preceding clause gives the operator the right to cure.

[Alternate Clause]
OWNER Owner shall have the right, within sixty (60) days after the sixth (6th) anniversary of the Formal Opening Date, to terminate this Agreement by giving Operator written notice during such sixty (60) -day period of Owner's intent to terminate this Agreement on a date set forth in such notice, which date shall not be less than ninety (90) days nor more than one hundred eighty (180) days after Operator's receipt of such notice, if Operator fails to achieve a Total Income Before Fixed Charges of at least \$..... during the twelve (12) months immediately preceding the sixth (6th) anniversary of the Formal Opening Date.

If Owner so advises Operator of Owner's intent to terminate this Agreement in such a manner, Operator shall have fifteen (15) days from the date of receipt of such notice of termination during which Operator may cure such failure by loaning to Owner an amount equal to the difference between \$..... and the Total Income Before Fixed Charges actually achieved by the Hotel in the twelve (12) months immediately preceding the sixth (6th) anniversary of the Formal Opening Date.

In the event that Operator cures such failure described above by making a loan to Owner, such loan shall be evidenced by a promissory note from Owner to Operator, in form and substance satisfactory to Operator and consistent with the terms hereof, and shall bear interest at the rate of six percent (6%) per annum. Repayment of the full amount of the loan is to be made from Cash Flow beginning in the year following the seventh (7th) anniversary of the Formal Opening Date, after payment of the Incentive Management Fees due and payable as provided for herein, and payments on such loan shall be made monthly or otherwise as such Cash Flow is available until such loan has been paid in full.

NOTE: The preceding clause allows the operator to cure its default by making a loan.

[Alternate Clause]
OWNER If, after the first two (2) full calendar years of operation, the Hotel has no Gross Operating Profit in any Operating Year, Owner may, at its option, terminate this Agreement, unless Operator advances the necessary funds required to fully cover (a) any negative Gross Operating Profit; (b) plus an amount equal to a fifteen percent (15%) annual return on equity funds (as hereinafter defined) invested in the Hotel. Should Operator advance any funds necessary for such purpose, Operator shall be reimbursed for any such advances out of future Adjusted Gross Operating Profit, if any, derived from the operation of the Hotel; provided, however, that such reimbursement shall not result in a negative Adjusted Gross Operating Profit and provided that such reimbursement shall reduce Adjusted Gross Operating Profit upon which any Incentive Fee is computed. Such reimbursement shall be in an amount equal to the amount so advanced plus interest on the balance of funds advanced outstanding from time to time at a rate of fifteen percent (15%) per annum, provided, however, that such reimbursement shall be payable only from funds remaining after Owner shall have received a fifteen percent (15%) return on Equity Funds invested in the Hotel.

[Optional Additional Clause]
OWNER In addition to the other provisions regarding termination herein provided, Owner shall have the right to terminate this Agreement if after five (5) full years of operation of the Hotel, eighty percent (80%) of the Adjusted Gross Operating Profit for any subsequent Operating Year does not equal at least a fifteen percent (15%) annual return for equity funds invested in the Hotel.

As used herein, the term "Equity Funds" shall mean all funds invested in or loaned to Owner by its principals and applied to the construction and operation of the Hotel over and above all borrowed funds, plus fair market value of all other assets, such as land contributed by the principals in Owner to Owner in return for a capital account credit, but only to the extent such assets are used in connection with the Hotel.

[Alternate Clause]
OWNER Owner shall have the right, at its option, to terminate this Agreement on thirty (30) days' written notice to Operator if, for any two (2) consecutive Fiscal Years during the Operating Term, the amount of Gross Operating Profit is less than the amount corresponding to each of the following Fiscal Years:

| <i>Year</i> | <i>Gross Operating Profit</i> | <i>Percentage of Market Study Projections</i> | <i>Percentage Cash on Equity</i> |
|-------------|-------------------------------|---|----------------------------------|
| 1988 | \$1,197,000 | 95 | 5.3 |
| 1989 | 1,447,000 | 95 | 13.4 |
| 1990 | 1,619,000 | 95 | 19.0 |
| 1991 | 1,692,000 | 90 | 21.4 |

For each year thereafter, the Gross Operating Profit number will be adjusted by the Consumer Price Index. In the event the Hotel were to be wholly or partially closed for business during any such year, for reasons beyond the control of Operator, then the foregoing performance standards shall be equitably adjusted.

Notwithstanding the above, Operator shall have a one-time right to cure the termination by paying to Owner, within five (5) business days, the amount that the actual Gross Operating Profit was deficient for each of the two Fiscal Years. If Operator makes this payment, the termination will be waived; however, if the actual Gross Operating Profit is less than the amount corresponding for the immediately succeeding Fiscal Year, Owner will again have the right to cancel this Agreement, and, as Operator will have already used its one-time right to cure, Operator will not be able to cure. If this Agreement is terminated as a result of this provision, the Incentive Fee to Operator will remain in effect.

