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10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

14 In re
15 LOS GATOS HOTEL CORPORATION,
16 Debtor in Possession..

Case No. 10-63135-ASW

Chapter 11

**SUPPLEMENT TO NOTEHOLDER'S
CHAPTER 11 PLAN OF LIQUIDATION
DATED APRIL 23, 2015**

Date: May 28, 2015

Time: 2:30 p.m.

Location: Courtroom 3020

280 S. First St.

San Jose, California

Judge: Hon. Arthur S. Weissbrodt

1 Attached as Exhibit A hereto is the form Asset Purchase Agreement for use in the Bidding
2 Procedures as described in Section V.C. of *Noteholder's Plan of Liquidation Dated April 23, 2015*
3 and as described in Section XI.C. of the *Disclosure Statement in Support of Noteholder's Chapter*
4 *11 Plan of Liquidation Dated April 23, 2015*.

5
6
7 Respectfully submitted,
8 Dated: May 7, 2015

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

10
11 By /s/ Michael M. Lauter
MICHAEL M. LAUTER
12 ALAN M. FELD

13 Attorneys for
14 GCCFC 2006-GG7 Los Gatos Lodging
15 Limited Partnership, Plan Proponent
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Exhibit A

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

By and Between

**Los Gatos Hotel Corporation,
a California corporation**

as Seller

and

a _____

as Buyer

Dated as of _____, 2015

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EXHIBIT "B"	Grant Deed
EXHIBIT "C"	Bill of Sale
EXHIBIT "D"	General Assignment
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THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS ("Agreement") is made as of _____, 2015 ("Effective Date") by and between Los Gatos Hotel Corporation, a California corporation ("Seller"), and _____, a _____ ("Buyer").

RECITALS

A. Seller is a debtor-in-possession in a chapter 11 bankruptcy case captioned *In re Los Gatos Hotel Corp.*, Case No. 10-63135-ASW (the "Chapter 11 Case"), which is pending in the United States Bankruptcy Court for the Northern District of California, San Jose Division (the "Bankruptcy Court").

B. Seller desires to sell the Property (defined below), subject to satisfaction of the conditions contained herein.

C. Buyer desires to buy the Property, subject to satisfaction of the conditions contained herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

AGREEMENT

For purposes of this Agreement, the following terms shall have the following definitions:

1. Certain Basic Definitions:

1.1 "Advance Bookings" means any and all reservations for public functions, banquets or rooms in the Hotel or on the Real Property for any period, all or any portion of which function, banquet or room use occurs after the Closing Date.

1.2 "Advance Booking Deposits" means any and all payments and deposits for Advance Bookings received by Seller prior to the Closing Date for a period after the Closing Date.

1.3 "Assumed Contracts" means the Equipment Leases, the Leases, the Service Contracts and the other Contracts to the extent such Equipment Leases, Leases, Service Contracts and other Contracts are assignable by Seller (exclusive, however, of the hotel management agreement between Seller and Manager).

1.4 "Authorities" means any and all governmental, judicial and quasi-governmental authorities, bodies and agencies.

1.5 "Bid Procedures" means the bid procedures set forth in the Plan and Disclosure Statement establishing the procedures for the sale of the Property in the Chapter 11 Case, as approved by the Bankruptcy Court in an Order entered on _____, 2015.

1.6 "Broker" means Eastdil Secured Broker Services, Inc., the Bankruptcy Court-approved broker for the sale of the Property in the Chapter 11 Case.

1.7 "business day" means any Monday, Tuesday, Wednesday, Thursday or Friday, other than any federal holiday, State of California holiday or other day on which banks are required or permitted to close for business in the State of California.

1.8 "Buyer's Address" means:

Attn: _____
Telephone: _____
Facsimile: _____

1.9 "Closing Date" means _____. Pursuant to the Bid Procedures, the Closing Date may be no later than thirty (30) days following the auction held in the Bankruptcy Court pursuant to the Bid Procedures, unless extended as provided in the Bid Procedures.

1.10 "Confidentiality Agreement" means that certain confidentiality agreement dated _____ between Buyer and /////Broker/////Seller/////.

1.11 "Contracts" means any and all of Seller's right, title, interest and obligations under the licenses, permits, contracts, and agreements in effect as of the Close of Escrow relating to any of the Property, as amended.

1.12 "Deposit" means the sum of _____ Dollars (\$_____).

1.13 "Equipment Leases" means any and all of Seller's equipment leases, oral or written, in effect as of the Close of Escrow, with respect to the Hotel or the Real Property, as amended, with such additions and deletions as may hereafter occur in the ordinary course of business.

1.14 "Escrow Holder" means _____.

1.15 "Escrow Holder's Address" means:

Attn: _____
Telephone: _____
Facsimile: _____

1.16 "FF&E" means any and all of the furniture, fixtures and equipment owned by Seller and located in the Hotel or on the Real Property, as of the Close of Escrow, with such additions and deletions as may hereafter occur in the ordinary course of business; provided, however, that FF&E shall not include the Operating Equipment and the Operating Supplies.

1.17 "Governmental Regulations" means any and all laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, environmental, toxic or hazardous waste, occupational health and safety, water, earthquake hazard, disabled persons and zoning and fire codes) of the Authorities bearing on the maintenance, use, operation or sale of the Hotel or the Real Property.

1.18 "Hotel" means: (a) any and all buildings, structures, fixtures, landscaping and other improvements constructed on or affixed to the Real Property; (b) the Assumed Contracts and the Intangibles; (c) the FF&E, the Operating Equipment, the Operating Supplies and the other Personal Property; (d) any and all accounts receivable (subject to proration and adjustment as provided in Section 3.10.12 below), and all reservation deposits and advance or prepaid payments or deposits relating to the operation of the Hotel and to be credited to Buyer in accordance with Section 3.10.15; (e) any and all books and records relating to the operation of the Hotel, including, without limitation, applicable computer software owned by or licensed to Seller (to the extent assignable); and (f) any and all permits, licenses, warranties and guarantees obtained by Seller in connection with the ownership, construction or operation of the Hotel (to the extent assignable).

1.19 "Hotel Employees" means employees of Seller or Manager whose employment is at or for the Hotel.

1.20 "Intangibles" means any and all trademarks, service marks, copyrights, trademark, service mark and copyright registrations, applications for trademark and service mark registrations, business and trade names or logos, patent and patent applications, if any, which are owned by or licensed to Seller as of the Close of Escrow and used in connection with the operation of the Hotel or the Real Property, as amended, to the extent the foregoing are assignable.

1.21 "Leases" means any and all of Seller's leases, licenses, concessions, operating agreements and other similar occupancy agreements of space in the Hotel or on the Real Property, oral or written, in effect as of the Close of Escrow, as amended.

1.22 "Legal Requirements" means any and all of the following which are applicable to the ownership and/or operation of any of the Property: all laws, statutes, rules, regulations, ordinances, codes, orders, decrees or rulings of any Authority, including, without limitation, all zoning, land use, subdivision, redevelopment, environmental, health, energy, building and construction laws and regulations affecting the use, occupancy or operation of any of the other Property; any permit or occupancy certificate issued pursuant to any law, statute, rule, regulation, ordinance, code; and any other order or decree by any public officer having jurisdiction over the Property.

1.23 "Lender" means GCCFC 2006-GG7 Los Gatos Lodging Limited Partnership, a Delaware limited partnership.

1.24 "Liquor Assets" means the inventory of alcoholic beverages owned by Seller, if any, as of the Close of Escrow which are saleable in connection with the operation of the Hotel or the Real Property or the restaurants, bars, function rooms and guest rooms located therein.

1.25 "Liquor License" means any and all of the licenses and permits held by Seller or Seller's affiliate pursuant to which the sale of alcoholic beverages is permitted in the Hotel or the restaurants, bars, function rooms or guest rooms located therein, issued by the State of California Department of Alcohol and Beverage Control.

1.26 "Loan" means that certain loan in the original stated principal amount of \$12,000,000.00 owing by Seller to Lender evidenced by, among other things, a Promissory Note dated as of February 10, 2006 by Seller in favor Greenwich Capital Financial Products, Inc., a Deed of Trust, Assignment of Rents and Security Agreement (Hotel) dated as of February 10, 2006 by Seller in favor of Greenwich Capital Financial Products, Inc. as beneficiary, an Assignment of Leases and Rents (Hotel) dated as of February 10, 2006, by Seller in favor of Greenwich Capital Financial Products, Inc., and an assignment of the foregoing documents from Greenwich Capital Financial Products, Inc. to Lender.

1.27 "Manager" means Seller's hotel manager on the Effective Date.

1.28 "Operating Equipment" means any and all of the vehicles owned or leased by Seller as of the Close of Escrow and used in the operation or maintenance of the Hotel, with such additions and deletions as may hereafter occur in the ordinary course of business; provided, however, that Operating Equipment shall not include FF&E and Operating Supplies.

1.29 "Operating Supplies" means any and all items owned by Seller on the Close of Escrow and used in the operation or maintenance of the Hotel and which are consumable or, when once used, are disposed of, including, without limitation, spa products, supplies for housekeeping, food and beverage service, pool and recreation

areas, engineering, accounting and office use, together with paper supplies, inventories of food and beverages and miscellaneous general supply items.

1.30 "Person" means any natural person, corporation, partnership, limited liability company, firm, association, government, governmental agency or any other entity and whether acting in an individual, fiduciary or other capacity.

1.31 "Personal Property" means Seller's right, title and interest in all of the personal property (tangible and intangible) owned, leased or licensed by Seller as of the Close of Escrow and used in connection with the operation or maintenance of the Hotel (to the extent transferable or assignable), including, without limitation; the chinaware, glassware, silverware, linens and uniforms located at and used in connection with the Hotel, with such additions and deletions as may hereafter occur in the ordinary course of business; all books and records, computers, computer files and software related to Hotel operations (to the extent assignable), accounting, bookings, inventory control and related matters, with such additions and deletions as may hereafter occur in the ordinary course of business; the FF&E; the Operating Equipment; the Operating Supplies; the Assumed Contracts; and the Intangibles.

