# MIXING UP AND MIXING IN
## The Hotel in a Mixed-Use Development

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## INTRODUCTION

When one takes the time to consider the components that make up a mixed-used development, a hotel may not be the first piece to come to mind. However, in recent years, hotels have become significant components of many mixed-use developments, and in some cases developers have positioned the hotels as anchors, just as shopping center and mall developers have sought a large department store as the first tenant of proposed centers. Although there has not been much hotel development in the 90s--and little is planned for a few years to come--there are many examples of mixed-use developments with hotels.

### Examples of Resort Developments

Resort communities provide the easiest-to-find examples: the Grand Cypress resort in Orlando (containing an 824-room Hyatt hotel, two and one-half complete golf courses, 48 villas, condominiums, etc.), the Waikoloa resort on the Big Island of Hawaii (containing a 1244-room Hyatt hotel, golf, shopping, and both single- and multi-family residences), and the Gainey Ranch resort in Scottsdale (containing a 489-room Hyatt hotel, single- and multi-family residences, shopping, and 27 hotels holes of golf). Two other prominent examples--without Hyatt hotels--can also be mentioned: the Casa de Campo resort in the Dominican Republic is, in almost every instance of market comparability studies, designated by most experts as the paradigm for resort community development in the Caribbean; the Palm-Aire resort and spa in

Pompano Beach, Florida, is characterized by literally miles of mid-rise condominium buildings surrounding two golf courses, a well-known hotel and spa, and other resort amenities.

**Examples of Urban Developments**

Urban mixed-use developments with hotels can be found in virtually every major city in the country, if not the world. In Chicago, the College held its last meeting at the Four Seasons and the Ritz-Carlton, across Michigan Avenue from one another. The Four Seasons is part of the 900 North Michigan Building, consisting of the hotel, residences, a shopping mall, and an office building. The Ritz-Carlton is part of the Water Tower Place development which also has, in addition to the hotel, shopping, residences, and offices. Incidentally, both of these hotels are operated by Four Seasons.

**Examples of Suburban Developments**

A third type of mixed-use development is the suburban development, which usually consists of a hotel, an office building or park, some shopping, and either a residential or other commercial use. The Hyatt Dulles, located in Fairfax County, Virginia's Route 28, across from Dulles International Airport, the Hyatt Fair Lakes, in the Fair Lakes development of Fairfax County, and the Hyatt Deerfield (in the north suburban area of Chicago) are hotels in developments which fit this description.

The precise attributes of the role of the hotel developer in a mixed-use development depend upon a number of factors. Is the hotel developer also the MXD master developer? Does the hotel developer have an identity of interest with the hotel operator? Do the hotel developer and hotel operator have a lessor/lessee relationship (a fundamentally more complex relationship than

the other customary ones, e.g., owner and operator, owner/developer as one, fee developer for an owner/operator, etc.)? Except as noted, the author's point of view herein indicates a fact pattern in which the hotel developer is different from the MXD master developer and has an identity of interest with the hotel operator. Certain examples in this paper will also introduce concepts where the hotel operator is contractually bound to--but has no other legal relationship with--the hotel developer. The author confesses a bias for this last factual pattern.

## A HOTEL IN A MIXED-USE DEVELOPMENT

A hotel in a mixed-use development presents a series of challenges to the MXD master developer. The hotel is not residential, and it is certainly not an office use. It may be most akin to a commercial use, although in truth, the hotel shares characteristics of all three of those uses. Like residences, there is substantial activity during the morning and evening heavy periods, those times of day when people arise and venture forth and when people return at the end of the day's endeavors. Like a shopping mall and an office use, there is continuous activity during the day and into the evening. Traffic and parking patterns are different from the other uses. When utility and other infrastructure requirements are considered, a hotel becomes a complicated ingredient in the mix of an MXD. In fact, an MXD developer's greatest challenge lies in the planning of the development.

### The Hotel in an Urban Development

Utility systems. A principal feature distinguishing a hotel from the other uses in an urban MXD is the 24-hour nature of use. The effect of 24-hour use is most keenly felt in the utility systems of the development. A developer must weigh the cost of separating heating, ventilation and cooling systems for the hotel and the remainder of the development against the possibility

of ceding control of the central facility to the hotelier, which requires 24-hour per day access to the those systems. Experience shows that the operation of a central heating, ventilation and cooling plant requires 24-hour per day maintenance and attention. Plumbing and electrical systems are no different. To the extent a developer does not wish to cede control, the documents underlying the MXD, whether an REA or CCRs, must address the needs of all users of the project. The hotel's representative will be cautious of the manner in which control of the central facilities is parceled out. Certainly, the hotelier will insist on either control or access; both create their own difficulties, and the careful draftsman will consider all the ramifications of either approach.

Sizing and capacity of utilities, especially, water and sewage lines but certainly electrical and telephone trunk lines, also deserve consideration, although the developer and not his lawyer would be most concerned. The hotel cannot be saddled with inadequate power capability or a shortage of telephone lines. In an urban MXD, too few telephone lines for business calls, and too little electric power for computers, would leave the hotel at the mercy of its competitors with adequate systems. Price of these systems is a significant issue. Ultimately, sizing and capacity relate most directly to usage patterns. An intimate, upscale hotel in an urban development will have vastly different needs from a large convention hotel near a convention center. As indicated above, a hotel has some of the characteristics of a residence. A convention hotel full of conventioneers on a schedule is full of people who shave, shower, and use the toilet at roughly the same time. What a difference in operating performance too little water or insufficiently sized sewage lines could make!

Elevators and access. In a typically vertical urban development, moving people in and out is less difficult than moving them up and down. Elevatoring, that is, providing sufficient elevators to transport office users, shoppers, residents and hotel guests--not to mention supplies, laborers, delivery personnel, housekeepers, and garbage, laundry, and food (especially, room service)--is a balancing act worthy of an acrobat. The developer must consider cost (to outfit a common area elevator cab may cost upwards of $40,000), capacity, anticipated usage, and building code requirements. If the developer has sold, leased or executed a management contract for the hotel, the developer must consider the hotelier's needs and desires as well. (Recall the lunchtime crowd to the elevators at the College meeting in Chicago when we attempted to move from one venue, the Four Seasons, to another, the Ritz-Carlton, for lunch.)

Access between components of the MXD must also be considered. The location of parking garages and connecting facilities, and the potentially different times of access to both, must be addressed both in planning and documentation. For security reasons, many shopping center operators do not want hotel guests strolling and window shopping after hours. For the same reasons, hotel operators may not want shoppers to have internal access to the hotel. Where a parking garage is common to both uses and access to one component can only be gained by traversing another component, planning of the access hallways becomes paramount. If space or other limitations cannot be overcome, the governing instruments must clearly delineate the rights and responsibilities of each component's owner or operator.

**Obtain Hotelier Input**

The instrument underlying an urban MXD is typically a declaration of covenants, conditions and restrictions containing, if ownership of the MXD components is to be divided, mutual support easements and reservations thereof. Counsel for the developer should seek input from

experienced hotel developers and counsel to assure approval of the document and a satisfactory working relationship between the MXD master developer and the hotel developer before and during construction and the hotel operator and other components' operators after construction. The concerns expressed above about access and control of central utility plants and people movement can best be addressed in a dialogue at the drafting stage.

Documentary examples of hotelier input abound, although, to the author's knowledge, not in the precise form described above. For example, the Hyatt Regency St. Louis at Union Station is in a magnificently restored train station near downtown St. Louis. The remainder of the old station property is used for parking and an urban, Rouse Company-developed shopping mall. As Hyatt was not involved in the original conversion of the train station, a review of the declaration of restrictions indicates little, if any, hotelier input; however, the hotel is obligated to contribute an assessed share of common area costs.

The documents governing the operation of the Hyatt Regency Suites on Michigan Avenue in Chicago and the Hyatt Regency Albuquerque, both hotels in urban MXDs, reflect different approaches to dealing with operational and cost allocation issues. In both cases, the hotel developer and the hotel operator are bound by management contracts outlining the terms of operation of the hotels; in both cases, Hyatt's incentive management fees[1] are stated percentages of a post-debt service-like operating cash flow, which in turn is based on dual concepts of project cost and operating costs. As the determination of project costs requires an allocation of construction costs among components of the MXD, the management contracts have attempted to deal with the difficult allocation issues. In the contract for the Hyatt Regency Albuquerque, relevant sections of which are excerpted in Exhibits A-1, A-2, A-3, and A-4, the developer and operator negotiated very specific provisions dealing with the allocations of operating costs and

project cost for the common systems of the MXD. The negotiations for the Hyatt Regency Suites in Chicago took a different tack: the parties left the issues of both operating costs and project cost allocation to a more general standard of good faith. Attached as Exhibits B-1, B-2, and B-3 are relevant sections of or excerpts from that contract.

**The Hotel in a Resort Development**

Utility systems. A resort developer confronted with the development of a hotel is not likely to be constrained by the needs of other uses in determining sizes of electric lines and telephone trunk lines, as those utilities will likely serve the hotel only, and each other component of the community will have its own such service. However, the developer must bear in mind that the hotel's utility needs are likely to be greater than those of other components of the resort. The size and location of the utility lines are sources of major concern to the developer, who, like his urban counterpart, if his anticipated clientele consists of conventions or large groups, will find his water, sewage, and electric requirements frequently used to capacity according to a group's daily schedule. The resort developer must determine the hotel's anticipated utility needs before finalizing master plans, as the size of utility lines may affect their placement, and the placement of those lines may affect the location of other components of the resort community.

Legal issues regarding utilities. Issues for the developer's counsel to consider in assisting her client include recapture and maintenance agreements, generation and desalinization plants (more common in the Caribbean than the United States), water retention and detention facilities, water treatment facilities (commonly used in golf resort communities), and, typically, reciprocal easement agreements and declarations of covenants, conditions and restrictions. The latter

instruments become critical in governing the competing needs of the mixed-use community's users, as discussed in more detail below.

Roads and access. Although a resort hotel in a mixed-use community shares many of the characteristics of its urban counterparts, moving people in and out is a great concern. In addition to the functional quality of the entry road (its width, composition, foundation, etc.), the aesthetic quality is of not insignificant importance.