[Alternate Clause]
OWNER A "Negative Earnings Event" shall occur if, at the completion of any Fiscal Year, the cumulative Performance Test Cash Flow for all Fiscal Years through such Fiscal Year is less

than One Dollar (\$1). "Performance Test Cash Flow" shall mean Cash Flow Available for Debt Service less Notional Free and Clear Cash Flow.

"Notional Free and Clear Cash Flow" shall be (a) none (\$0) through and including that Fiscal Year (the "Base Year") in which the Renovation Program is completed, (b) One Million Five Hundred Thousand Dollars (\$1,500,000) for the first full Fiscal Year following the Base Year, (c) Two Million Five Hundred Thousand Dollars (\$2,500,000) for the second full Fiscal Year following the Base Year, (d) Three Million One Hundred Thousand Dollars (\$3,100,000) for the third full Fiscal Year following the Base Year, and (e) Three Million Four Hundred Thousand Dollars (\$3,400,000) for the fourth full Fiscal Year following the Base Year and each Fiscal Year thereafter.

If a Negative Earnings Event shall occur, Owner may elect to terminate this Agreement upon written notice to Operator, within ninety (90) days after receipt of the annual financial statements as provided herein disclosing the occurrence of such a Negative Earnings Event. In this event, this Agreement shall terminate on the last day of the second (2d) calendar month following the month in which such notice was given.

A Negative Earnings Event shall not be a default hereunder, nor shall a default hereunder be a Negative Earnings Event.

[Alternate Clause] Beginning in the fourth (4th) full or partial Fiscal Year of operation of the Hotel, Operator shall achieve a level of performance (the Performance Standard) that is at least equal to eighty-five percent (85%) of the approved budgeted Gross Operating Profit or any revised approved budgeted Gross Operating Profit. If Operator fails to achieve the Performance Standard for three Fiscal Years of any five (5) -fiscal-year period, Owner shall have the option to terminate this Agreement. Notwithstanding the foregoing, if the Performance Standard is not met for any Fiscal Year, the Performance Standard shall be deemed to be met for such Fiscal Year to the extent that the deficiency for that Fiscal Year ("Performance Deficiency") is cured by operations in the succeeding Fiscal Year. To the extent that operations in the next succeeding Fiscal Year do not cure the Performance Deficiency, Operator may at its option contribute an amount equal to the Performance Deficiency for such Fiscal Year by deposit in the Bank Account (as hereinafter defined) by April 30 of the second (2d) succeeding Fiscal Year, and upon such contribution, the Performance Standard shall be deemed to have been met for the Fiscal Year.

10.12 Termination by Owner Upon Payment of Termination Fee

OWNER From the Formal Opening Date until the second anniversary of the Formal Opening Date, Owner shall have no right to terminate this Agreement except for those events of default set forth herein. Commencing with the second (2d) anniversary of the Formal Opening Date, this Agreement may be terminated by Owner for any reason by notice to Operator of Owner's intent to terminate this Agreement upon the expiration of a period of not less than ninety (90) nor more than one hundred eighty (180) days from the date of notice and payment of the following amounts:

A. If notice is given by Owner to Operator during the period commencing on the second (2d) anniversary of the Formal Opening Date, but prior to the fifth (5th) anniversary of the Formal Opening Date, Owner shall pay Operator a fee equal to one and one half (1 1/2) times the amount of Base Management, Centralized Service, and Incentive Fees earned by Operator for the twelve (12) months immediately preceding the date of termination.

B. If notice is given by Owner to Operator after the fifth (5th) anniversary of the Formal Opening Date, and prior to the tenth (10th) anniversary of the Formal Opening Date, Owner shall pay Operator a fee equal to one (1) times the amount of Base Management, Centralized Services, and Incentive Fees earned by Operator during the twelve (12) months immediately preceding the date of termination.

C. If notice of termination is given by Owner to Operator after the tenth (10th) anniversary of the Formal Opening Date, Owner shall pay Operator a fee equal to seventy-five percent (75%) of the Base Management, Centralized Services, and Incentive Fees earned by Operator during the twelve (12) months immediately preceding the notice of termination. In no event, however, shall the amount paid Operator by Owner under this provision be greater than the amount determined by multiplying (i) the amount earned by Operator during the year commencing on the ninth (9th) anniversary of the Formal Opening Date for Base Management Fees, Centralized Services, and Incentive Fees by (ii) a fraction, the numerator of which is the latest published Consumer Price Index figure available as of the date of termination and the denominator of which is the latest published Consumer Price Index figure available as of the tenth (10th) anniversary of the Formal Opening Date.

NOTE: Termination fees generally range up to three times the total management fee paid over the previous 12-month period.

[*Alternate Clause*]
OPERATOR If this Agreement terminates pursuant to Owner's election, Owner shall pay to Operator liquidated damages, representing the agreed, reasonable stipulated sum of all losses suffered by Operator because of such termination (including, without limitation, home office and key Hotel personnel commitments and loss of profits), in an amount equal to three (3) times annual fees and charges payable to Operator in the Fiscal Year ended immediately prior to the date on which Owner gives a termination notice to Operator.