1.32 "Plan Confirmation Order"

means an order of the Bankruptcy Court, in form and substance satisfactory to Lender, confirming Lender's Chapter 11 Plan of Liquidation dated April 23, 2015, which shall provide, among other things, for the sale of the Property for cash (subject to Lender's right to credit bid as set forth in the Bid Procedures), and the distribution of the proceeds of sale in accordance with Section 3.9.3 of this Agreement.

1.33 "Property" means the Real Property and the Personal Property.

1.34 "Purchase Price" means the sum of
_____ Dollars (\$_____).

1.35 "Real Property" means Seller's right, title and interest in that certain real property known as 210 East Main Street in the City of Los Gatos, consisting of the land located in the County of Santa Clara, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, together with Seller's right, title and interest in the improvements now or hereafter located thereon.

1.36 "Sale Order"

means an order of the Bankruptcy Court, in form and substance satisfactory to Lender, in furtherance of the Plan Confirmation Order, authorizing the sale of the Property to Buyer. Such Sale Order must include an order of the Bankruptcy Court authorizing the assumption by and assignment to Buyer of the Leases and specifying the cure amounts, if

any, necessary to cure any defaults thereunder that are required in order to assume the same. Responsibility for payment of such cure costs is set forth in Section 3.10.7, 3.10.11 or 3.10.22 of this Agreement. Such Sale Order must also (a) authorize the transfer of the Property free and clear of all liens, claims and encumbrances, (b) direct the distribution of proceeds of sale of the Property in accordance with Section 3.9.3 of this Agreement, and (c) provide for the termination of the management agreement with Manager and the employment of the Hotel Employees as of the Closing Date.

1.37 "Seller's Address" means:

Los Gatos Hotel Corporation

Attn: _____

Telephone: _____

Facsimile: _____

1.38 "Seller Released Parties" means, collectively, Seller and Lender, and each of their respective affiliates and servicers, and the employees, officers, directors, representatives, invitees, tenants, agents, contractors, servants, attorneys, shareholders, participants, affiliates, partners, members, and parents, the subsidiaries of each of the foregoing, and the successors and assigns of each of the foregoing.

1.39 "Service Contracts" means any and all of the service, maintenance and other similar contracts, oral or written, in effect on the Close of Escrow with respect to the Property, as amended.

1.40 "Title Company" means _____.

1.41 "Title Report" means that certain title report number _____ dated _____, 2015, prepared by Title Company for the Real Property, as amended and supplemented from time to time.

2. Sale of Property/Purchase Price:

2.1 Sale of Property: Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller, for the Purchase Price on the terms and conditions of this Agreement.

2.2 Purchase Price: The Purchase Price shall be payable as follows:

2.2.1 Deposit: On or before the execution of this Agreement by Buyer and Seller, Buyer shall deliver to Lender the Deposit in the form of a wire transfer of immediately available federal funds. If Buyer fails to deliver the Deposit to Escrow Holder when and as required under the immediately preceding sentence, Buyer shall be

deemed to be in material default under this Agreement, this Agreement shall automatically terminate, and Buyer shall have no further right, title or interest, and Seller shall have no further obligation or liability, under this Agreement. The entire Deposit shall be non-refundable and shall either be applied toward the payment of the Purchase Price on the Close of Escrow or retained by Lender if the Close of Escrow does not occur. .

2.2.2 Cash Balance: Buyer shall deposit into Escrow an amount ("Cash Balance"), in immediately available federal funds equal to the Purchase Price minus the Deposit and increased or decreased by the amount of any credits due or any items chargeable to Buyer under this Agreement. Buyer shall deposit the Cash Balance into Escrow in the form of immediately available federal funds no later than the earlier of one (1) business day before the Closing Date or such earlier date as may be required by the Escrow Holder under applicable law such that Escrow Holder will be in a position to disburse the cash proceeds to Seller on the Closing Date.

2.3 Interest: At the request of Buyer, all funds received from or for the account of Buyer and held by Escrow Holder shall be deposited by Escrow Holder in an interest-bearing account with a federally insured state or national bank ("Account") located in California. None of the Deposit shall earn interest.

2.4 Allocation of Purchase Price. At least fourteen (14) days prior to the Close of Escrow, Buyer shall provide to Seller a reasonable allocation of the Purchase Price between the Real Property and the Personal Property. All filings made by the parties hereto and the sales taxes to be paid by Buyer in connection with the transfer of such Personal Property shall be based on such value of the Personal Property.

3. Escrow: Closing Conditions.

3.1 Escrow:

Upon the execution of this Agreement by Buyer and Seller, and the acceptance of this Agreement by Escrow Holder in writing, this Agreement shall constitute the joint escrow instructions of Buyer and Seller to Escrow Holder to open an escrow ("Escrow") for the consummation of the sale of the Property to Buyer pursuant to the terms of this Agreement. Upon Escrow Holder's written acceptance of this Agreement, Escrow Holder is authorized to act in accordance with the terms of this Agreement. Buyer and Seller shall execute Escrow Holder's general escrow instructions upon request; provided, however, that if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control. Upon the Close of Escrow, Escrow Holder shall pay any sum owed to Seller with immediately available federal funds.

Prior to the execution of this Agreement by Buyer and Seller, Escrow Holder has prepared or obtained, and delivered to Buyer and Seller, a Natural Hazard Disclosure Statement in the form set forth in California Civil Code Section 1103.2 for the Property ("NHDS"). The cost of the NHDS shall be borne by Seller, however, shall not exceed Three Hundred Dollars (\$300).

3.2 Closing Date: The Escrow shall close ("Close of Escrow") on the Closing Date, provided that all conditions to the Close of Escrow set forth in this Agreement have been satisfied or waived by the party intended to be benefited thereby.

3.3 Buyer's Conditions to Closing: The obligations of Buyer to consummate the transactions provided for herein are subject to and contingent upon the satisfaction of the following conditions:

3.3.1 Representations and Warranties: All representations and warranties of Seller contained in this Agreement shall be true and correct; however, none of such representations and warranties by Seller shall survive the Close of Escrow.

3.3.2 Covenants: Seller shall have performed and satisfied all agreements and covenants required hereby to be performed by Seller prior to or at the Close of Escrow; however, none of such covenants to be performed by Seller prior to or at the Close of Escrow shall survive the Close of Escrow.

3.3.3 Title Policy: The Title Company's commitment to issue or the issuance of the Buyer's Title Policy complying with the requirements of Section 3.5.2 below.

3.3.4 Non-Contingency Items. Buyer acknowledges and agrees that Buyer's obligations under this Agreement are not contingent on (a) Buyer's obtaining any financing, franchise or license agreement, consent, approval, estoppel, remedial action plan, no action letter, or other item not listed in Section 3.3.3, above, or (b) the transfer of the Liquor License to Buyer or the issuance of a new liquor license to Buyer.

3.4 Seller's Conditions to Closing: The obligations of Seller to consummate the transactions provided for herein are subject to and contingent upon the satisfaction of the following conditions or the waiver of same by Seller in writing:

3.4.1 Representations and Warranties: All representations and warranties of Buyer contained in this Agreement shall be true and correct; however, none of such representations and warranties by Seller shall survive the Close of Escrow.

3.4.2 Covenants: Buyer shall have performed and satisfied all agreements and covenants required hereby to be performed by Buyer prior to or at the Close of Escrow; however, none of such covenants to be performed by Buyer prior to or at the Close of Escrow shall survive the Close of Escrow.

3.4.3 Purchase Price and Loan: The Escrow Holder's commitment to apply a portion of the Purchase Price to repay the Loan (including, without limitation, all principal, interest, default interest, fees, late fees, costs, expenses and other amounts owing to Lender in connection with the Loan) in full and pay the balance of the Purchase Price to the bankruptcy estate of Seller.

3.4.4 Orders: Seller shall have obtained a certified copy of the Plan Confirmation Order and a certified copy of the Sale Order, and neither of such orders shall have been modified, reversed, vacated, stayed, restrained, dissolved, enjoined or appealed on or prior to the Closing Date.

3.5 Title and Title Insurance

3.5.1 Deed: On the Closing Date, Seller shall convey title to the Property to Buyer by grant deed in the form of Exhibit "B" attached hereto and incorporated herein by this reference ("Deed").

3.5.2 Buyer's Title Policy: At the Close of Escrow, Escrow Holder shall cause the Title Company to issue to Buyer a CLTA Standard Coverage Owner's Policy of Title Insurance or equivalent owner's policy of title insurance ("Buyer's Title Policy") which:

3.5.2.1 shall be written with liability in the amount of the Purchase Price; and

3.5.2.2 shall insure title to the Real Property, to be vested in Buyer, subject only to the following exceptions ("Permitted Exceptions"):
(i) the standard printed exceptions set forth in the Buyer's Title Policy; (ii) general and special real property taxes and assessments for the current fiscal year, a lien not yet due and payable; (iii) the exceptions set forth in the Title Report (except the exception for the deed of trust for the benefit of Lender); (iv) any survey exceptions and exceptions for unrecorded matters; and (v) any exceptions directly or indirectly caused by Buyer.

3.5.3 ALTA Policy: Buyer shall have the right to procure an ALTA Extended Coverage Owner's Policy of Title Insurance ("ALTA Policy") as long as the issuance of the ALTA Policy shall not be a condition to, or result in a delay or extension of the Close of Escrow. Buyer shall pay for the increased cost of such ALTA Policy, the cost of any survey that the Title Company requires for issuance of an ALTA Policy, and the cost of any title insurance endorsements, and for the cost of any other increase in the amount or scope of title insurance if Buyer elects to increase the amount or scope of title insurance coverage provided in the Buyer's Title Policy.

3.6 Closing Costs and Charges

3.6.1 Seller's Costs: Seller shall pay (a) one-half (1/2) of Escrow Holder's fees; (b) the premium for the Buyer's Title Policy; (c) all expenses and charges incurred in connection with the discharge of delinquent taxes, if any, which may be required in order for the Title Company to issue the Buyer's Title Policy in accordance with Section 3.5.2 above; (d) the County documentary transfer taxes payable in connection with the transfer by Seller to Buyer of the Real Property; and (e) Seller's share of prorations as determined in accordance with Section 3.10 below.