The "driving experience" leading to the hotel can be a critical introduction to the ambience of a resort hotel and, therefore, is of substantial significance to the hotel developer and operator. This "experience" includes the location of the road, its length, its landscaping, its views, and its passage (that is, the attractiveness of the part of the resort through which it runs to get to the hotel); each facet of the entrance road must be considered.

Whether a resort's internal road systems, including the ambience-enhancing entry road, should be dedicated or remain private is a question posed, rhetorically at least, to all resort developers and their counsel. Dedication of roads naturally requires satisfying a governmental unit's requirements and relinquishing control over maintenance and repair, landscaping and lighting. Other and perhaps more important considerations relate to the users within the resort. Regardless of the order in which the developer brings on line components of his resort, at some point the permanent resident and the transient guest may confront one another. Where roads are dedicated, the permanent resident--or, more accurately, the document governing the resort community--is less likely to be in a position to restrict the transient guest's access to or through the residential community. Is this circumstance desireable? Is it good or bad business? Is it

profitable? The resort developer is the ultimate arbiter on each of these and myriad other, similar questions.

**Allocation issues.** The profit goal of a resort developer permeates many planning and development decisions. The size of water and sewage lines, the construction of generating or backup generating plants, and the quality of the road system must relate to the fulfillment of the profit objective. However, whether the hotel project is responsible for a particular cost, or whether the single-family development is responsible, cannot be determined without study and sufficient rationale for each such allocation. Likewise, after the project is constructed, the developer and his counsel must explicitly and clearly allocate the costs of operating any systems. As suggested above, the instruments governing operations take on additional significance when they become living and breathing documents affecting the lives of not just the developer but the guests, owners, users and operators of a resort.

**Amenities.** Although an unwritten rule of resort development holds that each component of the resort must be designed to stand by itself, two exceptions to the rule are the amenity package and incidental facilities within a hotel. Few projects can afford separate hotel and resident golf courses, tennis clubs, etc.; likewise, residential phases by themselves usually need no food and beverage outlets. The ideal, if one exists, rests in sizing the hotel's outlets to serve the community's needs, without overly taxing the hotel's operation with bars, restaurants, health clubs, gift shops or sundries stores or extra employees to serve the community's, as opposed to the hotel's, guests. Unhappily, the resort developer's inclusion of different amenities, designed and conceived, in part, to attract permanent residents (i.e., buyers), but perhaps necessary to enable the hotel to sell its rooms, may unintentionally create a conflict between the desires of the permanent residents and the desires of the transient guests.

The author has previously noted that:

> [i]ssues of access to the amenities, ownership, maintenance, cost, and similar concerns arise frequently and, sometimes, with hostility. Consider, for example, that a resort hotel operator may want to control something approaching 50% of available tee times at a championship golf course during the hotel's peak season. In addition, a championship golf course requires a first-class clubhouse facility and approximately 150 to 200 acres of land, throughout which the resort developer may desire to sell or develop for sale prime residential sites, all of which add to the costs of resort development.[2]

If the for sale sites or lots include membership rights in the golf club, the members--most experience would indicate--treat the club as their own. They do not like transients taking up their tee times. Worse is the tournament conducted for a hotel group's guests, when the members' access to the course may be curtailed entirely. The antagonism between the resident-members and the hotel operator or its guests in this instance could be palpable.

In considering the difficulties inherent in the tee time allocation issue, it may be instructive to review the language used by the author in negotiating contracts on this subject. Attached as Exhibit C-1 is the proforma language used in a preliminary term sheet for the management contract of a resort hotel development which will include golf. At the point in discussions when this term sheet is sent, the hotel developer may not have decided to have the hotel manager operate the golf course as part of the hotel. (Note that Hyatt's current policy would now preclude providing the developer a choice in this matter, if the developer wants Hyatt to operate his hotel.) Attached as Exhibit C-2 is language from a negotiated and executed management contract pertaining to Hyatt's operation of a golf course with a mixed-use resort development.

Noteworthy is the requirement that yet another document remains to be negotiated and executed, but the market's current wariness about financing resort hotels renders negotiation of the Golf Utilization Agreement (or similarly named instrument) prior to commencement of construction (when financing is secured) an expensive and perhaps useless exercise.

The hotel's need to control access to the golf course relates to its fundamental goal of selling hotel rooms. If guests want to play golf, whether a transient guest playing once during a vacation, a small group making a golf excursion, or a large convention or incentive group desiring a series of tournaments for its participants, the hotel must be able to commit the golf availability to its guests when they book their rooms, not when they check in to the hotel. However, as indicated above, the member of the club might resent the transient, and the transient hotel guest does not want to be treated as a second-class user of the golf course.

Although the foregoing discussion highlights a golf course as a source of hotel/resident conflict, other amenities may present similar conflicts if demand exists for both permanent and transient usage.

Consider, too, some issues relating to timesharing or interval ownership. Although the author does not subscribe to the view that most resort hotels could readily be converted to timesharing, he believes that timesharing can be a complementary use to a hotel development within a resort. However, the resort developer must determine whether the timeshare development and the hotel share certain common facilities--check-in/out facilities, pools, other physical amenities--or whether they are separate; whether the time-share owner plays golf as an owner or as a transient, and whose tee time allocation is thereby used; whether the timeshare owner (or even a full-time or part-time resident for that matter) can "charge" his or her purchases in the hotel

or at the hotel's facilities. Also, the developer needs to know whether the timeshare development and the hotel are "related" for marketing purposes through the hotel's frequent guest program. Unfortunately, as Hyatt has not entered the timeshare or interval ownership business as of this writing, the author cannot provide negotiation table experience as a guide for practitioners; indeed, he looks to practitioners to guide him.

**Other Components of the Resort**

The last area of importance is the relationship between the operation of the hotel and the operation of the remainder of the resort[3]. This paper has addressed above some concerns about golf access and timeshare access. More general, however, is how the resort must deal--legally--with the different uses. Where there are residents of any kind of permanent nature (and in this group one may include full-time residents and part-time residents who own their units or homes in undivided fee-simple, that is, not timeshare or interval owners), there are conflicts with transients. Whether the conflict arises in the golf clubhouse or the streets of the residential community, these two users will certainly come into conflict. The hotel owner and operator's concerns (and it is conceivable that the hotel owner and operator may have different stakes in this outcome) would be centered around the degree and quality of completion of the remainder of the resort. Unfinished developments surrounding the hotel are surely worse than no development at all. The resort developer, if different from the hotel developer, must provide satisfactory assurance that work begun will be prosecuted with continuity and diligence to completion. The quality of developments surrounding the hotel must be similar, if not higher.

Although the author has not seen to completion (from ground up) the development of a new mixed-use resort nor negotiated the documents pertaining to such development, he has submitted proposals in the form of letters of intent to deal with certain issues related to such development.

Attached as Exhibit D is language from a proposed letter of intent dealing with the negotiation of documents to effect land restrictions on other components of a mixed-use resort. Attached as Exhibit E is language from a negotiated and executed management agreement contract pertaining to components of the resort other than the hotel. The language in both cases is admittedly broad and general; bear in mind that the contract is negotiated well in advance of detailed design and legal planning of the resort. This language provides the hotelier the appropriate comfort that it, on behalf of the hotel and its guests, will have the right to be heard on issues affecting the hotel and the guests' experiences in the hotel.

The operation of other components of the resort by the hotel operator raises significant legal questions; the sale of other components operated by the hotel operator conceivably could impose liability on the hotel operator if care is not taken to insulate that operator from liability. Condominium developments with nonresident owners may have some form of rental pool and the resort developer may desire to offer the hotel operator's management services to buyers of condominiums. The hotel operator in this situation is well-advised to understand the resort developer's sales and marketing plans. Recognizing that the sale of condominiums (or timesharing) or, although apparently out of fashion in the United States, condotels, may be an integral part of the resort developer's financing plan for all components of the resort[4], the hotel operator may have no alternative to managing for sale aspects of the resort. Accordingly, counsel for the developer and the hotel operator must reach some documentary accommodation.

Attached as Exhibit F is a negotiated and executed language pertaining to the potential operation by the hotel operator of condominiums developed and sold by the resort developer or its hotel development affiliate. Note that the language contemplates an unknown number of condominiums in unknown locations nearby the hotel. As with the language pertaining to the

operation of the Golf Course attached as Exhibit C-2 (and taken from the same contract), the provisions of Exhibit F require still another agreement and may require the involvement of a condominium association. Nevertheless, the attached language can be used as a guide through many of the difficult issues a hotelier will confront in operating more than one component of the resort; indeed, the issues touched upon in Exhibit F must be considered and carefully documented in circumstances where the hotelier merely operates a hotel.

The hotel operator, particularly a chain operator, does not wish to have securities liability for potential securities law claims arising from the sale of the condominiums in a rental pool. Although there may be no manner in which a hotel operator can fully insulate itself from claims of disgruntled buyers of condominiums or condotel units bearing the hotelier's name and using its management services even in situations where the hotel operator is simply a manager, there are ways in which the operator can attempt to insulate itself. Paragraph 3 of Exhibit F sets forth the minimum requirements a hotel operator in these circumstances should demand[5]. Note, however, that, as indicated in Exhibit F, these minimum requirements apply to a circumstance where Hyatt's name was not to be used as a sales tool.

In a similar transaction, a developer proposed to build and sell condotel units as a complement to the developer-owned hotel. Like most, if not all, condotels, the operation would result in one pool of funds, remittances from which would be divided proportionally among all owners without regard to the actual units rented to transient guests. Clearly, a security would be created. As a means of attempting to insulate Hyatt as much as possible from the broad reach of securities laws, Hyatt required the developer to register the sales of the condotel units with the US Securities and Exchange Commission; such registration was in addition to the standard securities law indemnification section reproduced in note 5 hereof. Furthermore, as there would

be multiple owners of only a part of the hotel project, the developer agreed to the execution of a (so-called) co-owner agreement by which Hyatt would not be responsible for dealing with a disparate group of owners. The agreements of the developer regarding the SEC registration and the co-owner agreement are attached in Exhibit G[6].