[*Alternate Clause*]
OWNER Owner may terminate this Agreement without cause and upon thirty (30) days' prior written notice only in the event of a sale of the Hotel to a third party and then only as follows:

A. There shall be no right to terminate hereunder for the first three (3) years after the Effective Date;

B. If the Agreement is terminated in the fourth (4th) year, Owner will pay to Operator three (3) times the prior year's Base Management Fee as liquidated damages;

C. If the Agreement is terminated after the fourth (4th) year, Owner will pay to Operator the lesser of two and one half (2½), or the number of years remaining under the Initial Term, times the prior year's Base Management Fee as liquidated damages.

D. In addition, Operator shall be entitled to receive its Incentive Management Fee upon such sale, as per provisions of this Agreement.

10.13 Owner Indemnifies Operator After Termination

OPERATOR As a further condition of termination for any reason, Owner and, if this Agreement terminates in connection with a sale, any successor Owner shall indemnify and keep Operator harmless against any and all losses, costs, damages, liabilities, claims, and expenses, including reasonable attorney fees, arising or resulting from the failure of Owner or any prospective purchaser, lessee, or operator to provide any of the services contracted for in connection with the business booked for the Hotel to and including the date of termination, including any and all business so booked as to which facilities or services are to be furnished subsequent to the date of termination.

10.14 Termination by Operator

OPERATOR This Agreement and the employment of Operator may be terminated at the option of Operator ninety (90) days after written notice, and, except as to liabilities or claims that shall have accrued or arisen prior to such termination, all obligations hereunder shall cease upon the happening of any of the events specified hereinbelow.

10.15 Owner's Breach of Contract

OPERATOR Operator may terminate this Agreement if Owner shall have committed a material breach of this Agreement, and Operator shall have served written notice upon Owner setting forth the details of such alleged breach, and Owner shall not, within ten (10) days after the mailing of such notice in the case of a monetary default, have cured such breach, or if Owner shall not, within thirty (30) days after the mailing of such notice in the case of any other default, have cured such breach, or if such breach is of a nature that it cannot be cured within such thirty (30) -day period, and Owner shall not within such thirty (30) -day period have commenced and at all times thereafter have diligently proceeded with all acts required to cure such breach or does not cure such breach within sixty (60) days. Any such termination under this subdivision shall be without prejudice, however, to any and all other remedies that the Manager may have for breach of this Agreement by the Owner.

[*Alternate Clause*] In the event that Owner violates any of its covenants and agreements herein, or fails to perform any of its obligations, undertakings, or conditions as set forth in this Agreement, and shall not cure such failure within thirty (30) days after written notice from Operator, Operator may terminate this Agreement upon ten (10) days' prior written notice to Owner.

10.16 Owner's Bankruptcy

OPERATOR If Owner shall file, in any court and pursuant to any statute, of either the United States or any State, a petition in bankruptcy or insolvency or for a reorganization or for the appointment of a receiver or trustee of all or a substantial part of Owner's property, or if Owner makes an assignment for or petitions for or enters into an arrangement for the benefit of creditors, or if a petition seeking relief under the bankruptcy laws is filed against Owner that is not discharged within ninety (90) days thereafter, Operator may terminate this Agreement upon written notice to Operator.

[*Alternate Clause*] If Owner shall file a voluntary petition for reorganization or for any arrangement under any provisions of any bankruptcy code now or hereafter enacted, Operator may terminate this Agreement upon written notice to the party filing such petition.

[*Alternate Clause*] If a petition shall be filed by any third party for the reorganization of Owner under any provisions of any bankruptcy code now or hereafter enacted and such proceeding is not dismissed within ninety (90) days after each filing, then the Operator may terminate this Agreement upon written notice to the party against whom such petition was filed.

10.17 Appointment of a Receiver for Owner

OPERATOR If a receiver, trustee in involuntary bankruptcy, or other similar officer shall be appointed to take care of all or a substantial portion of the property of Owner, then Operator may terminate this Agreement upon written notice to the party for whom such official has been accepted.

10.18 Owner's Assignment for Creditors

OPERATOR If Owner makes a general assignment for the benefit of its creditors, the Operator may terminate this Agreement upon written notice to the party making such assignment.

10.19 Owner Causes Licenses to Be Revoked

OPERATOR Operator shall have the right to cancel and terminate this Agreement with respect to the Hotel if Owner causes any material license, permit, or other governmental authorization

necessary for the operation of the Hotel in accordance with the provisions of this Agreement to be revoked, rescinded, or terminated or its renewal to be refused by the governing authority having jurisdiction thereof where such revocation, rescission, termination, or refusal to renew is due to circumstances beyond Operator's control.

10.20 Owner Fails to Provide Adequate Funds

OPERATOR Operator may terminate this Agreement upon Owner's failure to maintain agreed-upon minimum balance in the Property's operating bank account.

