

APPENDIX **6**

Selected Provisions of Lease of Land Only

A. Demise; Description and "Subject to" Provisions

Lessor hereby leases to Lessee, and Lessee hereby hires, on the terms and conditions hereinafter set forth, the following (which is hereinafter called the "Leased Property"):

All that certain lot, piece or parcel of land, *without the buildings or improvements thereon erected*, situate, lying and being in the, City of, County of and State of, bounded and described as follows;

Beginning at a point (Include here a complete survey description of the Leased Property.)

Together with all the right, title, and interest, if any, of Lessor, in and to any streets and roads abutting the above-described premises to the center lines thereof.

There is not included in this lease the following, Title to which today has been conveyed, sold, and assigned by Lessor to Lessee: Any buildings, structures and improvements, or the furnishings, fixtures, personal property and equipment of every kind whatsoever located therein, now or at any time hereafter erected or situated on the Leased Property. Subject, nevertheless, to:

1. Rights of all tenants, licensees, concessionaires and occupants now in possession of portions of the Building pursuant to leases, licenses of agreements heretofore made by Lessor or any former owner of the Leased Property.
2. State of facts shown on survey made by, dated, 19..... and to any additional state of facts an accurate survey since that date, or an inspection, would show;
3. Any presently existing defects of title, easements, restrictions, and agreements affecting the Leased Property; but this lease is not subject to the lien of any mortgage which may have affected the fee title to Leased Property on the date hereof.

B. Initial Lease Term

To have and to hold the Leased Property unto Lessee, its successors and assigns, for a term of 25 years, commencing on December 1, 19..... and expiring at 12:00 noon on November 30, 20, unless this lease shall terminate sooner, as hereinafter provided.

C. Acknowledgment of Split Ownership of Land and Building

The parties acknowledge that Lessee holds title to the Building. It is the intention of the parties that such separation of title to the Leased Property from title to the Building is not to change the character of the Building as real property, except that the furnishings and other personal property which constitutes part of the Building shall continue to be treated as the personal property of Lessee.

D. Nonseparability of Ownership of Leasehold Estate From Ownership of Building

It is also the intention and agreement of the parties that Lessee's ownership of the leasehold estate created hereby and the Building shall be nonseparable, and that any attempt to transfer title to the Building shall be void and ineffective unless accompanied by a valid transfer of this leasehold estate to such grantee; and likewise, any attempt to transfer this leasehold estate without a simultaneous conveyance of the Building to such assignee shall be void, and either event shall constitute an Event of Default under this lease.

E. Automatic Transfer of Building to Lessor at End of Lease

Lessee covenants that upon the expiration or earlier termination of this lease, Lessee shall without payment therefor execute, acknowledge, and deliver to Lessor a quitclaim deed and bill of sale conveying and transferring to Lessor all of the right, title and interest of Lessee in and to the Building and the furnishings, and personal property therein, and Lessee hereby appoints Lessor irrevocably as its attorney in fact, with an interest, to execute, acknowledge, and deliver on Lessee's behalf said deed and bill of sale.

F. Basic Rent

Section 1. Lessee shall pay to Lessor, at such place as Lessor shall from time to time designate, a rental (hereinafter called the "basic rent") as follows:

- a. For the period commencing December 1, 19....., and continuing for 15 years at the rate of \$375,000 per annum, in equal monthly payments of \$31,250 each on the first day of each month in advance.
- b. During the last 10 years of the initial lease term a rental in each year equal to the higher of:
 - i. 7.5 percent of the fair market value of the Leased Property, determined as of the end of the fifteenth year in the manner provided in Section 3 below; or
 - ii. The rent payable during the fifteenth lease year.

G. Basic Rent for Renewal Terms as Percentage of Reappraised Value of Land

Section 2. Lessee may extend the term of this lease for eight separate and successive periods (renewal terms) of 10 years each, upon the same terms and conditions as herein contained, except that (a) there shall be no further right of renewal for any period beyond November 30, 20....., and (b) the basic rent during each year of each renewal term shall be at an annual rate equal to the greater of (i) 7.5 percent of the *fair market value of the land exclusive of the Building* thereon, determined as of November 30 of the last year of the then immediately preceding lease term, in the manner provided in Section 3 below, or (ii) the basic rent payable for the last year of the preceding term.

H. Manner of Determining Fair Market Value for Setting Rent

Section 3. The fair market value of the Leased Property shall be determined as if the Leased Property were then free and clear of all liens, encumbrances and leases and were capable of being devoted *solely to hotel use*; provided, however, that if at the time of such determination the Building is not

SELECTED PROVISIONS OF LEASE OF LAND ONLY

being operated as a hotel, the fair market value of the Leased property shall be determined as if it were capable of being devoted to the highest and best use permitted under the then-applicable zoning laws and regulations.