3.6.2 Buyer's Costs: Buyer shall pay (a) one-half (1/2) of the Escrow Holder's fee; (b) all document recording charges; (c) any costs arising out of the Buyer's Title Policy which are described in Section 3.5.3; (d) the cost of all endorsements; (e) the City documentary transfer taxes in connection with the transfer by Seller to Buyer of the Real Property; (f) Buyer's share of prorations as determined in accordance with Section 3.10 below; and (g) any sales taxes that may be payable in connection with the sale of any of the Property to Buyer.

3.6.3 Other Costs: All other costs, if any, shall be apportioned in the customary manner for real property transactions in the County where the Real Property is located.

3.7 Deposit of Documents by Seller: Not later than one (1) business day prior to the Closing Date, Seller shall deposit the following items into Escrow, each of which shall be duly executed and acknowledged by Seller where appropriate:

3.7.1 The Deed.

3.7.2 Two (2) counterparts of a bill of sale, duly executed by Seller, conveying to Buyer, without warranty, all of Seller's right, title, and interest in and to the Personal Property (other than the Assumed Contracts), in the form of Exhibit "C" attached hereto and incorporated herein by this reference ("Bill of Sale").

3.7.3 Two (2) counterparts of an assignment and assumption, duly executed by Seller, assigning to Buyer, without warranty, all of Seller's right, title, and interest in and to all Assumed Contracts, all to the extent transferable by Seller, in the form of Exhibit "D" attached hereto and incorporated herein by this reference ("General Assignment").

3.7.4 An affidavit executed by Seller to the effect that Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 ("Certification") and an executed California Real Estate Withholding Exemption (Form 593W) ("Form 593").

3.7.5 Other documents pertaining to Seller's authority to record the Deed that may reasonably be required by Escrow Holder to close the Escrow in accordance with this Agreement.

3.8 Deposit of Documents and Funds by Buyer: Not later than one (1) business day prior to the Closing Date, Buyer shall deposit the following items into Escrow:

3.8.1 The Cash Balance;

3.8.2 Two (2) counterparts of the General Assignment, duly executed by Buyer;

3.8.3 Two (2) counterparts of the Bill of Sale, duly executed by Buyer; and

3.8.4 All other funds and documents as may reasonably be required by Escrow Holder to close the Escrow in accordance with this Agreement.

3.9 Delivery of Documents and Funds at Closing: Provided that all conditions to closing set forth in this Agreement have been satisfied or, as to any condition not satisfied, waived by the party intended to be benefited thereby, on the Closing Date Escrow Holder shall conduct the closing by recording or distributing the following documents and funds in the following manner:

3.9.1 Recorded Documents: Record the Deed in the Official Records of the County in which the Real Property is located;

3.9.2 Buyer's Documents: Deliver to Buyer: (a) the original Buyer's Title Policy; (b) an original fully-executed counterpart of the Bill of Sale; (c) an original fully-executed counterpart of the General Assignment; (d) the original Certification; (e) the original Form 593; and (f) a conformed copy of each of the other documents delivered by Buyer or Seller into Escrow; and

3.9.3 Seller's Documents; Purchase Price: Deliver to Seller: (a) an original fully-executed counterpart of the Bill of Sale; (b) an original fully-executed counterpart of the General Assignment; and (c) a conformed copy of each of the other documents delivered by Buyer or Seller into Escrow. Disburse the Purchase Price (less the Deposit that was previously disbursed to the Lender) and such other funds, if any, as may be due to Seller by reason of credits under this Agreement, less all items chargeable to Seller under this Agreement, as follows: (i) first, disburse to Lender all funds necessary to pay all amounts owing to Lender as shown in the Plan Confirmation Order; and (ii) second, disburse the balance to the bankruptcy estate of Seller, in trust, to pay claims in the order of priority in accordance with the Plan Confirmation Order. Any and all funds payable to Seller under this Agreement after the Close of Escrow, including, without

limitation, amounts payable under Section 3.10 below, shall be paid to the bankruptcy estate of Seller, in trust, to pay claims in the order of priority in accordance with the Plan Confirmation Order.

3.10 Prorations and Adjustments

3.10.1 General: Except as otherwise set forth in this Section 3.10, rentals, revenues, and other income, if any, from the Property, and real property taxes and operating expenses, if any, affecting the Property shall be prorated as of 2:00 a.m. (California time) on the day of the Close of Escrow. Except as otherwise set forth in this Section 3.10, for purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income and responsible for the expenses, for the entire day upon which the Close of Escrow occurs.

3.10.2 Rentals: Subject to the provisions of Sections 3.10.3 and 3.10.4, rentals shall be prorated as of the Close of Escrow. "Rentals" as used herein includes fixed rentals, additional rentals, percentage rentals, escalation rentals, retroactive rentals, operating cost pass-throughs and other sums and charges payable by tenants under the Leases.

3.10.3 Delinquent Rentals: Rentals are delinquent ("Delinquent Rentals") when payment thereof is more than thirty (30) days delinquent as of the Close of Escrow. Delinquent rentals shall be prorated between Buyer and Seller as of the Close of Escrow but not until they are actually collected by Buyer. Buyer agrees to use commercially reasonable efforts to collect all delinquent rentals promptly after the Close of Escrow. Delinquent rentals collected by Buyer, net of the costs of collection (including attorneys' fees), shall be applied first against amounts most overdue. Buyer agrees that any payments due to Seller as a result of collected delinquent rentals shall be payable by Buyer to Seller promptly upon receipt thereof.

3.10.4 Additional Rentals: Operating cost pass-throughs, percentage rentals, additional rentals and other retroactive rental escalations, sums or charges payable by tenants which accrue as of the Close of Escrow but are not then due and payable, shall be prorated as of the Close of Escrow; provided, however, no payment thereof shall be made to Seller unless and until Buyer collects same from the tenant. When and if Buyer collects such operating cost pass-throughs, percentage rentals or other retroactive rental escalations, sums or charges from a tenant, Seller shall be due an amount equal to all such operating cost pass-throughs, percentage rentals or other retroactive rental escalations, sums or charges accruing prior to the Close of Escrow, computing same on a per diem basis after amortizing them over the respective periods for which such items are payable. Payments of such prorated amounts collected by Buyer shall be made to Seller promptly following receipt and shall be accompanied by a report showing how same was calculated and such supporting documentation as Seller reasonably requests.

3.10.5 Prepaid Rentals: Rentals received by Seller attributable to periods after the Close of Escrow shall be credited to Buyer and debited to Seller at the Close of Escrow.

3.10.6 Taxes and Assessments: All non-delinquent real estate taxes and current installments of assessments affecting the Property which are payable by Seller shall be prorated as of the Close of Escrow based on the actual current tax bill. All delinquent taxes and assessments, if any, affecting the Property which are payable by Seller shall be paid at the Close of Escrow from funds accruing to Seller. Any refunds of real estate taxes and assessments attributable to the period prior to the Close of Escrow shall be paid to Seller upon receipt, whether such receipt occurs before or after the Close of Escrow.

3.10.7 Operating Expenses: All utility service charges for electricity, heat and air conditioning service, other utilities, elevator maintenance, common area maintenance, taxes (other than real estate taxes and income taxes) such as rental taxes, and other expenses affecting the Property which are payable by Seller and any other costs incurred in the ordinary course of business or the management and operation of the Property which are payable by Seller shall be prorated on an accrual basis. Alternatively, at Seller's sole election, Seller may cause any utility company to transfer billings to Buyer upon the Close of Escrow. To the extent not payable directly by a tenant pursuant to a Lease, Seller shall pay all such expenses that accrue prior to the Close of Escrow and Buyer shall pay all such expenses accruing on the Close of Escrow and thereafter. To the extent possible, Seller and Buyer shall obtain billings and meter readings as of the Close of Escrow to aid in such prorations.

3.10.8 Commissions and Tenant Improvement Costs: Seller shall pay in full all leasing commissions and documented tenant improvement costs, if any, due and payable by Seller prior to the Close of Escrow with respect to the Leases which were executed prior to the date of this Agreement, as shown on the proration schedule to be prepared pursuant to Section 3.10.12 below, and Buyer shall pay in full all other leasing commissions and documented tenant improvement costs and other costs payable by the lessor with respect to Leases.

3.10.9 Tenant Deposits: Buyer shall be credited and Seller shall be debited with an amount equal to all tenant deposits (and any interest accrued thereon for the benefit of a tenant pursuant to Leases) paid by the tenants pursuant to the Leases and actually being held by Seller under the Leases, except to the extent that as of Close of Escrow Seller transfers to Buyer control of accounts holding tenant deposits, or letters of credit, certificates of deposit, or other forms of tenant deposits held in separately maintained accounts pursuant to Leases.

3.10.10 Seller Deposits: Seller shall be credited and Buyer shall be debited with an amount equal to all refundable deposits, retentions, and

holdbacks then being held by any Authority, or other third party under any Contract, together with all interest then accrued thereon for the benefit of Seller, to the extent same constitute liabilities of third parties to Seller which are credited or assigned by Seller to Buyer as of the Close of Escrow.

3.10.11 Capital Expenditures: All costs and expenses payable by Seller and not reimbursable by other third parties with respect to capital work relating to the Property conducted by or on behalf of Seller shall be paid in full by Buyer (or reimbursed by Buyer to Seller, if applicable) with respect to all such capital work which has not been substantially completed as of the Effective Date.

3.10.12 Accounts Receivable. All accounts receivable of the Property ("Receivables"), including utility deposits, shall be paid to Seller as and to the extent actually received by Buyer or Seller on and after the Close of Escrow. Seller shall as of 2:00 a.m. (California time) on the Closing Date, prepare a listing of all accounts receivable balances, such listing to be prepared in accordance with generally accepted accounting principles consistently applied, together with such support documentation as Buyer may reasonably request. Except to the extent provided herein, such Receivables shall remain the property of Seller and shall not be transferred as a part of the conveyance of the Property contemplated hereby. All amounts received by Buyer prior to ninety (90) days after the Close of Escrow from an account debtor (other than a tenant under a Lease) shall be applied first to amounts owed to Seller by that account debtor. Promptly following receipt of any such amount due Seller, Buyer shall forward such amount to Seller (after deducting any sum which may be due to Buyer from Seller by reason of post-closing adjustments or prorations and Buyer's reasonable costs for collection thereof, if any), together with a statement showing how such amount has been allocated. Until ninety (90) days after the Close of Escrow, Buyer shall use reasonable efforts to collect in the ordinary course of business Seller's Receivables and will not compromise any of Seller's Receivables without the approval of Seller. Seller shall not be entitled to receive any amounts received by Buyer subsequent to ninety (90) days after the Closing Date from an account debtor unless the account debtor specifically allocates or designates such amount(s) as payment of Seller's Receivables. If Seller receives any amounts with respect to the operation of the Property in excess of amounts due Seller or if any amount previously paid to Seller is reversed against Buyer (e.g., reversals of past payments by credit card companies), then Seller shall promptly remit such amount to Buyer.