10.21 Owner Fails to Compensate Operator

OPERATOR Operator may terminate this Agreement if compensation due Operator from Owner is not received by Operator thirty (30) days after Operator has submitted a written request for such compensation.

10.22 Owner's Default Under Ground Lease or Mortgage

OPERATOR Operator may terminate this Agreement as a result of a default by Owner under the ground lease (if any) or the mortgage, or if the landlord or mortgagee shall declare a default or take any other action in pursuance of the remedies arising as result of such default.

10.23 Owner Not in Compliance With Municipal Laws

OPERATOR If Owner shall fail to comply with any rule, order, termination, ordinance, or law of any federal, state, county, or municipal authority and Owner is not in good faith contesting same, Operator may terminate this Agreement upon ten (10) days' written notice to Owner.

10.24 Condemnation of Property

OPERATOR Operator may terminate this Agreement if the property is condemned in whole or in part and if Operator determines that the remaining facilities are insufficient for the efficient and profitable operation of the property.

10.25 Owner Fails to Restore After Casualty

OPERATOR Operator may terminate this Agreement if the property or any portion thereof shall be damaged or destroyed by fire or other casualty and if Owner fails to undertake to repair, restore, rebuild, or replace any such damage or destruction within ninety (90) days after such fire or other casualty, or shall fail to complete such work diligently.

10.26 Owner Fails to Secure Financing

OPERATOR Operator may terminate this Agreement if Owner has not secured firm investment commitments and firm financing commitments in amounts and upon terms approved by Operator in order to finance the construction, furnishing, equipping, and operation of the property.

10.27 Owner Interferes in Operation

OPERATOR Operator may terminate this Agreement if Owner repeatedly fails or refuses to observe Operator's right of non-interference.

10.28 Termination by Operator for Any Reason

OPERATOR Operator may terminate this Agreement with or without cause if it gives thirty (30) days' notice in writing to Owner, without payment of any damages to Owner, after the first (1st) complete year of operation.

10.29 Operator May Not Terminate Because of Foreclosure

OWNER If any mortgagee or other person or legal entity shall become Owner of the property, or any part thereof, as a result of any foreclosure or a conveyance in lieu of foreclosure, Operator shall have no right or power to terminate this Agreement solely because of such change in ownership of the property, or any part thereof, and shall recognize the mortgagee or such other person or legal entity as Owner hereunder to the same extent as though it or they had been Owner hereunder as of the execution of this Agreement, provided that such mortgagee or such other person or legal entity shall agree in writing with Operator to be bound by the terms and conditions of this Agreement to the same extent as if such mortgagee or such other person or legal entity had been an original party hereto.

10.30 Termination by Mutual Consent

NEUTRAL This Agreement and the employment of Operator may be terminated at any time by mutual agreement of Owner and Operator.

10.31 Termination Because Hotel Does Not Open

NEUTRAL If the opening of the Hotel shall not have occurred by July 1, 1990, then this Agreement shall terminate, unless Operator, by notice given to Owner prior to such date, shall elect to continue them in full force and effect for such period or periods of time as it shall, in its sole discretion, determine by so stating in said notice.

10.32 No Default During Arbitration

NEUTRAL Notwithstanding the foregoing, neither Owner nor Operator shall be deemed to be in default under this Agreement if a bona fide dispute with respect to any of the foregoing events of default has arisen between Owner and Operator and such dispute has been submitted to arbitration.

10.33 Payment of Accounts After Termination

NEUTRAL All accounts due and owing as between the parties shall become immediately due and payable upon termination, including a pro rata share of the Basic Fee and Incentive Fee then due Operator, if any.

[Alternate Clause]
OPERATOR Upon termination of this Agreement after the Commencement Date for any reason, Operator shall be entitled to receive from Owner the following amounts, subject to Owner's right of set-off in cases of termination of this Agreement by Owner because of a breach of this Agreement by Operator:

- A. Reimbursement of all expenses incurred with respect to the Hotel and to which it is otherwise entitled pursuant to this Agreement.
- B. Payment of all of its Basic Fees, Deferred Fees (and accrued interest thereon), Incentive Fees, and Centralized Financial Services Charges to date of termination;
- C. Payment of any other sums due Operator hereunder; and