**Other Questions**

Issues of maintenance are important. If the entry drive serves various components of the resort and is not dedicated, who has responsibility for landscaping and maintenance? Who pays the cost? Who controls in the event of disputes? Again, the developer and counsel must consider these problems in advance of development and sale.

Issues of access are important. If walkways and trails, not to mention roads, are continuous, do the hotel guests have the right to walk through residential area? (Perhaps this question is better asked in this fashion--do the residents have the right to restrict transient guests' access to areas of the resort?) Who maintains these areas? What entities are assessed for maintenance?

**The Hotel in a Suburban Development**

In terms of documentation, the suburban project is more comparable to a resort than an urban MXD, predominantly due to the horizontal nature of the development. Common issues with resort developments include water detention and retention. Governing documents refer to easement and access rights, maintenance and assessment issues, for a spread out project. Support easements and central utility systems are rare, as are amenity issues. Note that a hotelier's desire to maintain certain controls over land development and phasing, as suggested

by the language attached as Exhibits D and E, would be equally manifest in a suburban mixed-use development.

A device for achieving hotelier input into and approval of the CCRs for the suburban MXD is the use of the land acquisition agreement between the MXD developer and the hotel developer. Regardless of whether the acquisition agreement takes the form of a purchase and sale contract or a ground lease, the acquirer (that is, the purchaser or the lessee) can require the MXD developer, as a condition to the effectiveness of the transaction, to prepare the CCRs and obtain the hotel developer's approval thereof. The hotel operator, in turn, could require the hotel developer to obtain the operator's approval as a condition to the hotel developer's approval of the CCRs.

One purchase agreement used by Hyatt contained the following language as part of the section on "Conditions to Closing":

> Arrangements reasonably satisfactory to Purchaser shall have been made to provide for the ongoing development of the Land [that parcel which is bigger than but includes the hotel site] and the operation of improvements on the Land in coordination with the construction and operation of the Hotel including (i) provision for the ongoing maintenance of all private roads, sidewalks and other facilities of common benefit included or to be included within the Land and (ii) provision for reasonable guidelines for subsequent construction activities on the Land such that activities will not unreasonably interfere with the operation of the Hotel.

Although, as in other instances described in this paper, there is an element of the unenforceable "agreement to agree", the theory of rational economic actors--that is, the concepts that both the seller and purchaser want the hotel to be developed in the MXD and that both parties will work toward the common goal--in these circumstances prevails more often than not.

As other conditions can (and, in this instance, did) require the construction of minimal levels of infrastructure, including road widening and dedication, before the closing, the various contractual provisions, taken as a whole, are usually sufficient to move the parties forward without too much acrimony.

In a leasehold context, the same results can be accomplished by including the appropriate conditions in the lease itself or by executing an agreement to execute lease which contains the appropriate conditions and has attached the lease itself. Attached as Exhibit H is a form of Agreement to Execute Lease used by Hyatt in a transaction; it is a negotiated document and therefore reflects the input of the MXD developer and the hotel developer[7].

## CONCLUSION

It is critical to the qualitative, aesthetic, and monetary success of a mixed-use community--whether urban, suburban, or resort--that the developer has and maintains a consistent overriding vision of the completed development. It is equally critical that counsel works with her client to ensure that the developer's vision, in the form of the development's master plan, is properly and thoroughly documented, taking into account the different, and often conflicting, needs and desires of the community's end users. It is not enough to cater to the needs of only the hotel or retail owner or the office building tenant in an urban development, or the homeowner/golf club member or the hotel operator in a resort; the developer must consider both the creators

and the consumers of a community, and the developer's lawyer must reflect upon those needs and incorporate them into governing instruments which ameliorate rather than heighten the inherent conflicts among the various users.

Ultimately, one must conclude that the underlying legal and practical theories of governance of MXDs are similar, regardless of the urban, suburban, or resort location of the MXD. The goals of the developers and counsel can best be achieved by thorough examination of issues relevant to all users of the MXD and a reasonable solution to the questions raised by such examination.

## ENDNOTES

**Michael C. Shindler** received a Juris Doctor from Washington University in St. Louis in 1976 and is Vice President and General Counsel of Hyatt Development Corporation, Chicago, Illinois.

1 Management fees in the operation of hotels typically consist of a "basic fee", usually calculated as a fixed percentage of gross receipts, and an "incentive fee", usually a fixed percentage of pre-debt service "operating profit" or of post-debt service (or similarly based) cash flow. The latter calculation of incentive fees is a relatively recent phenomenon in the evolution of hotel management contracts.

2 Shindler, *The Challenge of Developing Resort Hotels*, PROBATE AND PROPERTY, Nov.-Dec. 1989, at 11,13.

3 This dependency issue can also arise in the context of an urban MXD. For example, the Management Agreement for the Hyatt Regency St. Louis contains a section entitled "Certain Matters Relating to the Independent Retail Space" which reads in part as follows:

> Owner agrees at all times during the [t]erm to operate and maintain the Independent Retail Space [as defined in the Agreement], together with any parking facilities serving the Hotel and the Independent Retail Space, in such manner as shall be consistent with the first-class standard operation of the Hotel.

> Management Agreement dated April 18, 1989, between St. Louis Associates and Hyatt Corporation, at 83 (unpublished).

The Management Agreement for the Hyatt Regency Albuquerque requires the owner to obtain public liability insurance on other components of the MXD and to name Hyatt Corporation as a named insured under the policy(ies).

4 In this circumstance, the resort developer typically has a significant, if not complete, identity of interest with the hotel developer, and the hotel operator is the stranger to the transaction.

5 The reference in Paragraph 3 of Exhibit F to "Section 24" is a reference to the securities law indemnity section contained in this particular Hyatt Management Agreement and in all Hyatt management contracts in substantially similar form. This particular Section 24 reads as follows:

> In the event Owner, or any person controlling Owner, shall, at any time, sell or offer to sell any securities issued by Owner or any affiliate of Owner (including, without limitation, any such offerings relating to the sale of Condominiums) through the medium of any prospectus or otherwise, it shall do so only in compliance with all applicable federal and state securities laws of the United

States and any applicable securities laws adopted by the Government of the Commonwealth of the _____, and shall clearly disclose to all purchasers and offerees that (i) neither Hyatt, HC nor any of their respective officers, directors, agents or employees shall in any way be deemed an issuer or underwriter of said securities, and that (ii) Hyatt, HC and said officers, directors, agents and employees have not assumed and shall not have any liability arising out of or related to the sale or offer of said securities, including, without limitation, any liability or responsibility for any financial statements, projections or other financial information contained in any prospectus or similar written or oral communication. Hyatt shall have the right to approve any description of Hyatt or HC, or any description of this Agreement or of Owner's relationship with Hyatt hereunder, which may be contained in any prospectus or other communication, and Owner agrees to furnish copies of all such materials to Hyatt for such purpose not less than twenty (20) days prior to the delivery thereof of any prospective purchaser. Owner agrees to indemnify, defend and hold Hyatt, HC, and their respective officers, directors, agents and employees, free and harmless of and from any and all liabilities, costs, damages, claims or expenses arising out of or related to the sale or offer of any securities of Owner.

6 Honesty compels the author to reveal that, due to the state of the financial markets, the project discussed in the text accompanying this note 6 did not materialize. Furthermore, the language reproduced in Exhibit G was taken from the executed letter of intent for that project, as the Management Agreement, though substantially negotiated with these provisions intact, was never executed.

7 In the document attached as Exhibit H, the "Landlord" was an affiliate of and had a virtual identity of interest with the MXD developer, and the "Tenant" was an affiliate of the hotel operator. Accordingly, although there are three parties to the Agreement, two complete points of view are represented.

**EXHIBIT A-1**

Set forth below is relevant language from Section 1.1 of the Management Agreement for the Hyatt Regency Albuquerque dealing with the allocation of project costs:

> To the extent any of the facilities intended for the benefit or use of the Hotel are to be used in common with other portions of the Project, or to the extent that common area and other costs and/or expenses are not allocated among the various components of the Project, the use thereof, and such costs and expenses, shall be allocated among the various components of the Project by Owner and Hyatt on the basis described in Exhibit D.

(Exhibit D to the Management Agreement is set forth in Exhibit A-4 hereto.)

**EXHIBIT A-2**

Attached is Section 3.1(c) of the Management Agreement. Note the treatment of the parking garage for both project costs and operating cost issues.

(c) Parking for the Hotel shall be contained in a separate garage which shall be constructed as part of the Project and which shall be operated by Owner, or a third party operator designated by Owner. Owner agrees, however, that at all times during the Term there shall be allocated for the exclusive use of Hotel guests and patrons not less than 230 car parking stalls, the location and identification of which shall be subject to mutual agreement between Hyatt and Owner, or any garage operator appointed by Owner. Owner and Hyatt will use their best efforts to finalize arrangements to provide the Hotel with additional on-site or off-site parking for special events conducted at the Hotel. The additional costs properly allocable to such additional parking shall be a cost of operation of the Hotel. If revenues from the parking garage are included in Hotel Gross Receipts, either by allocation of a portion thereof to the Hotel or by arrangements between Hyatt and Owner, or the garage operator designated by Owner, for charges to be made to Hotel guests and patrons using the parking garage, then a portion of the operating expenses of the garage shall be allocated to the Hotel in accordance with the provisions for allocation of operating expenses set forth in Exhibit D hereto. If no part of the revenues of the parking garage are included in Gross Receipts, then no part of the expenses for the operation of the parking garage shall be allocated to the Hotel.

**EXHIBIT A-3**

Attached are definitions of "Debt Service" and "Project Costs" from Section 4.2.2 of the Management Agreement for the Hyatt Regency Albuquerque. As indicated in the text accompanying note 1 supra, these definitions are relevant to the computation of the incentive management fee payable to Hyatt on an annual basis.