3.10.13 Accounts Payable. Seller shall, as of 2:00 a.m. (California time) on the Closing Date, prepare a listing of all accounts payable balances, such listing to be prepared in accordance with generally accepted accounting principles consistently applied, including but not limited to:

Accrued and unpaid charges for electricity and other utilities;

All federal, state and local taxes (except income and ad valorem taxes and taxes in connection with the sale of the Property to the Buyer), including without limitation, employment taxes, occupancy taxes, and sales taxes to which the Property may be subject, up to the Closing Date;

Wages, vacation allowance, accrued retirement benefits and all other employee benefits payable accrued through the Closing Date; and

Equipment rental and service and maintenance contract charges accrued for periods up to the Closing Date.

Seller shall pay concurrently with the Close of Escrow all accounts payable currently due with respect to the Property and the Assumed Contracts as of the Close of Escrow.

3.10.14 Room Rentals. Notwithstanding any other provisions contained in this Section 3, Seller shall be entitled to (i) all restaurant, food, beverage, public function and banquet revenues through 2:00 a.m. (California time) on the day of the Close of Escrow and (ii) all room charges, telephone, minibar, pay television, laundry, valet, parking, ski locker and other charges or rentals to transient guests of the Property (collectively, the items in clauses (i) and (ii) being referred to herein as the "Room Rentals") for the night commencing prior to and ending on the day of the Close of Escrow. Room Rentals payable for the night commencing on the date of Close of Escrow shall be for the account of Buyer. On the date of Close of Escrow, Buyer and Seller, or their designated agents and representatives, shall prepare a listing of each guest at the Property indicating thereon the date of occupancy commenced, the projected checkout date and the room rate chargeable to such guest. At the Close of Escrow, rather than remove Seller's cash from the Property, Buyer and Seller shall cause to be counted the amount of Seller's cash at the Property at 2:00 a.m. (California time) on the day of the Close of Escrow. Such cash shall not be removed from the Property by Seller and shall become the Property of Buyer, and Seller shall receive a credit in the amount of such cash.

3.10.15 Reservations and Guest Ledger. On the Closing Date, Seller shall provide Buyer with a complete schedule of Advanced Bookings and Advanced Booking Deposits, which schedule shall list for whose benefit the reservation was made, the amount of prepaid rent thereunder, the amount of any room rental deposits, and the amount of prepared rent thereunder, the amount of any room rental deposits, and the amount of any other deposits made for advance reservations, banquets and/or future services to be provided after Closing Date. Buyer will honor, for its account, all pre-closing reservations as so confirmed by Seller dated subsequent thereto at the rate of price previously agreed to by Seller. Buyer shall receive a credit and Seller a debit in the amount of all Advanced Booking Deposits disclosed in such schedule and paid to Seller but not earned with respect to the period prior to the Close of Escrow.

3.10.16 Contracts. Amounts payable under all Assumed Contracts assigned to and assumed by Buyer shall be prorated on an accrual basis. Seller shall pay all amounts due by Seller thereunder which accrue prior to the Closing Date and Buyer shall pay all amounts accruing on the Closing Date and thereafter.

3.10.17 Guest Property. Seller agrees that on the Closing Date there will be no baggage or other property retained as security for unpaid accounts receivable. Representatives of Seller and Buyer shall prepare an inventory as of 11:59 p.m. (California time) on the day preceding the Closing Date, which inventory shall be binding on all parties hereto, of all baggage parcels, laundry, valet packages, and other property of guests checked or left in the care of the Property by guests then or formerly in the Property, as well as all items contained in the Property's lost and found. Seller shall deliver all of the foregoing to Buyer at the Close of Escrow, and Buyer shall be responsible from and after 11:59 p.m. (California time) on the day preceding the Closing Date for all property listed in said inventory as well as all lost and found items. On the Closing Date, Seller shall cause the delivery to Buyer of all keys to the safe deposit boxes at the Property not at the time in use by guests at the Property or other depositors, all receipts and agreements relating to all safe deposit boxes and a complete list of safe deposit boxes in use at the Property, which list shall contain the name and room number of each depositor.

3.10.18 Inventory. Buyer is obtaining from Seller, as of the Closing Date (a) all Operating Supplies, (b) all Liquor Assets (subject to any requirements under California law that Buyer hold an appropriate liquor license before acquiring the Liquor Assets), and (c) all other tangible Personal Property located at the Property, without adjustment or proration therefor.

3.10.19 Employee Wages. Subject to Section 9, below, (a) all Hotel Employees shall be terminated as of the Closing Date, and Manager shall pay all wages, salaries and benefits payable to its employees for service up to and including 2:00 p.m. (California time) on the Closing Date, and (b) Buyer shall pay wages, salaries and benefits payable to its employees hired by Buyer upon or following the Closing Date.

3.10.20 Gift Certificates. Buyer shall honor any and all gift certificates issued prior to the Close of Escrow, and Buyer shall not be entitled to a credit against the Purchase Price for such gift certificates.

3.10.21 Other Income. All other income derived from the Property accruing or relating to the period through and including the night preceding the Closing Date shall be paid to Seller. All other income relating to the Property accruing and relating to the period commencing with the Closing Date shall be paid to Buyer.

3.10.22 Other Expenses. All other expenses not otherwise specified herein in connection with the Property accruing and relating to the period

through and including the night before the Closing Date will be the responsibility of and paid by Seller. All other such costs and expenses not otherwise specified herein in connection with the Property accruing and relating to the period commencing on the Closing Date and thereafter shall be the responsibility of and be paid by Buyer.

3.10.23 Method of Proration. Buyer and Seller agree to cause their accountants to prepare a schedule of tentative prorations ("Closing Statement") prior to the Closing Date with respect to the Property. Such prorations, if and to the extent known and agreed upon as of the Close of Escrow, shall be paid by Buyer to Seller (if the prorations result in a net credit to the Seller) or by Seller to Buyer (if the prorations result in a net credit to the Buyer) by increasing or reducing the cash to be paid by Buyer at the Close of Escrow. Any such prorations not determined or not agreed upon as of the Close of Escrow shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash as soon as practicable following the Close of Escrow. Buyer's and Seller's obligations with respect to prorations under this Agreement shall survive for a period of three (3) months after the Close of Escrow. A copy of the schedule of prorations as agreed upon by Buyer and Seller shall be delivered to Escrow Holder prior to the Close of Escrow.

4. Assessment Liens.

If and to the extent there exists any improvement assessment lien, Mello Roos bond payment or other similar assessment which encumbers the Property, Buyer hereby expressly agrees and assumes the obligation to pay any and all future installments of such bond or assessment lien affecting the Property which accrue from and after the Close of Escrow. Any bond payments or assessment liens for the current payable period shall be prorated in accordance with Section 3.10 above and any past due and unpaid installments of such bonds or assessment liens shall be paid by Seller. Seller shall have no obligation to pay the entire principal amount of any of such assessments or bonds. This Section 4 shall survive the Close of Escrow and shall not be merged with the Deed.

5. Delivery and Possession.

Seller shall deliver possession of the Property to Buyer at the Close of Escrow subject to all matters of record or apparent or otherwise disclosed to or discovered by Buyer. Seller shall instruct Manager to deliver to Buyer at the Hotel upon the Close of Escrow the following items to the extent in the possession of Manager or Seller: (a) the originals or, if the originals are not in Manager's or Seller's possession, copies of all warranties, guarantees, licenses, permits, franchises and material governmental approvals and certificates of occupancy for the Hotel, if any, (b) copies of books and records, the Assumed Contracts, and (c) combinations to safes, keys, codes and passcards relating to the operation of the Hotel and forming part of the Personal Property.

6. Commissions.

Buyer and Seller each represents and warrants to the other that there is no commission, finder's fee or brokerage fee arising out of the purchase and sale transaction contemplated by this Agreement due to the conduct of the representing party other than a commission payable by Seller to Broker on the Close of Escrow pursuant to a separate written agreement between Seller and Broker. Buyer shall indemnify, defend and hold Seller and the other Seller Released Parties harmless from and against any and all liabilities, claims, demands, damages, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in connection with claims for any such commissions, finders' fees or brokerage fees arising out of Buyer's conduct or the inaccuracy of the foregoing representation and/or warranty of Buyer. Seller shall indemnify, defend and hold Buyer harmless from and against any and all liabilities, claims, demands, costs and expenses, including, without limitation, reasonable attorneys' fees and costs in connection with claims for any such commissions, finders' fees or brokerage fees arising out of Seller's conduct or the inaccuracy of the foregoing representation and/or warranty of Seller. Notwithstanding anything to the contrary, Broker is not a third party beneficiary of this provision or this Agreement and has no right, title or interest in connection with this Agreement. The provisions of this Section 6 shall survive the Close of Escrow or earlier termination of this Agreement. This Section 6 shall survive the Close of Escrow and shall not be merged with the Deed.

7. Liquor License.

7.1 Temporary License. Promptly after the Effective Date, Buyer shall execute and file with the applicable Authority an application for transfer of the Liquor License by Seller to Buyer or issuance of a new liquor license. Simultaneously with the filing of the application for transfer of the Liquor License or issuance of a new liquor license, Buyer shall file with the applicable Authority an application for a temporary retail permit allowing Buyer to continue the operation of the Hotel during the period the application for transfer of the Liquor License is pending. Buyer specifically acknowledges and agrees that should the application for transfer of the Liquor License from Seller to Buyer or issuance of a new liquor license, after due prosecution and exhaustion of all appropriate administrative remedies, be finally denied for any reason, such denial shall not affect in any manner whatsoever the terms and provisions of this Agreement, and the Close of Escrow shall take place without delay or interruption. In the event of any delay in the transfer of the Liquor License or issuance of a new liquor license, Seller agrees, to the extent permitted by the applicable Governmental Regulations and Authorities, to maintain the Liquor License until such transfer is complete for the benefit of Buyer, but in no event more than thirty (30) days following the Close of Escrow. Seller agrees to complete all forms required to transfer the Liquor License to Buyer. All reasonable, documented third party expenses incurred by Seller or Seller's affiliate in connection with such actions shall be reimbursed by Buyer promptly

following delivery of written request therefor together with invoices for such expenses. Should Buyer operate temporarily under any license held in the name of Seller, Buyer agrees to indemnify, defend and hold Seller and the other Seller Released Parties, free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs, arising out of or resulting from Buyer's operating under Seller's license or licenses.