D. Reimbursement of the actual cost, together with administrative costs incurred, of all non-cancelable or non-terminable employee benefits to which employees (whether employed by Owner or Operator, other than those who continue to be employed by Operator after such termination) and their covered dependents may be entitled after the date of termination of this Agreement, including, without limitation, any amounts required to be paid pursuant to the Employee Retirement Income Security Act of 1974, as amended, in accordance with the terms of such documents or instruments as may be in force on the date of termination of this Agreement provided, that (i) the parties shall cooperate, to the extent reasonably practicable, in order to create plans and provide benefits such that there will be no liability pursuant to this section as a result of the termination of the coverage of any such employees pursuant to such plans; and (ii) the parties shall cause the trustee under any defined benefit plan that applies to employees of Owner pursuant to a collective bargaining agreement to determine, or cause an actuary selected by it to determine, as of the termination date of this Agreement, the excess of the accrued vested benefits over the balance of funds in such plan or, in the case of a multi-employer plan, the amount of the termination liability attributable to Owner's participation in the plan pursuant to the collective bargaining agreement relating to employees of the Hotel, and, at such times as such excess or termination liability is required to be funded, Operator shall fund twenty percent (20%) of such amount as of the termination date but will not, however, be obligated to fund amounts pursuant to this provision or the immediately following sentence that, in the aggregate, exceed the aggregate of Incentive Fees paid to Operator pursuant to this Agreement. Twenty percent (20%) of the cost of such determination and any costs associated therewith shall be paid by Operator. The balance of any amounts not required to be paid by Operator pursuant to this subsection D shall be Owner's obligation. Upon termination of this Agreement, Operator shall render a final accounting within forty-five (45) days after the end of the month of termination, regardless of the reason for such termination.

10.34 Operator to Remove Property After Termination

OWNER At the termination of this Agreement, Operator shall remove all its property from hotel's premises.

10.35 Operator to Deliver Property to Owner After Termination

OWNER Upon termination of this Agreement, Operator agrees to deliver to Owner any and all Furnishings and Equipment (along with then existing warranties, operating instructions, and service contracts). Operating Supplies, keys, locks and safe combinations, reservation lists, ledgers, bank statements for the Hotel Operating Account, budgets, accounting books and records, insurance policies, bonds and other documents, memoranda, schedules, lists, contracts, agreements, leases, licenses, correspondence, and other items required for the operation of the Hotel, including the Working Capital and the Reserve Fund. Any of the foregoing which are held in Operator's name shall be assigned by Operator to Owner.

[Optional Additional] Upon termination of this Agreement, all of such books and records forthwith shall be
OWNER turned over to Owner so as to ensure the orderly continuance of the operation of the Hotel, but such books and records shall be available to Operator at all reasonable times for inspection, audit, examination, and transcription for a period of three (3) years thereafter.

[Alternate Clause] Operator shall transfer to Owner (a) all of Owner's books and records regarding the Hotel
OWNER that are in the custody and control of Operator, and (b) all Operator's right, title, and interest in and to all liquor, restaurant, and other licenses and permits, if any, used by

Operator in running of the Hotel; provided, however, that if Operator has expended any of its own funds in the acquisition of such licences and permits, Owner shall reimburse Operator therefor if Owner requests such assignment and transfer of such licenses and permits.

10.36 Inventory at Termination

OPERATOR Upon termination of this Agreement, at the expense of Owner, Operator shall arrange for an independent agency to conduct an inventory of Furnishings and Equipment (the cost of which shall be an Expense of Operation), copies of which shall be made available to both Owner and Operator.

10.37 Operator to Assign Licenses at Termination

OWNER Operator shall, in connection with the termination of this Agreement, surrender and assign to Owner any and all licenses, permits, and/or other authorizations or property required for the operation of the Hotel in accordance with the directions of Owner and with applicable governmental laws, regulations, orders, or other provisions.

10.38 Cooperation During Termination

NEUTRAL During the period of termination of this Agreement, Owner and Operator shall fully cooperate with each other in connection with all matters relating to the Hotel that took place prior to termination.

10.39 Use of Operating Supplies on Termination

OPERATOR Upon the expiration or earlier termination of this Agreement, Owner shall have the right to use in connection with the operation of the Hotel any and all items of Operating Supplies bearing the name of Operator, but shall not reorder any such items. However, if within fifteen (15) days after termination of this Agreement, Operator offers to buy any and all of said Operating Supplies bearing the name of Operator, trademarks, emblems, insignias, slogans, or distinguishing characteristics, at fair market value, Owner shall cease to use same and shall sell same to Operator. In the event of any dispute as to such fair market value, the Independent Auditor shall determine said value. Removal of Operator's name from the Hotel shall be at Operator's cost.

[Alternate Clause]
OWNER Operator will purchase from Owner, for a purchase price equal to fair market value but not exceeding cost, all unbroken cases of operating supplies and expendable products then on hand at the Hotel or ordered or purchased and that bear only the identification of Operator.

Section 11 GENERAL PROVISIONS

11.1 Ownership of Hotel

NEUTRAL Owner covenants and agrees that its right, title, and interest in and to the Hotel will upon the Commencement Date be as detailed in the description of the hotel project, the survey, and the legal description of the land attached hereto as Exhibit I [omitted].

NOTE: The preceding clause assures the Operator that the contract is with the actual owner of the hotel.

11.2 Qualifications of Operator

NEUTRAL Operator is qualified in the supervision, operation, and management of hotels.

11.3 Engagement of Operator

NEUTRAL Owner desires to engage Operator to manage and operate the Hotel for the account of Owner, and Operator desires to accept such engagement, all upon the terms and conditions hereinafter set forth.