At least 60 days before the start of the sixteenth year of the initial term, and, if notice of renewal has been given, at least 60 days before the end of each lease term, Lessor and Lessee shall endeavor to agree on the then fair market value of the Leased Property. If they have not reached agreement by the thirtieth day before the start of the sixteenth lease year or by the thirtieth day prior to the end of the then-current lease term, Lessor and Lessee shall each appoint a qualified and experienced appraiser, who shall be a member of a professional association of independent real estate appraisers. The two appraisers so appointed shall then jointly appoint a third appraiser similarly qualified, or if they cannot within 30 days after their appointment agree on the selection of the third appraiser, either Lessor or Lessee may apply to the President of the County Board of Realtors, Inc. to appoint the third appraiser. A majority of the appraisers shall determine the fair market value of the Leased Property as soon as practicable, and the rent computed in accordance therewith shall be effective from the start of the relevant lease period, as provided in the preceding subdivisions of this Article Until such new rent is fixed, Lessee shall continue to pay basic rent at the rate it had most recently been paying. If the new rent is higher, the deficiency shall be paid in a single payment by Lessee within 20 days after the decision of the majority of the appraisers shall have been rendered. Each party shall pay the fees and disbursements of the appraiser it selects, and each party shall pay one-half of all other fees, disbursements, and expenses of the appraisal process. The written decision of the majority of the appraisers shall be binding upon the parties as if Lessor and Lessee had themselves agreed on such fair market value. If either party fails to appoint a qualified appraiser, it shall have waived its right to do so and shall be bound by the sole decision of the appraiser appointed by the other party.

Section 4. The basic rent shall be paid to Lessor without notice or demand and without abatement, deduction or setoff, except as may be expressly allowed hereinbelow.

I. Limitation of Assignability of Lease

Lessee shall not assign this lease, unless the assignee simultaneously acquires fee title to the Building. Nor shall any total sublease be valid unless the total subtenant simultaneously acquires the leasehold estate in and to the Building.

J. Lessee's Right to Mortgage Lease and Building, But Not Without Building

Lessor hereby consents to Lessee from time to time mortgaging this lease and the Building (but not the fee title to the Leased Property), on the following terms and conditions:

- a. No mortgage of this lease shall be effective unless such mortgage also encumbers the Building.
- b. The leasehold mortgage shall provide that any condemnation proceeds which may be payable shall be applied in the manner set forth in this lease, and not otherwise.
- c. There shall not be more than one leasehold mortgage in existence at any time.

K. Leasehold Mortgagee's Right to Receive Copy of Notice of Lessee's Default Under Lease and Opportunity to Cure Default

If Lessor shall have received written notice of the existence of a leasehold mortgage, together with a conformed copy of the note and mortgage, Lessor thereafter shall simultaneously send to the holder thereof a copy of any default notice or demand which Lessor shall send to Lessee. Such holder shall have an additional period of 15 days after the expiration of the applicable grace period allowing in Article above in which to cure Lessee's default. In the event that this lease shall have been terminated by Lessor in accordance with the terms hereof and either (i) such leasehold mortgagee shall within said

additional 15-day period cure the default, or deposit with Lessor the cost of effecting such cure, or (ii) if the Event of Default which resulted in such termination shall have been any event which also constitutes an event of default under the leasehold mortgage, then, and in any such case, Lessee promptly upon the demand of the leasehold mortgage shall execute (1) a new lease to the leasehold mortgagee or its nominee upon the same terms and conditions contained herein, for a term equal to what otherwise would have been the balance of the then term hereof, together with options for renewal terms equal to the then-remaining renewal terms hereunder, and (2) a quitclaim conveyance to the new lessee of the Building, which conveyance shall recite that the grantee holds title to the Building which title shall revert to Lessor automatically, without payment, upon the termination of this lease or its replacement.

L. Prohibition Against Lessor's Acceptance of Voluntary Surrender of Lease Without Consent of Leasehold Mortgagee and Sublessee

Lessor shall not accept a voluntary surrender of this lease (even under circumstances where Lessee is herein expressly granted the right to terminate this lease) not permit a merger of the fee title and leasehold estate, nor agree to any modification of this lease without the prior consent of any leasehold mortgagee and any total subtenant. The exercise by Lessor of any right of cancellation pursuant to the terms of this lease shall not be deemed a "voluntary surrender," nor shall anything herein require that Lessor obtain the consent of any mortgagee or total subtenant before commencing any action or proceeding based upon a default hereunder by Lessee.

M. Right of Leasehold Mortgagee in Possession to Assign Lease Once Without Lessor's Consent

Notwithstanding any provision of Section..... of Article hereof to the contrary, if a leasehold mortgagee shall acquire the leasehold estate in the Leased Property and title to the Building, or possession thereof, the mortgagee in possession (or new Lessee) shall have the right to assign the lease and simultaneously convey the Building to the assignee on one occasion only without Lessor's prior, written consent, provided only that there is delivered to Lessor promptly a duplicate original of the written instrument of assignment, in recordable form, containing the name and address of the assignee, and an assumption by the assignee of the lease and of all the agreements and obligations to be observed and performed by Lessee. Any subsequent assignment of this lease or of such new lease shall be valid only if made pursuant to the provisions of Sections and of Article without reference to this section.