7.2 Transfer Not a Condition: Buyer hereby specifically acknowledges and agrees that to the extent that the Liquor License is not assignable or has not been effectively assigned to Buyer prior to the Closing Date or that Buyer's application for a new liquor license is delayed or denied, such failure shall not affect in any manner whatsoever the Close of Escrow, and the Close of Escrow shall proceed without any delay or interruption.

This Section 7 shall survive the Close of Escrow and shall not be merged with the Deed.

8. Damage or Destruction; Condemnation.

8.1 Uniform Act: This Agreement shall be governed by the Uniform Vendor and Purchaser Risk Act as set forth in Section 1662 of the California Civil Code ("Act") as supplemented by this Section 8. For purposes of the Act, (a) a taking by eminent domain of a portion of the Property shall be deemed to affect a "material part" of the Property if the estimated value of the portion of the Property taken exceeds ten percent (10%) of the Purchase Price, and (b) the destruction of a "material part" of the Property shall be deemed to mean an insured or uninsured casualty to the Property following Buyer's inspection of the Property and prior to the Close of Escrow having an estimated cost of repair which equals or exceeds ten percent (10%) of the Purchase Price.

8.2 Definitions: The phrase "estimated value" shall mean an estimate obtained from a M.A.I. appraiser, who has at least five (5) years' experience evaluating property located in the County where the Real Property is located, similar in nature and function to that of the Property, selected by Seller and approved by Buyer, and the phrase "estimated cost of repair" shall mean an estimate obtained from an independent contractor selected by Seller and approved by Buyer. Buyer shall not unreasonably withhold, condition or delay Buyer's approval under this Section.

8.3 Notice; Credit to Buyer: Buyer shall have the right to terminate this Agreement if all or a material part of the Property is destroyed without fault of Buyer or a material part of the Property is taken by eminent domain. Buyer shall give written notice of Buyer's election to terminate this Agreement under the Act within five (5) business days after Buyer first learns of any damage to or condemnation of the Property which entitles Buyer to terminate this Agreement. If Buyer does not give such notice, then this Agreement shall remain in full force and effect and there shall be no reduction in the

Purchase Price, but Seller shall, at Close of Escrow, assign to Buyer (a) any insurance proceeds payable with respect to such damage; or (b) the entire award payable with respect to such condemnation proceeding, whichever is applicable.

9. Employees.

9.1 Employees. (a) Buyer agrees to hire a sufficient number of the Hotel Employees to avoid any violation of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq. (the "WARN Act") or the need to provide any advance announcement to the Hotel Employees. Buyer agrees to indemnify, defend and hold harmless Seller, the other Seller Released Parties and Manager and their respective employees, officers, directors, representatives, invitees, tenants, agents, contractors, servants, attorneys, shareholders, participants, affiliates, partners, members, parents, subsidiaries, successors and assigns, free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs, in connection with any claim of any Hotel Employee, employee representative, or any Authority based on failure to comply with the WARN Act, to the extent applicable.

(b) Manager shall be responsible for any liability for payment of all employees' wages, accrued vacation pay, sick leave, bonuses, pension benefits and other benefits earned by and due to or accrued to Hotel Employees as of the day prior to the Closing Date, together with FICA, unemployment and other taxes and benefits due from any employer of such Hotel Employees through the day prior to the Closing Date, and including any Sections 601-608 of ERISA and Section 4980 B of the Code ("COBRA") rights that are due to Hotel Employees who are not hired by Buyer or Buyer's manager upon the Closing Date. Buyer shall be responsible for any liability for payment of all employees' wages, accrued vacation pay, sick leave, bonuses, pension benefits and other benefits earned by and accrued to Hotel Employees on and after the Closing Date, together with FICA, unemployment and other taxes and benefits due from any employer of such Hotel Employees on or after the Closing Date, and including COBRA benefits that are due to Hotel Employees who are hired by Buyer or Buyer's manager. Buyer shall assume the liability to all Hotel Employees who are hired by Buyer or Buyer's manager for all employees' wages, accrued vacation pay, sick leave, bonuses, pension benefits and other benefits earned by and due to or accrued to Hotel Employees as of the day prior to the Closing Date, and Buyer shall receive a credit under Section 3.10 at the Close of Escrow for such assumed liability (other than unfunded or underfunded pension benefits).

(c) Buyer shall give written notice to Seller prior to the Closing Date of all Hotel Employees offered employment, and all Hotel Employees who have accepted such offer, by Buyer or Buyer's manager at the Hotel.

9.2 Future Employment of Employees. Seller's obligations under this Agreement are conditioned on the Plan Confirmation Order and the Sale Order providing

that the employment by Manager or Seller of Hotel Employees shall terminate at the Close of Escrow.

This Section 9 shall survive the Close of Escrow and shall not be merged with the Deed.

10. Seller's Representations and Warranties.

Seller represents and warrants to Buyer that as of the date of this Agreement:

10.1 Formation. Seller is duly organized, validly existing, and in good standing under the laws of the state of its formation; and

10.1 Authority. Seller has the full power and authority to execute, deliver and perform its obligations under this Agreement, subject to Seller's obtaining the Plan Confirmation Order and the Sale Order.

11. Buyer's Representations and Warranties.

Buyer represents and warrants to Seller that as of the date of this Agreement:

11.1 Formation. Buyer is duly organized, validly existing, and in good standing under the laws of the state of its formation;

11.1 Authority. Buyer has the full power and authority to execute, deliver and perform Buyer's obligations under this Agreement; and

11.1 Prohibited Transaction. Buyer is not acquiring the Property with the assets of an employee benefit plan as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974, as amended ("ERISA") and the transaction which is the subject of this Agreement is not a prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended. .

12. Due Diligence Completed.

12.1 Condition and Other Matters. Buyer hereby approves the physical condition of the Property and all other matters in connection with the Property. Pursuant to the Confidentiality Agreement, Buyer had the opportunity to inspect the Property. Buyer's obligations under this Agreement, including, without limitation, the obligation to purchase the Property in accordance with this Agreement, are not conditioned on Buyer's approval of the condition of, or any other matter in connection with, the Property, including, without any further inspection or investigation of the Property or any matter in connection with the Property, or any document or other matter.

12.1.1 Buyer shall have the right to conduct further physical inspection of the Property upon two (2) business days prior notice to Seller and after Seller's receipt of written evidence that Buyer has procured the insurance required by Section 12.1.3 of this Agreement. Buyer's physical inspection of the Property shall be conducted during normal business hours at times mutually acceptable to Buyer and Seller and shall not interfere with the use, occupancy or operation of the Property. Buyer shall give Seller or Seller's agent the opportunity to accompany Buyer or Buyer's consultant during any site inspection of the Property. Notwithstanding anything to the contrary, (a) no invasive testing or boring shall be done without the prior notification of Seller and Seller's prior written permission of the same, which permission may be withheld in Seller's sole and absolute discretion, and Seller shall have the right to view any such invasive testing or boring and (b) no contact with any Hotel Employee, guest, tenant or property manager shall be made without the prior notification of Seller and Seller's prior written permission of the same, which permission may be withheld in Seller's sole and absolute discretion, and Seller shall have the right to participate in any such contact with any Hotel Employee, guest, tenant or property manager.

12.1.2 Buyer acknowledges that: (i) Buyer has conducted such surveys and inspections, and made such geologic, environmental, soils and other studies of the Property; and (ii) Buyer has made such investigations of the Property (including, without limitation, investigations of zoning, land use, environmental and other laws, regulations and restrictions) as Buyer has, in Buyer's discretion, deemed necessary or advisable in connection with Buyer's purchase of the Property and to determine the physical, environmental and land use characteristics of the Property and all other matters in connection with the Property and the Property's suitability for Buyer's intended use.

12.1.3 Buyer shall obtain or cause its consultants to obtain, at Buyer's sole cost and expense prior to commencement of any investigative activities on the Property, a policy of commercial general liability insurance covering any and all liability of Buyer and Seller and the other Seller Released Parties with respect to or arising out of any investigative activities. Such policy of insurance shall be kept and maintained in force during the term of this Agreement and so long thereafter as necessary to cover any claims of damages suffered by persons or property resulting from any acts or omissions of Buyer, Buyer's employees, agents, contractors, suppliers, consultants and other related parties. Such policy of insurance shall have liability limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability and shall name Seller and the other Seller Released Parties as an additional insured.

12.1.4 Buyer shall protect, indemnify, defend and hold the Property, Seller and the other Seller Released Parties, free and harmless from and against any and all claims, damages, liens, stop notices, obligations, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs, resulting from Buyer's inspection

and investigation of the Property and matters in connection with the Property, including, without limitation, repairing any and all damages to any portion of the Property, arising out of or related (directly or indirectly) to Buyer's conducting such inspections and investigations. Buyer shall keep the Property free and clear of any mechanics' liens or materialmen's liens related to Buyer's right of inspection and investigation and the activities contemplated by Section 12.1.1 of this Agreement. The Buyer's indemnification obligations set forth herein shall survive the Close of Escrow and shall not be merged with the Deed, and shall survive the termination of this Agreement and Escrow prior to the Close of Escrow.

12.2 Title. Buyer hereby approves the Preliminary Title Report, all matters described or disclosed therein, and all other matters in connection with the title to the Property and encumbrances thereon. All exceptions set forth in the Preliminary Title Report and any other encumbrance or exception, except for the deed of trust for the benefit of Lender, are hereby collectively referred to herein as the "Permitted Exceptions".