[*Alternate Clause*] OPERATOR Owner turns over to Operator all control and discretion in the operation, direction, management, and supervision of the property.

11.4 Furniture, Fixtures, and Equipment

NEUTRAL The phrase "Furniture, Fixtures, and Equipment" shall mean the furniture, furnishings, fixtures, and equipment installed and used in the Hotel, including, without limitation: (a) all necessary furniture and furnishings for guestrooms, public areas, and non-public areas (e.g., kitchen, laundry, and cleaning facilities, rooms for the use of employees, storage areas, front desk, and administrative offices); floor and window coverings; decorative light fixtures; and equipment. However, this phrase shall not encompass the Hotel's major mechanical and electrical equipment and systems (e.g., the elevators).

NOTE: The preceding clause provides a definition of furniture, fixtures, and equipment for the Hotel. Such a definition is important because such items are generally replaced from a Reserve for Replacement account.

11.5 Licenses

NEUTRAL Owner hereby certifies that it has all necessary food and liquor licenses authorizing sale and consumption upon the premises.

11.6 Franchise

OPERATOR Owner will keep in full force and effect the Franchise, if any, and will comply with all terms and conditions of such Franchise required to be performed by Owner.

11.7 Operator's Right to Quiet Enjoyment

OPERATOR Owner covenants to Operator that, so long as no grounds exist for termination of this Agreement by Owner, Operator shall and may peaceably and quietly possess, hold, occupy, enjoy, and manage the Hotel throughout the Operating Term, free from molestation, eviction, ejection, or disturbance by Owner, any person through whom Owner may derive title to the Hotel, or any other person claiming by, through, or under Owner. Owner agrees to pay and discharge any payments and charges and, at its expense, to prosecute or defend all appropriate actions, judicial or otherwise, necessary to ensure such peaceful and quiet possession of the Hotel by Operator.

[*Alternate Clause*] OPERATOR The parties acknowledge and agree that the continued operation by Operator of the Hotel pursuant to the terms hereof represents a valuable asset of Operator, and, moreover, is critical to the maintenance by Operator of its reputation in the hotel industry. Therefore, and notwithstanding any provision of law or of this Agreement otherwise pertaining, it is agreed that any attempt by Owner to disturb Operator's right to quiet enjoyment of the Hotel or to terminate this Agreement, other than in strict accordance with its terms, would

cause Operator to suffer great, incalculable, and irreparable harm, and may be enjoined by Operator in any court of law having jurisdiction, to the end that this Agreement may be specifically enforced in the aforesaid manner by Operator.

NOTE: Although the preceding clause is attractive from the operator's viewpoint, it sets the owner up for a massive damage suit if the contract is terminated. In addition, this provision might impact the principal-agent relationship that allows for termination of the agency. An owner would be unlikely to agree to this clause.

11.8 Initial Operating Term

NEUTRAL The phrase "Operating Term" shall mean and refer to that period commencing on the Effective Date and ending at 11:59 PM on the last day of the fifteen (15th) full Fiscal Year thereafter, or on any earlier date upon which this Agreement terminates pursuant to the provisions hereof.

[Alternate Clause] The obligations of Owner and the services of Operator under this Agreement shall commence upon the completion of the construction of the Hotel and the issuance of all permits required for the operation of the Hotel (the "Commencement Date") and shall expire on December 31 of the fifteenth (15th) year following the Commencement Date, unless terminated sooner by the terms of this Agreement.

NEUTRAL

11.9 Renewal Terms

OWNER After the expiration of the initial Operating Term, the term of this Agreement shall continue on a calendar year-to-year basis unless canceled by Owner upon the giving of four (4) months' advance written notice.

[Alternate Clause] Operator shall have the right to extend the Operating Term for three (3) successive periods of ten (10) years each, provided that the following conditions are met:

OPERATOR

- A. Owner at such time is not entitled to terminate this Agreement by reason of Operator's default;
- B. The Operating Term shall have been extended for all prior periods; and
- C. Operator shall have given notice to Owner of its election to extend the Operating Term on or before the first (1st) day of January on the last full calendar year of the Initial Operating Term, or any extension thereof then in force.

11.10 Delegation of Authority

OPERATOR The operations of the Hotel shall be under the supervision, direction, and control of Operator, and, except as otherwise specifically provided in this Agreement, Owner delegates to Operator sole and full responsibility for the proper and efficient operation, management, and maintenance of the Hotel.

NOTE: In the preceding clause, the phrase "without interference from Owner" can be added to strengthen the operator's position.

11.11 Establishment of an Agency Relationship

NEUTRAL In the performance of its duties as Operator, Operator shall act solely as agent of Owner. No provision of this Agreement shall constitute or be construed to be or create a partnership or joint venture between Owner and Operator.