"Debt Service" shall mean, for the fiscal year in question, the sum of all principal and interest actually paid or payable by Owner on Secured Indebtedness (as hereinafter defined) actually outstanding during such fiscal year, including for this purpose, any additional interest which may be measured by the revenues or income from the Hotel, but excluding (i) any interest the payment of which, under the provisions of the loan in question, are deferred for payment in subsequent fiscal years, (ii) any pre-payments of principal or premiums paid in connection therewith, or (iii) so-called "balloon" or lump sum payments of principal or deferred interest payable on maturity of the loan; provided, however, there shall be excluded from "Debt Service" any principal or interest payments to the extent they relate to any portion of Secured Indebtedness which exceeds the amount of Project Costs reduced by the amount of the UDAG Grant.

"Project Costs" shall mean the sum of all costs and expenses incurred, directly or indirectly, in connection with the acquisition of the Site and the development of the Hotel thereon which are properly and reasonably allocable to the Hotel, including, without limitation, the deemed value of the fee and leasehold interests in the land attributable to the portion of the Site on which the Hotel is located (which shall be $2,323,905), all hard construction costs, costs of initial FFE installed in the Hotel on the Effective

Date, site preparation (for off-site and on-site improvements) and landscaping costs, interim construction loan interest and fees, the cost of initial working capital (including initial quantities of food, beverage and other inventories), pre-opening expenses, Hyatt's technical assistance service fee payable pursuant hereto, development fees (provided the amount thereof which shall be included in Project Costs for purposes of this Agreement shall not exceed amounts reasonable and customary for such services and in no event greater than four percent (4%) of the dollar amount of the general construction contract), feasibility studies, costs of obtaining governmental permits and approvals, architectural, engineering, legal, accounting, survey and other similar professional fees and expenses and title insurance premiums; provided, however, there shall be an allocation, on the basis described in Exhibit D hereto, of costs attributable to other portions of development of the Project, including landscaping, infrastructure, off-site and on-site improvements, parking and other similar costs and expenses for the benefit of the Project as a whole and not specifically related exclusively to the costs of development, construction, furnishing or equipping of the Hotel.

**EXHIBIT A-4**

Attached is Exhibit D from the Management Agreement for the Hyatt Regency Albuquerque, delineating the means of allocating both project costs and operating costs among various components of the MXD.

## PROJECT COSTS

Attached hereto is a summary methodology of allocation of costs and expenses among the various components of the Project including the Hotel. Owner and Hyatt acknowledge that the actual designation of areas of the Project as common areas or as specific components of the Project (i.e., the Hotel, office tower, or retail area) will depend on the final design of the Hotel as agreed upon by Owner and Hyatt. The actual portions of the Project to be designated as common areas or as part of the Hotel as well as the exact cost and expense allocation (based on the attached methodology) shall be agreed upon by the Owner and Hyatt following completion of the final design of the Project.

**EXHIBIT D**

ALBUQUERQUE PLAZA
PROJECT EXPENSE ALLOCATION METHODOLOGY

A. Maintenance and Operating Costs:

1. OFFICE COMMON AREAS : [redacted]

This area will be managed by BetaWest (BW) or a third party manager under contract to Albuquerque Plaza Partners (APP).The operating and maintenance expenses will be determined on a square footage basis and billed to the office tenants as part of the expense stop pass through provision included in their lease.

2. RETAIL COMMON AREAS : [redacted]

These areas will also be managed by BW or third party manager under contract to APP. Operating and maintenance expenses will be calculated on a square footage basis and billed to the retail tenants on a prorated rentable square footage basis as part of their retail Common Area Maintenance (CAM) charge as included in the retail leases.

3. HOTEL COMMON AREAS : [redacted]

Areas designated for the exclusive use by the Hotel will be managed by Hyatt as part of their management agreement with APP. Hyatt at their discretion can either maintain these areas with their own employees or enter into contracts with third parties to manage these areas. The expense to operate and maintain these areas will be billed directly to the Hotel and become part of its operating expense statement.

4. PROJECT COMMON AREAS : [redacted]

To be managed by BW or third party under contract to APP, these areas will be available to all users within the Project. The operating and maintenance expenses for these areas will be determined on a square footage basis and billed to the office, retail and hotel on a ~~[illegible]~~ square footage basis.

5. OFFICE/RETAIL COMMON AREAS : [redacted]

This area which covers that portion of the loading dock not designated for the exclusive use by the Hotel will be managed by BW or a third party manager under contract to APP. Operating and maintenance charges for this area will be prorated to the retail tenants on a per rentable square footage basis as part of their CAM charge and to the office tenants on a per rentable square footage basis as part of their expense stop calculation.

6. GARAGE : ☐

The two level below grade parking facility consisting of approximately 500 spaces will be managed by BW or a third party manager under contract to APP. Operating and maintenance expenses for this facility will be prorated to the Hotel and Office on a per space basis, according to the number of spaces reserved for each Project user.

7. CENTRAL MECHANICAL PLANT : ☐

Located on Levels P-1 and P-2 of the Project's garage below the Office tower, this facility will be managed by BW or a third party manager, (which could include Hyatt), under contract to APP. Chilled and hot water generated by the Plant will be metered to each Project user (i.e. Hotel,Office,Retail,Project Common Areas;interior only, Retail Common Areas; interior only,and Garage). Conditioned water generation costs, including operations and maintenance, will be prorated to each Project user on a cost per gallon basis determined by the total central plant operating expense cost divided by the number of gallons of conditioned water generated on a monthly basis.The total cost per gallon expense for each Project user as determined by central plant meter readings will then be billed to the Hotel as an energy expense and to the other users as included in the expense proration methodologies in paragraphs 1 through 6 above.

Electrical, water, sewer, and natural gas will be metered to each Project user on a individual basis.

B. Construction Costs:

**Hotel costs will include the following:**

1. Hotel tower complete, including foundation under tower footprint.

2. Prorated cost of two level below grade parking structure, up to slab at grade, excluding costs of mechanical equipment in central plant. Allocation will be made using the following formulas:

$$\frac{\text{Total Cost of Below Grade Parking Structure}}{\text{Total Number of Space}} \times 230 \text{ (Number of Spaces Allocated to Hotel)}$$

3. Total cost of shell construction of two level podium outside of tower footprints (i.e. hotel and office) beginning at concrete slab at grade through roof structure, will be determined on a gross square footage basis. Gross square footage area dedicated solely to hotel uses will be determined and allocated as follows:

$$\frac{\text{Total Shell Cost of Podium}}{\text{Gross Square Feet of Podium}} \times \text{Gross square feet of podium dedicated to solely hotel uses}$$

The interior finish out costs of those areas within podium for hotel uses will be determined on an individual basis (i.e. kitchen, restaurant, lobby, bar, etc.).

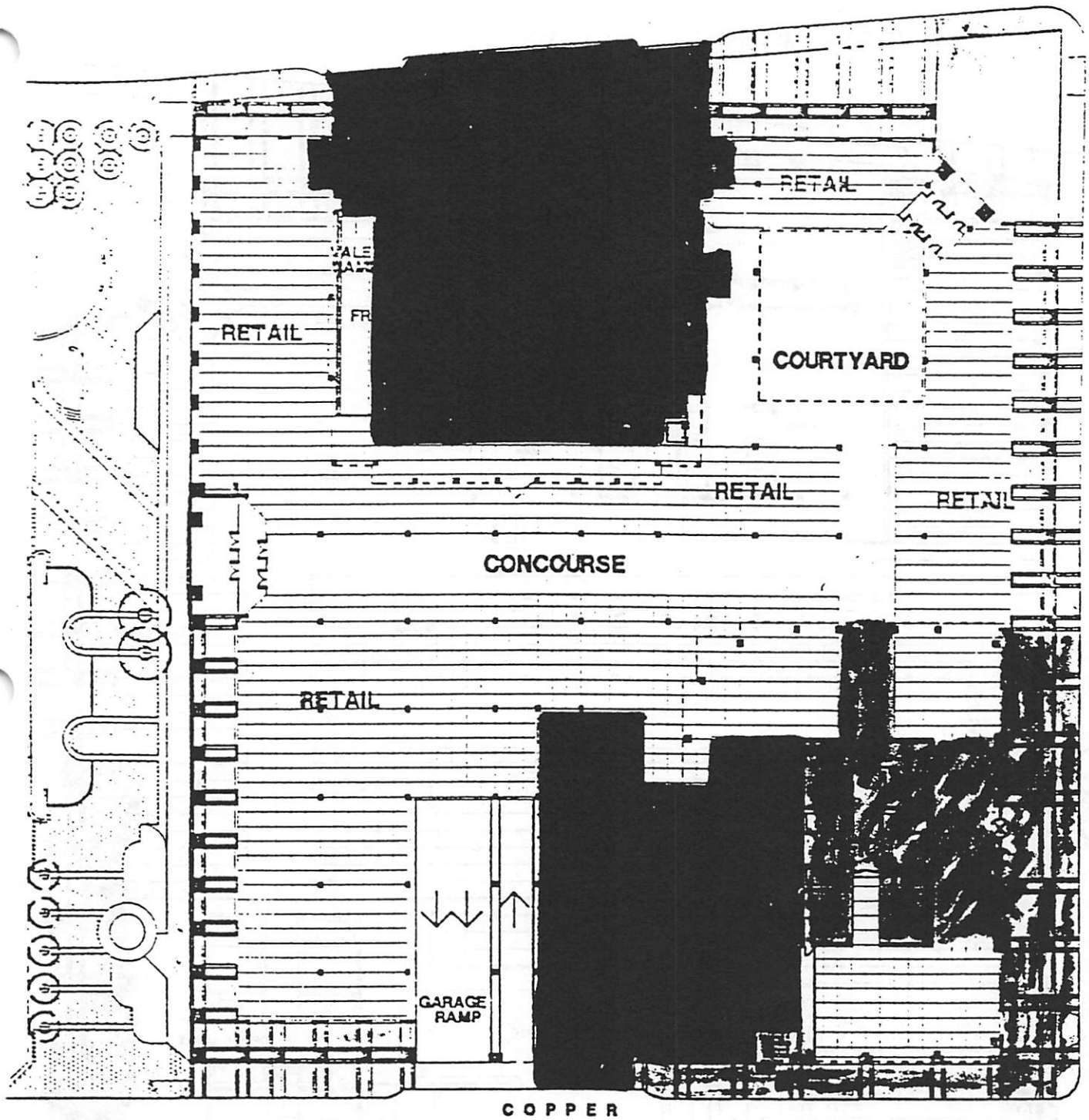
4. Total cost of loading dock will be determined beginning at slab on grade to bottom of second level slab then prorated on square foot basis to actual area dedicated to each project use.