12.3 Due Diligence Items. Buyer hereby approves all of the Due Diligence Items. "Due Diligence Items" means, collectively, the items described on Exhibit "E" attached hereto, the other items available or disclosed in any electronic due diligence room to which Broker provided access to Buyer, all publicly available information (including, all information available in connection with the bankruptcy proceedings of Seller and the records and files of the Regional Water Quality Control Board), and all other items made available to or discovered by Buyer. Buyer acknowledges that the Due Diligence Items include, without limitation, a Natural Hazard Disclosure Statement in the form set forth in California Civil Code Section 1103.2 for the Property. Seller acknowledges Buyer may desire to discuss or otherwise inquire about plans, documents, agreements and other records of various governmental entities, districts and utilities regarding the Property or otherwise impacting, restricting, or affecting its use or value ("Governmental Records") with various governmental entities and utilities and the other Due Diligence Items with third parties. In this regard, subject to the terms and conditions of this Agreement (including, without limitation, the last sentence of Section 10.1.1), Buyer is permitted to contact all necessary third parties and discuss with such third parties the Governmental Records and other Due Diligence Items; provided, however, Seller is first given a reasonable opportunity to participate in any such contact or discussion. It is understood by the parties that Seller does not make any representation or warranty, express or implied, as to the accuracy or completeness of any Due Diligence Item. Buyer acknowledges that Seller and Seller's affiliates are providing the Due Diligence Items made available by Seller as a disclosure only, and Seller shall have no responsibility for the contents or accuracy of such disclosures, irrespective of the contents of any such disclosures or the timing of delivery thereof.

12.4 Estoppel Certificates. After the opening of the Escrow, Buyer may pursue a tenancy statement from each tenant of the Property ("Estoppel Certificate"); provided, however, that Seller shall not be obligated to obtain any such Estoppel Certificate. Buyer's obligations under this Agreement, including, without limitation, the obligation to purchase the Property in accordance with this Agreement, are not conditioned on Buyer's receipt or approval of any such Estoppel Certificate or the form or content of any Estoppel Certificate.

12.5 Disclaimer. Buyer represents and warrants, which representations and warranties shall survive the Close of Escrow and not be merged with the Deed, that Buyer has conducted all due diligence in connection with the Property that Buyer deems necessary or advisable, and that Buyer is familiar with the general condition of the Property. Buyer understands and acknowledges that the Property may be subject to earthquake, fire, floods, erosion, high water table, dangerous underground soil conditions, hazardous materials, soil and groundwater contamination, and similar occurrences that may alter its condition or affect its suitability for any proposed use. Seller shall have no responsibility or liability with respect to any such occurrence or condition. Buyer represents and warrants that Buyer is acting, and will act, only upon information obtained by Buyer directly from Buyer's own inspection of the Property and due diligence investigations. Notwithstanding anything to the contrary contained in this Agreement, the suitability or lack of suitability of the Property for any proposed or intended use, or availability or lack of availability of (a) permits or approvals of Authorities, or (b) easements, licenses or other rights with respect to any such proposed or intended use of the Property, shall not affect the rights or obligations of the Buyer hereunder.

This Section 12 shall survive the Close of Escrow and shall not be merged with the Deed.

13. Property "AS IS".

This Section 13 shall survive the Close of Escrow and shall not be merged with the Deed.

13.1 No Side Agreements or Representations: No person acting on behalf of Seller is authorized to make, and by execution hereof, Buyer acknowledges that no person has made, any representation, agreement, statement, warranty, guarantee or promise regarding the Property or the transaction contemplated herein or the zoning, construction, physical condition or other status of the Property except as may be expressly set forth in this Agreement. No representation, warranty, agreement, statement, guarantee or promise, if any, made by any person acting on behalf of Seller which is not contained in this Agreement will be valid or binding on Seller.

13.2 AS IS CONDITION: BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND

SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (I) VALUE; (II) THE INCOME TO BE DERIVED FROM THE PROPERTY; (III) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, INCLUDING, WITHOUT LIMITATION, THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE PROPERTY; (IV) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (V) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (VI) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (VII) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE AUTHORITY; (VIII) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (IX) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, THE ENVIRONMENTAL LAWS, AND ANY AMENDMENTS TO ANY OF THE FOREGOING, AND ANY REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING; (X) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY OR THE GROUND WATER; (XI) THE CONTENT, COMPLETENESS OR ACCURACY OF THE DUE DILIGENCE ITEMS, ANY PRELIMINARY REPORT REGARDING TITLE; OR ANY OTHER ITEM MADE AVAILABLE FOR BUYER'S REVIEW; (XII) THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PROPERTY, INCLUDING ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER; (XIII) THE CONFORMITY OF THE PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS; (XIV) DEFICIENCY OF ANY UNDERSHORING; (XV) DEFICIENCY OF ANY DRAINAGE; (XVI) THE FACT THAT ALL OR A PORTION OF THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE; (XVII) THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY; OR (XVIII) WITH RESPECT TO ANY OTHER MATTER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND REVIEW INFORMATION AND DOCUMENTATION AFFECTING THE PROPERTY, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND REVIEW OF

SUCH INFORMATION AND DOCUMENTATION, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION MADE AVAILABLE TO BUYER OR PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. BUYER AGREES TO FULLY AND IRREVOCABLY RELEASE SELLER AND THE OTHER SELLER RELEASED PARTIES FROM ANY AND ALL CLAIMS THAT BUYER MAY NOW HAVE OR HEREFTER ACQUIRE AGAINST SELLER OR ANY SELLER RELEASED PARTY FOR ANY COSTS, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION ARISING FROM SUCH INFORMATION OR DOCUMENTATION. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS, AND THAT SELLER HAS NO OBLIGATIONS TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN. BUYER REPRESENTS, WARRANTS, AND COVENANTS TO SELLER, WHICH REPRESENTATION, WARRANTY, AND COVENANT SHALL SURVIVE THE CLOSE OF ESCROW AND NOT BE MERGED WITH THE DEED, THAT BUYER IS RELYING SOLELY UPON BUYER'S OWN INVESTIGATION OF THE PROPERTY.

BY INITIALING BELOW, THE BUYER ACKNOWLEDGES THAT (i) THIS SECTION 13.2 HAS BEEN READ AND FULLY UNDERSTOOD, (ii) THE BUYER HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (iii) THE BUYER HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION 13.2.

SELLER'S INITIALS

BUYER'S INITIALS

14. Release.

Buyer shall rely solely upon Buyer's own knowledge of the Property based on its investigation of the Property and its own inspection of the Property in determining the Property's condition. Buyer and anyone claiming by, through or under Buyer hereby waives its right to recover from and fully and irrevocably releases Seller, and the other

Seller Released Parties from any and all claims that Buyer and anyone claiming by, through or under Buyer, may now have or hereafter acquire against any of the Seller Released Parties for any loss, liability, damage, obligation, cost or expense (including, without limitation, attorneys' fees and court costs), demand, action, cause of action, directive, order, or judgment (collectively, "Claims") arising from or related to the Property, including, without limitation, environmental matters affecting (or in otherwise connection with) the Property or any portion thereof (including, without limitation, any claim under California Health & Safety Code, the Federal Water Pollution Control Act, the Clean Air Act, the Federal Resource Conservation and Recovery Act, the U.S. Environmental Protection Agency Regulations at 40 C.F.R., Part 261, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Mine Safety and Health Act of 1977, any other statutory, common, case or other law related to any hazardous, toxic, infectious or contaminated substances, materials and wastes or similar materials, including, without limitation, oil, oil byproducts, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, PCEs, TCEs and any other materials which are 'hazardous substances,' 'hazardous wastes,' 'hazardous materials,' 'toxic substances,' 'wastes,' 'regulated substances,' 'industrial solid wastes,' or 'pollutants,' or the environment, any amendment to any of the foregoing, or any regulations, directives or guidelines promulgated in connection with any of the foregoing (collectively, "Environmental Laws"), or Title III of the Americans With Disabilities Act of 1990, as amended, or any regulations promulgated thereunder, or any other law). This release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release to Seller and the other Seller Released Parties. Buyer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

In this connection and to the extent permitted by law, Buyer hereby agrees, represents and warrants, which agreements, representations and warranties shall survive the Close of Escrow and not be merged with the Deed, that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs,

losses and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees, represents and warrants, which agreements, representations and warranties shall survive the Close of Escrow and not be merged with the Deed, that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to Seller by Buyer in exchange for Seller's performance hereunder. This Section 14 shall survive the Close of Escrow and shall not be merged with the Deed.

Seller has given Buyer material concessions regarding this transaction in exchange for Buyer agreeing to the provisions of this Section 14. Seller and Buyer have each initialed this Section 14 to further indicate their awareness and acceptance of each and every provision hereof.

SELLER'S INITIALS

BUYER'S INITIALS

15. Property; Hazardous Materials.

(a) From and after the Close of Escrow, Buyer shall protect, defend, indemnify and hold each of the Seller Released Parties, and hold each of the Seller Released Parties free and harmless, from and against any and all Claims, whether direct or indirect, known or unknown, or foreseen or unforeseen, of whatever kind or nature arising from or in any way connected with the physical condition of the Property or any other aspect of the Property, which arise after the Close of Escrow.

(b) From and after the Close of Escrow, Buyer shall protect, indemnify and defend each of the Seller Released Parties, and hold each of the Seller Released Parties free and harmless, from and against any and all Claims in connection with any environmental matter affecting (or otherwise in connection with) the Property or any portion thereof or groundwater in, on, under or about the Property or any portion thereof, including, without limitation, any Claim in connection with any Environmental Law, or any Claim in connection with any use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation, migration or presence any hazardous, toxic, infectious or contaminated substances, materials and wastes or similar materials, including, without limitation, oil, oil byproducts, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, PCEs, TCEs and any other materials which are 'hazardous substances,' 'hazardous wastes,' 'hazardous materials,' 'toxic substances,' 'wastes,' 'regulated substances,' 'industrial solid wastes,' or 'pollutants' under any Environmental Law (collectively, 'Hazardous Materials'). The Claims covered by such agreement to protect, indemnify, defend and hold harmless shall include, without limitation, (a) the investigation, remediation, and disposal of Hazardous Materials and

protective measures against Hazardous Materials, (b) Claims of Authorities and other third parties, and (c) Claims in connection with any Hazardous Material located in, on, under, over or about the Property or any portion thereof or groundwater in, on, under or about the Property or any portion thereof, regardless of whether or not such Hazardous Material was discharged, released or disposed by Seller, Buyer or any third party.