11.12 Operator as Independent Contractor

OPERATOR Owner hereby appoints and engages Operator, and Operator hereby accepts such appointment on the terms and conditions hereinafter provided by this Agreement, to maintain, operate, manage, supervise, rent, and lease the Hotel on Owner's behalf. The performance of all activities by Operator hereunder shall be as an independent contractor and not as an agent of Owner, except as otherwise specifically provided herein. Operator's appointment and engagement hereunder encumbers the Hotel and runs with the Land upon which the Hotel is situated.

NOTE: The preceding clause attempts to make the owner-operator relationship an encumbrance that runs with the land in the manner of a lease, thereby giving the operator greater possessory rights. It is doubtful, however, whether a management contract can be construed as anything more than an agency agreement.

11.13 Use of Property

OWNER Operator shall use the property solely for the operation of a hotel under standards comparable to those prevailing in the hotel industry and for all activities in connection therewith that are customary and usual to such an operation. Operator, in any event, shall comply with and abide by all applicable laws and regulations.

11.14 Nature of Agreement

NEUTRAL The relationship of Owner and Operator created hereby is that of a principal and agent, it being understood that Operator's agency is defined by virtue of this Agreement. Nothing herein contained shall constitute or be construed to be or create a co-partnership or joint venture between Owner and Operator with respect to the management of the Hotel as provided for in this Agreement.

11.15 Operator Does Not Guarantee Profits

OPERATOR Operator makes no guarantee, warranty, or representation that there will be profits or that there will not be losses from the operation of the Property.

11.16 Reliance on Operator's Projections

OPERATOR Owner hereby certifies that it has not relied on any projection of earnings, statements as to the possibility of future success, or other similar matter that may have been prepared by Operator, and understands that no guaranty is made or implied by Operator as to the future financial success of the Hotel.

11.17 Timely Consent by Parties

NEUTRAL Except as herein otherwise provided, whenever in this Agreement the consent or approval of Owner or Operator is required, such consent or approval shall not be unreasonably withheld or delayed and shall be in writing, signed by an officer or agent, thereunto duly authorized, of the party granting such consent or giving such approval. In cases where consent or approval is required, the failure to respond within twenty (20) Business Days of the receipt of the request for such consent or approval shall be conclusively deemed to constitute the requested consent or approval unless another period is expressly provided for in this Agreement in which case the other period shall apply.

11.18 Severability

NEUTRAL In the event any term or provision of this Agreement or any application thereto to any person or circumstance shall be declared prohibited, invalid, or unenforceable to any extent in any jurisdiction, as determined by a court of competent jurisdiction, such term or provision shall, in that jurisdiction, be ineffective only to the extent of such prohibition, invalidity, or unenforceability, or as applied to such persons or circumstances, without invalidating or rendering unenforceable the remaining terms or provisions hereof or affecting the validity or enforceability of such term or provision in any other jurisdiction or as to other persons or circumstances in such jurisdiction, unless such would effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of the Agreement on the party benefited by such term or provision.

11.19 Partial Invalidity

NEUTRAL In the event that any portion of this Agreement shall be declared invalid by order, decree, or judgment of a court, this Agreement shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship to Operator or Owner or constitute a substantial deviation from the general intent and purpose of said parties as reflected in this Agreement.

11.20 Binding Effect

NEUTRAL This Agreement shall be binding upon Owner and Operator and, as provided in this Agreement, their respective successors and assigns, provided that, except as specified in this Agreement, neither of the parties hereto shall assign their rights hereunder without the consent and approval of the other party. This Agreement contains the final and entire agreement between the parties hereto. No change or modification of this Agreement shall be valid or binding upon the parties hereto unless such change or modification shall be in writing and signed by the parties hereto. Neither the parties nor their agents shall be bound by any terms, conditions, statements, warranties, or representations, oral or written, not herein contained.

11.21 Notices

NEUTRAL Any notice, statement, or demand required to be given under this Agreement shall be in writing, sent by certified mail, return receipt requested, postage prepaid. Notices shall be sent to Owner at the address specified hereinabove or at such or to such other address or addresses as Owner shall designate in the manner herein provided. Notices shall be sent to Operator, at the address specified hereinabove, marked "Attention: President," with a copy to the attention of the Senior Vice President of Finance, or at such or to such other address or addresses as Operator shall designate in the manner herein provided. A notice shall be deemed to have been given on the day ten (10) business days after it shall have been deposited as aforesaid in any post office or post box maintained by the United States Government.

11.22 Waiver

NEUTRAL The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No

waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

11.23 Construction of Additional Facilities

OPERATOR In the event a casino, restaurant, or cocktail lounge should be operated at the Hotel, Operator shall have the exclusive right to operate same and to include gross revenues in the total revenues of the Hotel and gross revenues less operating expenses in the Gross Operating Profit of the Hotel.

[Alternate Clause]
OPERATOR In the event a casino should be operated at the Hotel, Operator shall have the exclusive right to operate same, and the excess of the gross amount wagered therein over the total amount of money won by wagers will be included in the Total Revenue of the Hotel. The said excess, reduced by the Operating Expenses specified herein that relate to the casino, will be included in the Gross Operating Profit of the Hotel.