5. Cost of central plant equipment will be determined together with total gross square footage within project served by central plant. This cost will then be allocated as follows:

$$\frac{\text{Total Cost of Central Plant Equipment}}{\text{Gross Square Feet of Conditioned Space}} \times \text{Gross square feet of conditioned space within hotel areas}$$

6. Soft costs (that is, construction period interest, real estate taxes, ground rent and insurance, architectural and engineering fees, legal and accounting, title insurance, other professional fees, loan fees, permits appraisals and feasibility reports, survey), excluding office and retail marketing and promotional charges, shall be allocated in the proportions in which other Project Costs are allocated.

TIJERAS




GROUND FLOOR PLAN

# ALBUQUERQUE PLAZA

HELLMUTH OBATA & KASSABAUM, INC. ARCHITECTS

**EXHIBIT A-4**

ALBUQUERQUE PLAZA

PROJECT COST ALLOCATION OF PLAZA AREAS

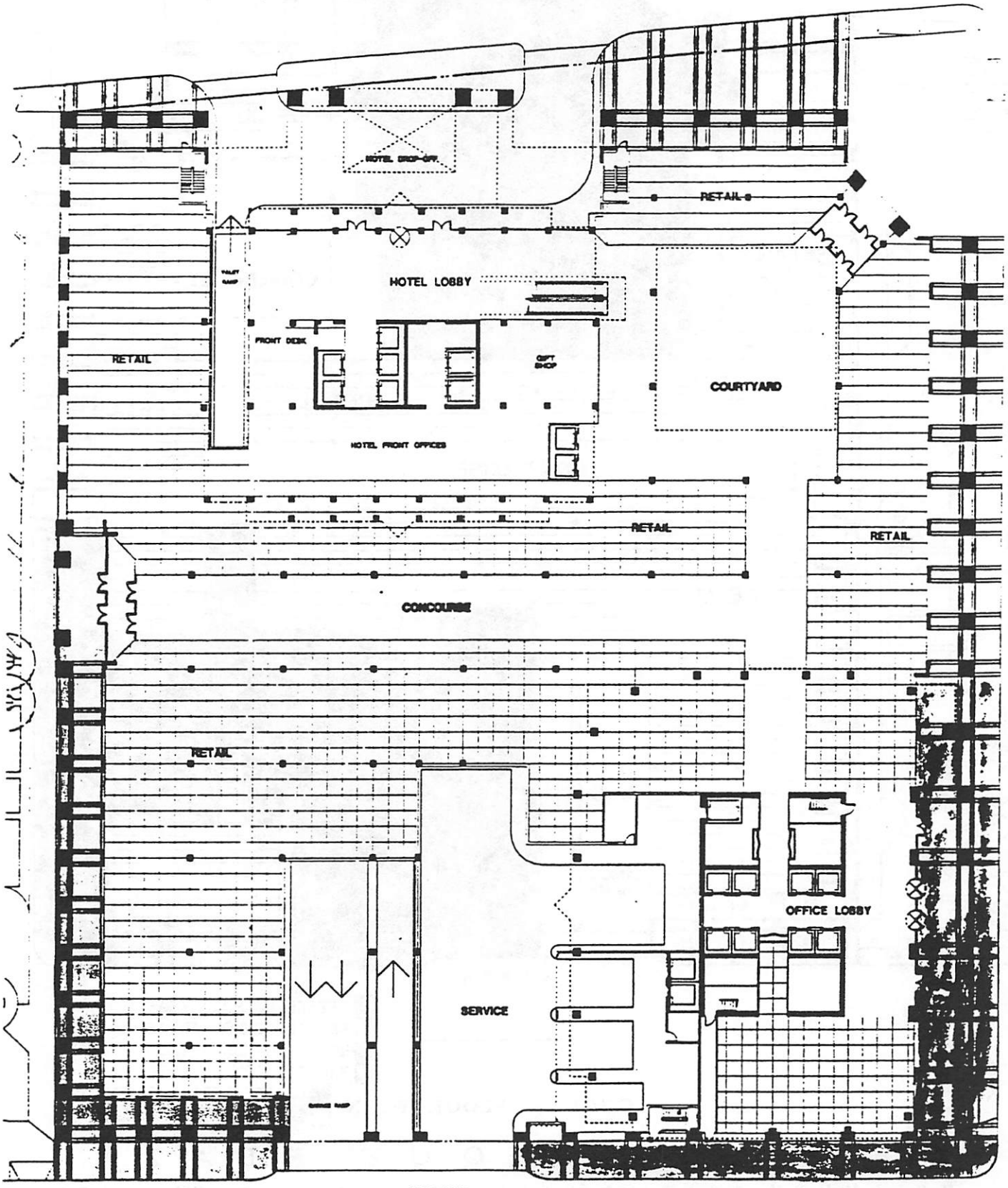



**EXHIBIT A-4**
*page 7 of 7*

**EXHIBIT B-1**

Attached is Section 1.1 of the Management Agreement for the Hyatt Regency Suites on Michigan Avenue in Chicago. Note that Hyatt had the right to approve the methodology for allocating project costs.

1.1 Construction.

Subject to the provisions of Section 1.8, Owner shall, in accordance with plans and specifications approved by Hyatt (which approval shall not be unreasonably withheld or delayed), and with reasonable diligence, cause the MXD, and each component thereof other than the Retail Center, to be constructed upon the Site as may be necessary or desirable to meet a standard commensurate with the first-class hotel standard. Upon Hyatt's approval of any drawings, plans or specifications, subsequent drawings, plans or specifications consistent in all material respects with those previously approved, shall likewise be approved. For purposes of this Section 1.1 and Section 1.2, there shall be included in the matters submitted to Hyatt for approval, the plans and specifications for any improvements or facilities to be used in common (the "Common Areas") by guests and patrons of the Hotel, by tenants or invitees of the Commercial Facilities or in connection with the operation of the Hotel, together with the portion of the cost thereof, if any, which shall be included in "Project Costs" (as hereinafter defined) and the formula for allocating operating and other expenses to the Hotel. For purposes of Sections 1.1, 1.4 and 1.5 hereof, any pedestrian connections between the Hotel and any of the Commercial Facilities shall be deemed to be parts of the Common Areas.

**EXHIBIT B-2**

Attached is Section 4.7(A)(h), defining "Project Costs", from the Management Agreement for the Hyatt Regency Suites on Michigan Avenue in Chicago.

(h) "Project Costs" shall mean all costs and expenses incurred in connection with the acquisition of the Site, and the development of the Hotel thereon, including, without limitation, land acquisition costs (to be included in Project Costs on the basis of land values accepted by the first mortgage lender for loan underwriting purposes and in approving the project budget for the Hotel development), hard construction costs, costs of initial FFE installed on the Opening Date, site preparation and landscaping costs, interim construction loan interest, amounts disbursed by the holder(s) of the Secured Indebtedness for operating deficits, the cost of initial working capital (including initial quantities of food, beverage, and other inventories), pre-opening expenses, fees paid to Hyatt pursuant hereto up to (and including the balance of the Technical Assistance Services fee payable on) the Opening Date, development fees (provided the amount thereof which shall be included in Project Costs shall be the amount accepted by the first mortgage lender for loan underwriting purposes and in approving the project budget for the Hotel), feasibility studies, cost of obtaining governmental permits and approvals, engineering, legal, accounting, survey and other similar professional fees and expenses, title insurance premiums, and other costs and expenses reasonably necessary in connection with the development of the Hotel. Hyatt acknowledges that Project Costs may be determined by Owner's allocating certain of the items comprising Project Costs to the Hotel and other components of the MXD. Owner covenants to effect such allocation reasonably and in good faith.

**EXHIBIT B-3**

Set forth below is relevant language from Section 5.2 of the Management Agreement for the Hyatt Regency Suites on Michigan Avenue in Chicago requiring deduction of certain amounts for purposes of calculating the basis for determining Hyatt's incentive management fee:

(h) All amounts assessed to the Hotel under reciprocal easements and other agreements for the Common Area to the extent that such assessments are reasonable in amount, are allocated to the Hotel in accordance with an allocation formula previously approved by Hyatt, pursuant to Section 1.1 hereof[.]

**EXHIBIT C-1**

Set forth below is relevant language from a proposed term sheet for Hyatt's operation of a golf course within a to-be-built resort development:

> Hyatt would prefer to operate the Golf Course as part of the Hotel. If Hyatt is persuaded of the necessity of Owner's operating the Golf Course, Hyatt would, at a minimum, require the execution of an agreement with the Golf Course owner or operator for the benefit of the Hotel, reserving to the Hotel not less than 35% of the tee times at the Golf Course, with provisions for the release of unreserved tee times and for advance reservations for group and tournament play for Hotel guests.

**EXHIBIT C-2**

Attached is negotiated language expanding, with the intent of implementing, the proposed language contained in Exhibit C-1.

Note the issue of cost allocation regarding the Golf Course in this section.

3.7 **Golf Facilities.**

As indicated above, the Improvements will include the Golf Facilities which shall constitute part of the Resort and, therefore, shall be managed and operated by Hyatt pursuant to the provisions of this Agreement. In this regard, a separate golf utilization agreement (the "Golf Agreement") shall be entered into between Hyatt and Owner on or prior to a date which is not later than twelve (12) months prior to the then estimated Opening Date of the Resort.