This Section 15 shall survive the Close of Escrow and shall not be merged with the Deed.

16. Indemnification.

Buyer shall indemnify, defend, protect and hold harmless each of the Seller Released Parties, and hold each of the Seller Released Parties free and harmless,, from and against any and all Claims, whether direct or indirect, known or unknown, or foreseen or unforeseen, of whatever kind or nature which may arise from or be related to (a) Buyer's breach of any term or provision of this Agreement, or (b) Buyer's activities on or ownership of the Property, including, but not limited to, the acts or omissions of Buyer or its employees, agents, suppliers or contractors. Buyer's obligations hereunder shall survive the Close of Escrow and shall not be merged with the Deed. This Section 16 shall survive the Close of Escrow and shall not be merged with the Deed.

17. Governmental Approvals.

Nothing contained in this Agreement shall be construed as authorizing Buyer to apply for a zone change, variance, subdivision map, lot line adjustment or other discretionary governmental act, approval or permit with respect to the Property prior to the Close of Escrow, and Buyer agrees not to do so without Seller's prior written approval, which approval may be withheld in Seller's sole and absolute discretion. Buyer agrees not to submit any reports, studies or other documents, including, without limitation, plans and specifications, impact statements for water, sewage, drainage or traffic, environmental review forms, or energy conservation checklists to any Authority, or any amendment or modification to any such instruments or documents prior to the Close of Escrow unless first approved by Seller, which approval Seller may withhold in Seller's sole discretion. Buyer's obligation to purchase the Property shall not be subject to or conditioned upon Buyer's obtaining any variances, zoning amendments, subdivision maps, lot line adjustment, or other discretionary governmental act, approval or permit.

18. Default.

18.1 LIQUIDATED DAMAGES - DEPOSIT: NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF THE SALE OF THE PROPERTY TO BUYER IS NOT CONSUMMATED FOR ANY REASON OTHER THAN SELLER'S DEFAULT UNDER THE AGREEMENT, SELLER SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS SELLER'S

LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH FAILURE, PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHTS TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES, NOR WAIVE OR AFFECT SELLER'S RIGHTS AND BUYER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTION 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676, AND 1677. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION.

SELLER'S INITIALS

BUYER'S INITIALS

18.2 No Contesting Liquidated Damages: As material consideration to each party's agreement to the liquidated damages provisions stated above, each party hereby agrees to waive any and all rights whatsoever to contest the validity of the liquidated damage provisions for any reason whatsoever, including, but not limited to, that such provision was unreasonable under circumstances existing at the time this Agreement was made.

18.3 Buyer Remedies: Upon a default by Seller under this Agreement, Buyer as its sole remedy may terminate this Agreement by written notice to Seller and Escrow Holder and recover the Deposit from Seller. Buyer shall have no right to, and Buyer hereby waives, any and all consequential damages, punitive damages and exemplary damages. Seller shall not be bound to this Agreement unless and until (i) the Plan Confirmation Order and Sale Order are entered, and (ii) Seller executes and delivers this Agreement.

18.4 Termination: Upon termination of this Agreement pursuant to this Section 18: (a) each party shall promptly execute and deliver to Escrow Holder such documents as Escrow Holder may reasonably require to evidence such termination; (b) Escrow Holder shall return all documents to the respective parties who delivered such documents to Escrow; (c) Buyer shall return to Seller all Due Diligence Items in Buyer's possession relating to the

Property together with any tests or studies prepared by or on behalf of Buyer with respect to the Property; (d) the defaulting party shall pay Escrow Holder's title and escrow cancellation fees, if any; (e) the defaulting party shall pay to the other party the amounts owing under this Section 18; and (f) the other respective obligations of Buyer and Seller under this Agreement shall terminate; provided, however, notwithstanding the foregoing, Buyer's indemnity obligations and any rights of any party to recover reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and court costs shall survive any such termination of the Agreement. If this Agreement is terminated under any provision of this Agreement other than this Section 18, then clauses (a), (b), (c) and (f), above, shall apply to such termination, and Buyer shall pay the Escrow Holder's title and escrow cancellation fees, if any.

19. Resolution of Disputes.

Seller and Buyer hereby consent to the sole jurisdiction of the Bankruptcy Court to resolve any dispute, claim or controversy between the parties arising out of or relating to the Property, this Agreement or any matter that is the subject of this Agreement, and agree that the Bankruptcy Court shall retain exclusive jurisdiction to resolve any dispute, claim or controversy between the parties arising out of or relating to the Property, the Agreement or any matter that is the subject of this Agreement. The provisions of this Section 19 shall survive the Close of Escrow or earlier termination of this Agreement.

20. Attorneys' Fees.

If any action or proceeding is commenced by either party to enforce their rights under this Agreement or to collect damages as a result of the breach of any of the provisions of this Agreement, the prevailing party in such action or proceeding, including any bankruptcy, insolvency or appellate proceedings, shall be entitled to recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, in addition to any other relief awarded by the court. The provisions of this Section 20 shall survive the Close of Escrow or earlier termination of this Agreement.

21. Notices.

All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective upon the earlier of the following to occur: (a) when delivered to the recipient; (b) when delivered by United States mail, postage prepaid by registered or certified mail, return receipt requested, addressed to the recipient as set forth below; or (c) when delivered by email. All notices to Seller shall be sent to Seller's Address. All notices to Buyer shall be sent to Buyer's Address. All notices to Escrow Holder shall be sent to Escrow Holder's Address. The foregoing addresses may be changed by written notice given in accordance with this Section. If the date on which any notice to be given hereunder falls on a day that is not a business day, then such date shall automatically be extended to the next business day.

22. Amendment; Complete Agreement.

All amendments and supplements to this Agreement must be in writing and executed by Buyer and Seller. This Agreement contains the entire agreement and understanding between Buyer and Seller concerning the subject matter of this Agreement and supersedes all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Buyer or Seller concerning the Property or the other matters which are the subject of this Agreement. This Agreement has been drafted through a joint effort of the parties and their counsel and, therefore, shall not be construed in favor of or against either of the parties.

23. Governing Law.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

24. Severability.

If any provision of this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement (including the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

25. Counterparts; Headings.

This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one Agreement. The headings to sections of this Agreement are for convenient reference only and shall not be used in interpreting this Agreement.

26. Time of the Essence.

Time is of the essence of this Agreement.

27. Waiver.

No waiver by Buyer or Seller of any of the terms or conditions of this Agreement or any of their respective rights under this Agreement shall be effective unless such waiver is in writing and signed by the party charged with the waiver.

28. Third Parties.

This Agreement is entered into for the sole benefit of Buyer and Seller and their respective permitted successors and assigns. No party other than Buyer and Seller and such permitted successors and assigns shall have any right of action under or rights or remedies by reason of this Agreement.

29. Additional Documents.

Each party agrees to perform any further acts and to execute and deliver such further documents which may be reasonably necessary to carry out the terms of this Agreement.

30. Independent Counsel.

Buyer and Seller each acknowledge that: (i) they have been represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel; and (iii) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by Seller's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Seller because Seller's counsel prepared this Agreement in its final form.

31. Assignment; Cooperation with 1031 Exchange.

Buyer shall not assign this Agreement without Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion, except as set forth below in this Section 31. Any purported assignment in violation of the terms of this Agreement shall be void. Seller shall not unreasonably withhold its consent to an assignment by Buyer to a partnership or limited liability company in which Buyer is the managing partner or managing member upon the satisfaction of the following conditions: (i) the assignee of Buyer shall assume all obligations of Buyer hereunder, but Buyer shall remain primarily liable for the performance of Buyer's obligations under this Agreement; (ii) a copy of the fully executed written assignment and assumption agreement shall be delivered to Seller at least five (5) business days prior to Closing Date; and (iii) such assignment must not cause a delay of, or be a condition to, the Close of Escrow.

Seller shall cooperate with Buyer in connection with Buyer's acquisition of the Property as part of a tax-deferred exchange; provided, however, that (i) the effecting of such exchange shall not cause a delay of or be a condition to the Close of Escrow, (ii) any such exchange shall not relieve Buyer of any obligation or liability under this Agreement or the documents and instruments executed and delivered pursuant to this Agreement, (iii) Seller shall not be obligated to take title to any property in connection with any such

exchange, (iv) Seller shall not incur any cost, expense, obligation or liability in connection with any such exchange, including, without limitation, any indemnification or other obligations to any accommodator, and Seller shall not be required to modify or release any right or remedy in connection with any such exchange (including, without limitation, Seller's right to the Deposit) and (v) Buyer shall indemnify, defend, protect and hold harmless Seller and the other Seller Released Parties, from and against any and all damages, losses, liabilities, costs or expenses whatsoever (including attorneys' fees and costs) and claims therefor, whether direct or indirect, known or unknown, or foreseen or unforeseen, which may arise from or be related to any such exchange. Buyer's obligations hereunder shall survive the Close of Escrow and shall not be merged with the Deed. The provisions of this Section 31(b) shall survive the Close of Escrow and shall not merge with the Deed.

32. Successors and Assigns.

Subject to Section 31, above, this Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto.

33. Exhibits.

Each reference to a Section or Exhibit in this Agreement shall mean the sections of this Agreement and the exhibits attached to this Agreement, unless the context requires otherwise. Each such exhibit is incorporated herein by this reference.

34. Duty of Confidentiality.

Except to the extent Seller discloses any such information in connection with the bankruptcy proceedings of Seller, including, without limitation, the Plan Confirmation Order or Sale Order, Buyer and Seller represent and warrant that each shall keep all information and/or reports obtained from the other, or related to or connected with the Property, the other party, or this transaction, confidential and will not disclose any such information to any person or entity without obtaining the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

35. Survival.

Unless otherwise specifically set forth in this Agreement, none of the representations, warranties or indemnities set forth herein shall survive the Close of Escrow.

36. Bulk Sales Law. Seller and Buyer agree to waive compliance with the provisions of the Commercial Code effective in the State of California relating to bulk transfers in connection with the sale of the Personal Property. The provisions of this

Section 36 shall survive the Close of Escrow and the execution, delivery and recordation of the Deed.