11.24 Operator Not Responsible for Owner's Obligations

OPERATOR Owner shall not represent in any proposed financing arrangement or to any proposed lender or participant in a private or public investment that Operator shall be in any way responsible for Owner's obligation in financing arrangement other than to state that the property will bear the name of Operator, will be managed by Operator, and will be a part of the Operator's hotel system.

11.25 Operator to Review Financing Instruments

OPERATOR In order to ensure Owner's full and faithful compliance with the terms of this Agreement and to prevent any misunderstanding on the part of a proposed lender or participant in any such investment offering, Owner shall, prior to the closing of any such proposed financing arrangement, inform and furnish Operator with the identity of the proposed lender and copies of the proposed closing documents, and Owner shall, prior to the printing of any prospectus concerning said private or public investment offering, furnish Operator with a copy of said prospectus, and said prospectus shall not be published or distributed without the prior written consent of Operator.

11.26 Modification of Agreement for Refinancing

OWNER If, in connection with any refinancing of the Hotel, any Mortgagee shall request modifications of this Agreement as a condition of such refinancing, Operator covenants not to unreasonably withhold or delay its agreement to such modifications, provided that such modifications are reasonable and do not increase the obligations or adversely affect the rights of Operator hereunder.

11.27 Exculpation

OWNER Operator agrees that it will look only to Owner's estate and property in the Hotel (or the proceeds thereof) for the satisfaction of Operator's remedies for the collection of a judgment requiring the payment of money by Owner in the event of any default by Owner hereunder, and no other real or personal property or assets of Owner or of Owner's individual principals shall be subject to levy, execution, or other enforcement procedures for the satisfaction of Owner's remedies under or with respect to this Agreement.

11.28 Real Estate Broker Indemnification

NEUTRAL Each party agrees to indemnify and hold the other party harmless from and against all loss, cost, damage, or expense (including reasonable attorney fees) suffered or incurred in connection with claims made by a real estate broker or other persons claiming, by or through the indemnifying party, entitlement to any brokerage fees or similar payment in connection with the negotiation and execution of this Agreement.

11.29 Consumer Price Index Adjustments

NEUTRAL Expenditure limitations and required minimums and maximums specified herein are based on the purchasing power of money as of the date of this Agreement. Notwithstanding Operator's authorization to revise the Operating Budget and Capital Budget as heretofore specified, said limitations, minimums, and maximums shall be subject to annual adjustment to retain the purchasing power intended at the onset of this Agreement. The annual adjustment shall be based upon annual percentage increases or decreases in the Consumer Price Index for all Urban Consumers (1967 = 100) specified for "All Items" as published by the United States Department of Labor, Bureau of Labor Statistics.

11.30 Freedom of Action

OPERATOR Operator may engage in and/or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership financing, leasing, operation, management, brokerage, and development of real property, which may be adjacent to and/or competitive with, the Hotel. Owner shall not have any right by virtue hereof in and to such other business ventures or to the income or profits derived therefrom.

11.31 Owner's and Operator's Use of the Hotel

NEUTRAL Officers and employees of Operator or its parent company, or a reasonable number of persons designated by Owner may occupy guest rooms at a fifty percent (50%) discount from the rates charged to the public, provided, however, that lodging facilities may be utilized in such a manner only if space is available and not reserved or occupied by members of the public and is utilized in accordance with Operator's standard employee privilege program, as amended from time to time. The percentage discount may also vary from time to time as percentage changes are made and promulgated in Operator's employee benefit handbook or employee benefit card. In the event a room occupied by a person paying less than the full room rate, as provided hereunder, is needed to satisfy the demands of full-paying guests, such person shall be given the choice of vacating the room or paying full price for the room, so long as the demand for such room persists.

[Alternate Clause]
OWNER Operator agrees that during the Operating Term and subject to availability, Operator will make rooms in the Hotel available (a) without charge to the officers of the general partner (and its constituent partners) of Owner, (b) at fifty percent (50%) of the normal rate for such rooms to the limited partners of Owner, and (c) at fifty percent (50%) of the normal rate for such rooms to certain brokers involved in marketing the interests in Owner's partnership (a list of such brokers shall be provided to Operator by Owner) for a period of one (1) year after the Closing. The provisions of this clause shall be limited to seven (7) nights for each calendar year period.

[Alternate Clause]
OWNER Operator shall provide complimentary suites at the Hotel to Owner, its officers, directors, employees, agents, and guests upon request at such times as vacancy permits and at other times in reasonable amounts and upon reasonable notice. Operator shall provide

such complimentary accommodations to Franchisor as are required under the Franchise and shall provide complimentary accommodations to travel agents and others to the extent necessary to market and promote the Hotel as provided in the Operating Budget.

11.32 Employee Use of the Hotel

OPERATOR Operator, in its discretion and as is customary and usual in hotels, may provide reasonable food and lodging for full time employees of the Hotel, and allow them the reasonable use of Hotel facilities.