The Golf Agreement shall adequately reflect the needs of the Resort for sufficient golf availability to meet the demands of Resort guests, and Owner's need to provide adequate tee times for Condominium owners. Each party, bearing in mind the conflicting demands of Resort guests and Condominium owners, will negotiate a Golf Agreement in good faith. In the event, however, Owner and Hyatt are unable to agree upon a Golf Agreement, any terms which are in dispute between them shall be submitted to arbitration for resolution. The arbitrator shall be a person mutually satisfactory to Owner and Hyatt, or, if the parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators selected in accordance with the provisions set forth in Section 14; provided, however, that if the three (3) arbitrator procedure is in effect, all such arbitrators shall be persons experienced in the ownership or management of resort hotels having golf as a significant amenity. In connection with any such arbitration, Owner shall present its position on each of the disputed items, and Hyatt shall present its position, and the arbitrator(s) shall select, on each disputed item, from between the positions of Owner and Hyatt, and shall have no right to alter or vary the respective positions of

the parties. The decision of the arbitrator(s), provided it is made consistent with the provisions of this Agreement, shall be binding on the parties hereto. The cost of the arbitration herein contemplated shall be borne by Owner and shall constitute part of the Total Project Costs.

The Golf Agreement shall be in form and substance satisfactory to Hyatt and Owner and shall contain, at a minimum, provisions to the following effect:

1. The rights of Hyatt under the Golf Agreement shall be enforceable directly against Owner and any successor in interest to the ownership of the Golf Facilities including any mortgagee, and public notice of such rights shall be given by means of a recorded instrument which shall run with the land and be binding on the golf course portion of the Site.

2. The Golf Agreement shall provide for priority use of tee times by the Resort; that is, priority use for Resort guests and patrons over all other possible users of the Golf Facilities. The priority of use shall apply with respect to thirty percent (30%) of the available tee times on each day and in each season of the year. In addition, it is understood that the Resort shall be entitled to accommodate group play and tournaments from time to time as referred to in sub-paragraph (4) below, even if the effect of such bookings is to cause the Resort to utilize all, or in excess of its allocable percentage, of available tee times.

3. The revenues generated by the Golf Facilities shall be included in Gross Receipts and the costs of the operation of the Golf Facilities shall be included as costs of the operation of the Resort.

4. Appropriate provisions shall be made to accommodate Resort group play and tournaments which will permit bookings under particular circumstances and on particular days of all available tee times (with respect to tournaments) and blocks of time during a day (with respect to group play) to accommodate the reasonable needs of the Resort.

5. The Golf Agreement shall make reasonable provision for advance bookings, tee time reservations and billing and credit arrangements.

6. The parties acknowledge that special arrangements will be made to provide priority bookings for guests of the Princess Cruise Line, or any other cruise ship carrier utilizing cruise shop docking facilities reasonably accessible to the Resort. Such arrangements shall be made by agreement of the parties, with a good faith effort to avoid unduly restricting Hyatt's ability to book large group and tournament play.

Owner hereby agrees that the Golf Facilities shall be completed and available for play by Resort guests not later than the Opening Date, and completion thereof shall be a condition precedent to the obligation of Hyatt to cause the Opening Date to occur.

**EXHIBIT D**

Set forth below is relevant language from a proposed letter of intent for a to-be-built MXD resort:

> **Land Restrictions and Covenants.** Given the magnitude of the potential development of _____ Resort, Hyatt would like some assurances that the Hotel will have an opportunity to obtain a solid start in the marketplace and may desire certain restrictions on remaining land development during the early stages of Hotel operation. In addition, to the extent Owner conveys any portion(s) of land owned by Owner to any other entity, whether affiliated or otherwise, such conveyance shall be made subject to written and recorded covenants and restrictions, approved by Hyatt and dealing generally with the establishment of a plan for any common elements of the Project and such other portions of the land and the responsibility of the various owners to pay costs associated with maintaining same. Further, Hyatt would want certain assurances from the Owner about the phasing plan of the Project and the remainder of _____ Resort. The provisions of this paragraph will also be extremely important as we discuss the relationship of the residences and the remainder of the development with the Project. Issues dealing with residents' and guests (of other hotels) access to Project amenities (including, especially, the Golf Course) will certainly arise.

**EXHIBIT E**

Attached is negotiated language broadly expanding the proposal language contained in Exhibit D.

**3.8 Phase I Facilities.**

The Phase I Facilities shall be developed and maintained at all times during the Term in a manner which shall not detract from the ambience or first class resort standard of the Resort and, in the case of the Marina, consistent with the first-class resort standard as contemplated hereunder. Except as contemplated by Section 3.6 hereof with respect to the Managed Condominiums, management, operation and maintenance of the Phase I Facilities shall be the sole responsibility of Owner. Owner shall indemnify and hold harmless HC, Hyatt and their respective directors, officers, employees and agents from and against any and all liability, loss, damage, cost and expense arising out of, or incurred in connection with, the ownership, construction, development, operation or maintenance of the Phase I Facilities. Unless separately metered, taxed and maintained, the Phase I Facilities and the Resort shall each bear a fair allocation of Project overhead and common costs such as maintenance costs, ad valorem taxes, insurance, water, sewer and other utilities.

Except as contemplated by Section 3.6 hereof with respect to the Managed Condominiums, the Phase I Facilities shall be operated and marketed without reference to or use of the "Hyatt" name. All liability insurance policies maintained with respect to the Phase I Facilities shall name Hyatt and HC and their respective directors, officers, employees and agents as additional insureds thereunder.

Resort guests shall be granted access to and use of the Phase I Facilities, and guests and patrons of the Phase I Facilities shall be granted access to and use of the Resort facilities, in each case on terms which are at least as favorable as those offered to the general public; provided, however, nothing herein shall require Hyatt to provide or extend preferential treatment to the guests and patrons of the Phase I Facilities with respect to the use of Resort facilities or require Owner to provide or extend preferential treatment to the guests and patrons of the Resort with respect to the use of Phase I Facilities.

**EXHIBIT F**

Attached is negotiated and executed language for the operation of condominiums adjacent to the hotel.

3.6 Condominium Matters.

Hyatt and Owner acknowledge that planning with respect to the Condominiums is at a very preliminary stage. Among other things, it is not now known the number of Condominium units which will be developed on the Site, their size or location on the Site, the right of access of the Condominium occupants to Resort facilities and the terms applicable thereto, the nature of infrastructure improvements on the Site necessary to accommodate the Condominiums, and other engineering, design, marketing and business issues. Hyatt shall have the right to approve the number of Condominium units developed on the Site and the plans and specifications with respect thereto (including any plans and specifications with respect to FFE to be included in the Condominium units to be managed by Hyatt). Hyatt's approval with respect to plans and specifications will not be unreasonably withheld and is intended to ensure that (i) Condominium units located within the Resort Property or within the area delineated as "Managed Condominium Area" on the map attached as Exhibit A hereto will be developed only in a manner consistent with the first-class resort standard as herein contemplated and (ii) Condominium Units located elsewhere within the Site shall be attractive and not detract from the ambience or first class resort standard of the Resort. Hyatt's approval over the number of Condominium units is designed to ensure that the number thereof shall not be greater than that which, in Hyatt's reasonable opinion, can be supported by the infrastructure developed for and utilities and services available to the Site (without adverse impact on the Resort or the quality or quantity of services offered to Resort guests), and

shall not exceed the reasonable ability of Resort amenities to service both the Condominium occupants and Resort guests.

It is the intention of Owner and Hyatt that, subject to the foregoing, certain Resort amenities and services (such as access to certain recreational facilities of the Resort) will be made available to Condominium owners and occupants within the Managed Condominium Area. In addition, it is intended that Condominium owners within the Managed Condominium Area will be offered the opportunity to rent their units to transient guests, and that for any portion of the year in which Condominium units are to be rented to transient guests, management thereof will be provided by Hyatt under separate agreements with Hyatt, Condominium owners (or with their association) and Owner as provided below.

Notwithstanding the foregoing, Hyatt shall not be obligated to provide management services with respect to any Condominium to the extent it shall determine that providing such services may adversely affect Hyatt's ability to operate the Resort in conformity with a first class resort standard and in a businesslike and efficient manner. Any Condominium which Hyatt shall agree to manage shall be hereinafter referred to as a Managed Condominium. The precise terms and provisions of the agreements among Hyatt, Owner and the Managed Condominium owners (or the Condominium association), and the relationship between the Managed Condominiums and the Resort will be determined at a later date on the basis of agreements between Owner and Hyatt mutually satisfactory to both parties. Nevertheless, Owner and Hyatt hereby agree, with respect to the Managed Condominiums, as follows:

1. Hyatt will manage and operate the Managed Condominiums under separate agreements among the Managed Condominium owners (or the Condominium association), Owner and Hyatt provided, among other things, the terms and provisions applicable thereto shall not be materially inconsistent with any of the terms or provisions of this Management Agreement. The agreements will, however, require Hyatt only to deal with Owner who, in turn, will be responsible for all direct dealings with Managed Condominium owners and the Condominium association.

2. In acting as manager of the Managed Condominium units, Hyatt shall at all times be entitled to give priority in bookings, and in providing services, to the Resort, and, shall allocate available bookings among the Managed Condominium units in an order of rotation as determined from time to time by Hyatt and Owner. Hyatt shall utilize HC's central reservation system in making such bookings. In acting as manager of the Condominium units, Hyatt shall be indemnified in full for any costs or expenses it may incur in connection therewith (other than those which it may suffer by reason of its gross negligence or willful misconduct or reckless or willful violation of legal requirements) by Owner and by the Condominium association.

3. In connection with the sale or offering for sale of Condominium units, Owner agrees that it shall do so only in compliance with all applicable and, if

applicable, U.S., securities laws and only in a manner which would not, as a matter of law, render Hyatt or HC a co-issuer, underwriter or aider-abettor with respect thereto. Prior to the offering or sale of any Condominium units (or interests therein), Owner shall deliver to Hyatt a legal opinion or opinions of competent counsel reasonably satisfactory to Hyatt with respect to the matters set forth in the preceding sentence. Hyatt shall have the right to review and approve in its sole discretion any descriptions of Hyatt or HC or the nature of its involvement with the Condominiums and their relationship with the Resort which may be contained in any prospectus or sales materials relating to the Condominiums and no such materials shall be disseminated by Owner without Hyatt's prior written approval. Any prospectus or other offering materials shall contain the disclaimers regarding Hyatt, HC and their respective officers, directors, agents and employees set forth in Section 24. No Units (or interests therein) shall be sold or offered for sale bearing the Hyatt name or referring to an involvement with Hyatt (other than factual references to pre-existing contractual arrangements relevant to such Units) unless Hyatt shall have approved such offer and sale, which approval may, in Hyatt's sole discretion, be conditioned upon the payment of fees or other matters.