37. Binding Offer; Buyer's Bid; Deposit. (a) General. The preparation and/or delivery of unsigned drafts of this Agreement shall not create any legally binding rights in the Property and/or obligations of Seller, and Buyer acknowledges that this Agreement shall not be binding on Seller unless and until this Agreement is duly executed and delivered by both Buyer and Seller and approved by the Bankruptcy Court. Buyer understands and agrees that Seller shall have the right to continue to market the Property and/or to negotiate with other potential purchasers of the Property and/or accept back up offers to purchase the Property. When Buyer executes and delivers this Agreement to Seller and transfers the Deposit to Lender, this Agreement shall constitute an irrevocable offer by Buyer to purchase the Property under the terms of this Agreement, and Seller may accept such offer by executing and delivering this Agreement to Buyer at any time selected by Seller in its sole and absolute discretion (but in no event later than 5:00 pm (California time) on _____, 2015, at which time this offer shall expire and be of no force or effect if not so accepted). Buyer acknowledges and agrees that, without such irrevocable offer by Buyer to Seller, Seller would not allow Buyer to be a qualified bidder in the auction process of selecting the buyer of the Property under the Bid Procedures, and to make the offer under this Agreement and any higher bid made by Buyer at the auction contemplated by the Bid Procedures ("Buyer's Bid"). Buyer acknowledges that the sale of the Property provided for in this Agreement is subject to approval of the Bankruptcy Court and is subject to overbidding, including potentially an auction, pursuant to the Bid Procedures or as otherwise permitted or ordered by the Bankruptcy Court. If Buyer's Bid is determined by the Seller and/or the Bankruptcy Court to be the highest and best bid ("Highest Bid"), then Seller may execute and deliver this Agreement (as amended as described below). If another bid is determined by the Seller and/or the Bankruptcy Court to be the Highest Bid and Buyer's Bid is the next highest and best bid as determined by the Seller and/or the Bankruptcy Court, then Buyer may elect, in Buyer's sole discretion (such election to be made by Buyer promptly upon conclusion of the auction), to have the Buyer's Bid become the "Back-Up Bid". If Buyer's Bid is or becomes the Highest Bid, or if Buyer's Bid is the Back-Up Bid and Seller proceeds to close the sale to Buyer due to the failure of the Highest Bidder to close, and in each case if Buyer timely performs all of Buyer's obligations under this Agreement and all conditions to Seller's obligations under this Agreement are satisfied, then Buyer and Seller shall execute an amendment to his Agreement increasing the Purchase Price to the Buyer's Bid, and the Deposit shall be credited toward the Purchase Price, as the Purchase Price is so increased. If Buyer's Bid is the Back-Up Bid, and Seller closes a sale of the Property to the party making the Highest Bid, Seller shall return the Deposit to Buyer within two (2) business days after such closing. If Buyer's Bid is not the Highest Bid and Buyer elects not to be the Back-Up Bid, Seller shall return the Deposit to Buyer forthwith after the conclusion of the auction.

(b) LIQUIDATED DAMAGES PRIOR TO EXECUTION BY SELLER-DEPOSIT: NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF, PRIOR TO EXECUTION AND DELIVERY OF THIS AGREEMENT BY SELLER, BUYER ATTEMPTS TO RESCIND, REVOKE, MODIFY, OR OTHERWISE TERMINATE THIS IRREVOCABLE OFFER PRIOR TO THE EXPIRATION DATE SET FORTH HEREIN, EXCEPT TO THE EXTENT BUYER IS ENTITLED TO TERMINATION UNDER THIS AGREEMENT, OR IF BUYER OTHERWISE MATERIALLY BREACHES THE PROVISIONS OF THIS IRREVOCABLE OFFER, SELLER SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS SELLER'S LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S RESCISSION, REVOCATION, MODIFICATION, OR OTHER TERMINATION OF THIS IRREVOCABLE OFFER, OR BUYER'S BREACH OF THE PROVISIONS OF THIS IRREVOCABLE OFFER, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS IRREVOCABLE OFFER, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH ACTION BY BUYER. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTION 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676, AND 1677. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION.

SELLER'S INITIALS

BUYER'S INITIALS

IN WITNESS WHEREOF, Buyer and Seller do hereby execute this Agreement as of the date first written above.

SELLER:

Los Gatos Hotel Corporation,
a California corporation

By: _____
Name: _____
Its: _____

BUYER:

_____,
a _____
By: _____
Name: _____
Its: _____

ACCEPTANCE BY ESCROW HOLDER

Escrow Holder acknowledges receipt of the foregoing Agreement and accepts the instructions contained therein.

Dated: _____

By: _____

Name: _____

Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION

[To be attached]

EXHIBIT "B"

RECORDING REQUESTED BY
AND WHEN RECORDED
MAIL THIS DEED AND,
UNLESS OTHERWISE
SHOWN BELOW,
MAIL TAX STATEMENTS TO:

Attn: _____
Telephone: _____
Facsimile: _____
Attn: _____

THIS SPACE ABOVE FOR RECORDER'S USE

GRANT DEED

State of California
County of _____

The undersigned Grantor hereby declares that the amount of Documentary Transfer Tax
due on this Grant Deed is:

\$ _____ County

\$ _____ City

- ☐ Computed on the consideration or value of the property conveyed; OR
- ☐ Computed on the consideration or value less liens or encumbrances remaining at
time of sale.

THIS **GRANT DEED ("Deed")** is made as of _____, 2015, by
_____, a _____ ("Grantor"), to
_____, a _____ (the "Grantee").

In consideration of good and valuable consideration, the receipt and
sufficiency of which are hereby acknowledged by Grantor, the Grantor does hereby grant,
bargain, sell and convey unto the Grantee the Grantor's right, title and interest in that
certain real property more particularly described in Exhibit "A" attached hereto (the
"Property").

However, this conveyance is made subject to the liens securing payment of taxes and assessments, as well as to those matters of record, or matters that could be disclosed by a visual inspection or accurate survey of the Property, as of the date hereof, and all other "encumbrances" as that term is used is California Civil Code Section 1113(2).

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed by its representative thereunto duly authorized as of the day and year first above written.

GRANTOR:

By: _____
Name: _____
Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF _____ } ss:

COUNTY OF _____

On _____ before me, _____, a Notary Public,
(insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A" TO EXHIBIT "B"
LEGAL DESCRIPTION

Assessor's Parcel No. _____.

[To be attached]

EXHIBIT "C"

BILL OF SALE

THIS BILL OF SALE is made this ____ day of as of
_____, 2015, between _____, a _____
("Seller"), to _____, a _____ ("Buyer").

R E C I T A L S :

B. Seller and Buyer are parties to that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of _____, 2015 (as amended, the "Purchase Agreement") for the purchase and sale of certain real property more particularly described therein (the "Real Property"). Each capitalized term not defined herein shall have the respective meaning given to that term in the Purchase Agreement.

C. The Purchase Agreement provides, in part, that Seller shall transfer to Buyer all Personal Property (other than Assumed Contracts).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver (collectively, "Transfer") to Buyer, and Buyer accepts, the Personal Property (other than the Assumed Contracts).

THE PERSONAL PROPERTY (OTHER THAN THE ASSUMED CONTRACTS) IS BEING TRANSFERRED ON AN "AS IS" BASIS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, OF ANY KIND WHATSOEVER BY SELLER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ACKNOWLEDGES THAT SELLER EXPRESSLY DISCLAIMS AND NEGATES, AS TO ALL PROPERTY TRANSFERRED HEREBY: (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY; (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (C) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR MATERIALS.

By acceptance of this Bill of Sale, Buyer hereby assumes the performance of all of the terms, covenants and conditions imposed upon the owner of the Personal Property (other than the Assumed Contracts).

Buyer hereby agrees to indemnify, defend and hold harmless Seller and the other Seller Released Parties, from and against any and all claims, losses, liabilities and expenses, including reasonable attorneys' fees, suffered or incurred by reason of any breach by Buyer of any of obligations arising out of anything pertaining to the Personal Property (other than the Assumed Contracts).

This Bill of Sale shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of Buyer and Seller.

If any party hereto brings any action or suit against the other party hereto by reason of any breach of any covenant, condition, agreement or provision on the part of the other party set forth in this Bill of Sale, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees, charges and costs, in addition to any other relief to which it may be entitled.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the day and year first above written.

SELLER:

By: _____
Name: _____
Its: _____

BUYER:

By: _____
Name: _____
Its: _____

EXHIBIT "D"

GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT ("Assignment") is made this ____ day of as of _____, 2015, by _____, a _____ ("Assignor"), to _____, a _____ ("Assignee").

WITNESSETH:

WHEREAS, Assignor and Assignee are parties to that certain Agreement of Purchase and Sale and Joint Escrow Instructions (as amended, the "Agreement") dated as of _____, 2015, respecting the sale of certain "Property" (as described in the Agreement). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.

WHEREAS, under the Agreement, Assignor is obligated to assign to Assignee, to the extent transferable by Assignor, all of Assignor's right, title and interest in and to all Assumed Contracts.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, except as set forth in Section 3.10 of the Agreement, Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title and interest in and to the Assumed Contracts, and Assignee hereby accepts such assignment.

By acceptance of this Assignment, Assignee hereby assumes the performance of all of the terms, covenants and conditions imposed upon Assignor under the Assumed Contracts.

Assignee hereby agrees to indemnify, defend and hold harmless Assignor and the other Seller Released Parties, from and against any and all claims, losses, liabilities and expenses, including reasonable attorneys' fees, suffered or incurred by reason of any breach by Assignee of any of its obligations under this Assignment or arising out of anything pertaining to the Assumed Contracts.

In the event any party hereto institutes any action or proceeding against the other party with regard to this Assignment, the prevailing party in such action shall be entitled to recover, in addition to the cost of the suit, its actual attorneys' fees.

This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

This Assignment may be executed in any number of counterparts, each of which shall be an original, and all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

ASSIGNOR:

a _____

By: _____

Name: _____

Its:

ASSIGNEE:

a _____

By: _____

Name: _____

Its:

EXHIBIT "E"

DUE DILIGENCE ITEMS

[To be provided]