4. Hyatt shall be entitled to earn a management fee for its management services in renting the Managed Condominium units at the rate of percent ( %) of gross receipts from the rental of Managed Condominium units. The cost of performing such management services shall be Resort expenses, to the extent such costs are not recovered from Condominium owners, and shall be deducted in computing Available Cash Flow hereunder, and cost reimbursements shall be an offset against Resort expenses and shall not constitute "Gross Receipts". Funds from the operation of the Managed Condominiums under the rental program shall be deposited in separate operating accounts out of which shall be paid Hyatt's management fee attributable to the operation of Managed Condominiums. Reports regarding Managed Condominium operations shall be submitted by Hyatt to Owner. It shall be the responsibility of Owner to distribute available funds (if any) to Managed Condominium owners and to make separate reports of operations to each unit owner.

5. It is anticipated that the agreements between Hyatt, Owner and the Managed Condominium owners (or the Condominium Association) will provide for the right of Unit owners or occupants to order special Resort services, e.g., maid service and room service on such terms as may be specified in such agreements, but charges for such services shall, in any event, be additional to and not included within, the management fee referred to

in Paragraph 4 above. In addition, it is anticipated that one or more condominium associations within the Managed Condominium Area may wish to contract with Hyatt for maintenance of landscaping, exterior walls and other common areas. The cost of performing such special services shall be Resort expenses, deducted in computing Available Cash Flow hereunder, and revenues received by Hyatt with respect thereto shall reduce operating expenses in the calculation of Available Cash Flow hereunder. Revenues attributable to the sale of food, beverages or other goods shall be included in Gross Receipts for the Resort (e.g., room service charges); no other service charges shall be included in Gross Receipts for the Resort.

6. Any Managed Condominium units shall be required to make contributions to separate FFE funds (the "Condominium Fund"), one such fund for each participating unit, similar to the Fund contemplated by Section 5.4(a). The Condominium Funds shall be separate from the Fund referred to in Section 5.4(a), and amounts deposited in the Condominium Funds shall be available for, and only for, the replacement of and additions to FFE for the Managed Condominium units and for maintenance of the Managed Condominium common elements, and not for the Resort, and no part of the Fund established pursuant to Section 5.4(a) shall be available for replacement of or additions to FFE for the Managed Condominium units. Although there shall be separate Condominium Funds for

each unit, amounts in each such fund may be commingled and may be used by Hyatt for the replacement of and additions to FFE for the Condominium responsible for the generation of the funds on deposit in the Condominium Fund in question. Unused funds on deposit shall be remitted to the Managed Condominium owner at such time as such owner's unit is permanently withdrawn from the rental program. All Managed Condominium units, as a condition to their continued entitlement to participate in the rental program, must be maintained at all times in accordance with the first-class resort standard. If amounts in the Condominium Fund for any unit are insufficient to permit such unit to be maintained in accordance with this standard, the owner of such unit shall be responsible for any additional costs necessary to maintain the unit in accordance with the first-class resort standard. Hyatt shall have the right, in its reasonable judgment, to exclude any Managed Condominium unit from the rental program which fails to adhere to the first-class resort standard. Similarly, the Condominium association shall cause all common elements and the exterior of the Condominium units, landscaping and other aesthetic features to be maintained in accordance with the first-class resort standard.

7. Unless separately metered, taxed and maintained, all Condominium units, or the Condominium association, shall bear a fair allocation of overhead and common costs such as maintenance costs, ad valorem taxes, insurance, water, sewer and other utilities.

**EXHIBIT G**

Securities Law Indemnities. Owner (and if determined by Hyatt to be necessary, creditworthy affiliate(s)) of Owner) would be required to indemnify Hyatt in conjunction with sales of the units in the Condo Hotel which may be sold subject to the Management Agreement. In this regard, Owner (and such creditworthy affiliate(s) will be required to submit and consent to the jurisdiction of the United States Courts in connection with such indemnity, and Hyatt would require assurance, including an opinion of counsel, of the validity of such submission and consent and the availability of sufficient assets of Owner with which to fulfill its indemnity obligations. Furthermore, Owner would be required to register the sales of units of the Condo Hotel with the United States Securities and Exchange Commission.

Co-Owner Agreement. As indicated [elsewhere in this letter], the units in the Condo Hotel may be sold subject to the Management Agreement. They also would be subject to the provisions of a Co-Owner Agreement (which may be incorporated in the documents establishing and governing the Condo Hotel), the terms of which shall be subject to Hyatt's approval, providing, among other things, as follows:

(1) Hyatt would maintain one book of accounts for the Project, in accordance with the Uniform System of Accounts for Hotels (current edition). All revenues from and expenses pertaining to the operation of the Condo Hotel would be included in such book of accounts.

(2) All "Owner's Remittance Amounts" (as defined in Section 4.3 of the prototype Management Agreement) shall be payable to Owner, for disbursement to the separate owners of the Condo Hotel.

(3) Allocations of Owner's Remittance Amounts between the Condo Hotel and the remainder of the Project shall be contained in the Co-Owner Agreement.

(4) Owner shall be obligated to (and Hyatt shall look solely to Owner to) fulfill working capital and other capital needs of the Project. To the extent Owner expects contribution from owners of units of the Condo Hotel, Owner's right to demand same and enforce such rights shall be set forth in the Co-Owner Agreement.

(5) Owner shall be designated as representative of all owners of units of the Condo Hotel for all purposes of the Management Agreement. Owner's decisions, approvals, etc. shall bind all Condo Hotel unit owners.

(6) The Co-Owner Agreement shall contain such other provisions as Owner and Hyatt deem necessary to effect the foregoing.

**EXHIBIT H**

Attached is a negotiated and executed Agreement to Execute Lease.

## AGREEMENT TO EXECUTE LEASE

This Agreement, dated this 25th day of [redacted], 19[redacted] by and between [redacted] HOTEL LIMITED PARTNERSHIP, a [redacted] limited partnership ("Landlord"), [redacted] PARTNERSHIP, a [redacted] general partnership ("Developer"), and HT-[redacted] INC., a Delaware corporation ("HT").

### Preliminary Statement

Developer and Landlord, collectively (each as to portions thereof) are the owners, in fee simple, of [redacted] located in the southeast portion of the [redacted] Office Park in [redacted]. Developer has heretofore submitted to [redacted] County, [redacted] a proposed Final Development Plan ("FDP") for a portion of said land bay, denominated [redacted] which contemplates, among other things, the development of a 13 story hotel containing between 300 and 350 guest rooms to be located in the western portion of [redacted] approximately at the intersection of [redacted] Circle and [redacted] Parkway, and immediately adjacent to Interstate [redacted] A copy of the FDP is attached hereto as Exhibit A. Landlord, an affiliate of Developer, has heretofore acquired a portion of the aforesaid land, and hereafter Landlord will enter into a lease with respect to said premises with HT, subject to the provisions hereof. The parties hereto now desire to enter into this Agreement to set forth certain conditions precedent to their respective obligations to execute and deliver the aforesaid lease, and certain understandings and agreements between them which shall govern their relationship prior execution and delivery of the aforesaid lease.

NOW, THEREFORE, it is hereby agreed, by and between the parties hereto, as follows:

1. Definitions. For purposes hereof, the term "Lease" shall mean the Deed of Lease to be entered into in accordance with the provisions of this Agreement between Landlord and HT which shall be substantially in the form of the Deed of Lease attached hereto as Exhibit B, or, if applicable, Exhibit F. Any terms used herein which are defined in the Lease shall, except as otherwise herein expressly set forth, have the same meaning as set forth in the Lease.

2. Execution of Lease. Subject to the satisfaction of each of the conditions precedent herein set forth, and in accordance with the provisions hereinafter set forth, HT and Landlord each hereby agree to execute and deliver the Lease, substantially in the form attached hereto as Exhibit B, with such changes therein, and additions thereto, as may be required or contemplated by the provisions of this Agreement, with appropriate notarial acknowledgments. Notwithstanding the foregoing, at any time on or prior to the date on which HT shall be obligated, under the provisions of this Agreement, to execute and deliver the Lease, it shall have the right, in lieu of executing the Lease in the form attached as Exhibit B, to execute and deliver the Lease substantially in the form attached hereto as Exhibit F, either form being satisfactory to Landlord, and whichever form selected by HT being the document which is herein referred to as the "Lease". Upon execution, acknowledgment and delivery of the Lease, an executed counterpart thereof (or, at the election of HT, a memorandum thereof in form and substance reasonably satisfactory to Landlord and HT) shall be recorded in the land records of [redacted] County, [redacted] provided, however, in no event shall Tenant cause the Lease to be recorded prior to the earlier to occur of (i) commencement of construction of the Hotel (as defined in Section 2.3 of the Lease) or (ii) concurrently with (or immediately prior to) the recordation of any Leasehold Mortgage. If Tenant shall elect, in lieu of the recordation of a counterpart of the Lease, to record a memorandum thereof, Landlord

shall execute, acknowledge and deliver said memorandum, provided only that the same shall be consistent with the provisions of the Lease, and shall be in form and substance reasonably satisfactory to Landlord and its counsel. All recording charges, fees and taxes shall be the sole liability and obligation of HT, but shall comprise a part of the Cost of the Project.

3. Covenants and Conditions. Developer, Landlord and HT each covenant and agree to comply with the following covenants set forth in this Section 3 with the understanding that, among other things, satisfaction and performance in full of each of the covenants set forth below as binding on Developer or Landlord shall be a condition precedent to the obligations of HT to execute and deliver the Lease, and compliance by HT with each of the covenants set forth below which are binding on HT shall be a condition precedent to the obligations of Landlord to execute and deliver the Lease. Either party hereto shall have the right to waive compliance by the other party with the following covenants and obligations, but no such waiver shall be valid unless set forth in writing signed by the waiving party.

3.1 Governmental Approvals. As indicated in the Preliminary Statement hereto, Developer has heretofore submitted to [redacted] County, [redacted] a proposed FDP for [redacted]. Developer hereby agrees that it will diligently and in good faith use its best efforts to cause the FDP, substantially in the form as submitted to [redacted] County, [redacted], to be approved on or prior to [redacted] 10, 19[redacted]. Developer further agrees that it shall make no changes to the FDP, whether or not requested by [redacted] County, [redacted] which (i) in any way affect the Hotel, or any facilities located on the Demised Premises, including landscaping and parking; (ii) increase the amount or density of office space in [redacted] or reduce the amount of parking allocated thereto; (iii) change the location of the office buildings proposed

on [redacted] or (iv) alter the location of the means of ingress to and egress from the Demised Premises. In the event the parking requirements for the Demised Premises or for other portions of [redacted] as imposed by [redacted] County, [redacted] shall exceed the amount which Developer and HT deem reasonably necessary for the operation of their respective businesses therefrom, HT and Developer agree to cooperate with each other in all reasonable respects to enter into shared parking arrangements provided that there shall at all times be located on the Demised Premises, and free of any shared parking obligation, not less than that number of parking spaces which HT reasonably deems necessary for the operation of the Hotel. In no event shall any party be required to construct on property owned or leased by it more parking spaces than is reasonably necessary to meet the parking needs of such party, or to meet applicable requirements of law.

3.2 Legal Descriptions. As soon as reasonably practicable after the receipt of FDP approval, Landlord shall cause a survey to be made by a licensed Virginia surveyor, and shall cause the surveyor to prepare legal descriptions in metes and bounds, of the following areas:

(a) [redacted] which shall be that portion of [redacted] depicted on the parcel plat attached hereto as Exhibit C.

(b) Common Areas which will include the proposed driveways providing ingress and egress to [redacted] as well as the landscaped plaza approximately in the center court area of the proposed buildings.

(c) Demised Premises which shall include the land on which the Hotel, and its adjacent surface parking areas, are to be located.

Said survey shall delineate the perimeter boundary lines of each of the above areas, shall locate thereon any existing easements of record and any then existing improvements. The survey shall be certified to HT, and to any title insurance company or lender which HT has designated in a written notice to Landlord delivered at any time prior to the completion and delivery of the final survey. All boundary lines establishing the Demised Premises, the Common Areas, and Land Bay 5(B)(1) shall be subject to reasonable approval of HT, Landlord and Developer.

3.3 Approval of Drawings. HT shall submit the Drawings to Landlord as contemplated by Article 7 of the Lease as soon as reasonably practicable after the date hereof, together with such other information, not inconsistent with the requirements of Article 7 of the Lease, as Landlord may reasonably request. Landlord agrees that it shall review the Drawings, and shall deliver the same for review and approval by the District III Architectural Review Board of the [redacted] promptly. Tenant shall have the right to submit, from time to time, component portions of the Drawings to Landlord and the Architectural Review Board for separate approval, as well as alternative design proposals, which, if approved by Landlord and the Architectural Review Board shall be subject to the discretion of Tenant as to alternatives to be incorporated in the final plans and specifications; provided, however, alternatives may be submitted only for the entire design proposal and not individual component parts. It shall be a condition precedent to the obligations of HT and Developer hereunder and of HT and Landlord under the Lease that the Drawings shall have been approved by Developer, Landlord and the appropriate Architectural Review Board, together with an acknowledgment from each of the said parties that review and approval of the Drawings constitute the sole and final review and approval requirements under the

Lease and under the applicable covenants governing development within the [redacted] Office Park. At the request, from time to time, of HT, whether prior to or after execution and delivery of the Lease, Landlord agrees that it shall, or shall cause the applicable Architectural Review Board, or both, to certify to HT, or any Leasehold Mortgagee, that the Drawings have been approved in accordance with the provisions of this Agreement and Lease, and that, accordingly, all architectural reviews and approvals required of Developer, Landlord and the Architectural Review Board for the commencement of construction on the Demised Premises have been obtained and are in full force and effect.

3.4 Conveyance to Landlord. Landlord currently has fee simple title to the Demised Premises.

3.5 Non-Disturbance and Management Agreement. HT agrees that it shall, concurrently with the execution and delivery of the Lease, enter into a Management Agreement with Hyatt Corporation as contemplated by Article 8 of the Lease and shall deliver an executed or conformed counterpart thereof to Landlord. Upon receipt of the same, Landlord will execute and deliver a counterpart of the Non-Disturbance and Attornment Agreement, in the form attached hereto as Exhibit D, provided counterparts thereof shall concurrently therewith be executed by Hyatt Corporation and HT.

3.6 Plat of Subdivision. Landlord agrees that it shall file, with respect to [redacted], or such portion thereof as shall be necessary under applicable law, a final plat of subdivision relating to said premises sufficient, in all respects, to permit the development in [redacted] of the Hotel on the Demised Premises and the other facilities intended to be developed therein in accordance with the

FDP, and sufficient to cause a tax division of the Demised Premises, as a matter of law, whereby the Demised Premises will be assessed and taxed for real estate tax purposes as a separate parcel, as contemplated by Section 5.6 of the Lease.

3.7 Dedicated Roadways. Developer shall deliver to HT evidence reasonably satisfactory to HT that all roadways providing access to the Demised Premises, including, without limitation, [redacted] Parkway, [redacted] Parkway and [redacted] Circle, are dedicated public roads, available for use by the general public, including, without limitation, the agents, employees, servants, guests, patrons, business invitees, contractors and subcontractors of HT or of the Hotel. Evidence satisfactory for this purpose shall include, without limitation, a special endorsement to the title insurance policy to be delivered as provided below insuring to HT that the aforesaid roadways are, in fact, dedicated public roads.

3.8 Utility Easements and Services. It shall be a condition precedent to the obligations of HT to execute and deliver the Lease that it shall have received evidence, reasonably satisfactory to it, that all necessary utility installations (with sufficient capacity to permit the efficient operation of the Hotel) shall be available to the Demised Premises (including water, sanitary sewer and storm sewer) at the perimeter thereof, subject only to payment of necessary connection, tap-on or hook-up fees in accordance with the schedule therefor applicable to all similar users of such public facilities. HT acknowledges that telephone and electric utilities have a legal obligation to provide service to the Premises although trunk lines are not now located at the perimeter of the Premises and may not be so located at the time of execution and delivery of the Lease. Nevertheless, it shall be a condition precedent to the obligations of HT hereunder that it shall have

received assurances reasonably satisfactory to it that such utility services will be available as needed by HT for its construction and operational purposes. Developer agrees to grant to the Board of Supervisors of [redacted] County, [redacted] or to the appropriate public utility companies, or to Landlord or HT, as appropriate or required under applicable law, but in any event for the benefit of the Demised Premises and the use thereof by HT under the provisions of the Lease, appropriate easements, on forms prescribed by the applicable utility company or in form and substance reasonably satisfactory to HT, over such portions of [redacted] Office Park as shall be necessary to enable HT, as Tenant under the Lease, to have available to it at the Demised Premises the benefit of all such utility services. Said easements shall comply in all respects with applicable provisions of law, shall either be perpetual or shall continue for not less than the full Term of the Lease, shall make adequate provision for necessary junction boxes, cables, wires, conduits and pipes, and shall permit reasonable access for the purpose of installation, repair, maintenance and replacement. At the election of Developer, any easement instruments may provide for the right of Developer, or its successors and assigns, to relocate the same, provided (i) such relocation shall not result in any interruption of utility service to the Demised Premises or the Hotel; (ii) such relocation shall be at the sole cost and expense of Developer, or its said successor and assigns, and, if deemed reasonably necessary by Tenant under the Lease, adequate surety for the payment of such costs shall be provided to such Tenant; and (iii) such relocation shall not interfere with the use of the Demised Premises or the operation of the Hotel thereon or adversely affect development of other portions of [redacted].

3.9 Other Easements and Operating Covenants. Immediately prior to the execution and delivery of the Lease, and subject to the prior written approval of HT as to both form and substance, Landlord and Developer shall enter into an appropriate written instrument or instruments, which shall be binding upon, and shall run with, the Demised Premises and all other portions of [redacted], to the following effect: (i) granting to and for the benefit of the Demised Premises, and the Tenant under the Lease, non-exclusive easements, in common with other owners and users of other portions of [redacted], of ingress to and egress from the Demised Premises through the entranceway provided therefor as part of the Common Areas and providing access to [redacted] Circle, together with a non-exclusive easement for the use and enjoyment of the open spaces within the Common Areas; (ii) granting to and for the benefit of the Demised Premises, and the Tenant under the Lease, an easement over remaining portions of [redacted] for water runoff and drainage necessary to enable drainage of the Demised Premises and access to storm sewers maintained on other portions of [redacted]; (iii) granting to Landlord and HT, in its capacity as Tenant under the Lease, those rights of approval contemplated by Section 21.3 of the Lease (or Section 19.3 of the form of Lease attached hereto as Exhibit F, if applicable); (iv) granting to Landlord and HT, in its capacity as Tenant under the Lease, and obligating Developer, and its successors and assigns, with respect to those matters relating to the maintenance of [redacted] contemplated by Section 21.5 (or Section 19.5 of the form of Lease attached hereto as Exhibit F, if applicable) of the Lease, and with respect to construction on other portions of [redacted] as contemplated by Section 21.6 (or Section 19.6 of the form of Lease attached hereto as Exhibit F, if applicable) of the Lease; (v) containing provisions for the design, construction of improvements (including landscaping) and maintenance of the Common Areas, and

the sharing of costs with respect thereto; (vi) containing provisions for the shared use of parking facilities as contemplated by Section 3.1 above; and (vii) undertaking, for the benefit of HT in its capacity as Tenant under the Lease the construction covenants set forth in Section 21.6 (or Section 19.6 of the form of Lease attached hereto as Exhibit F, if applicable) of the Lease.

3.10 Title Insurance. As soon as reasonably practicable after delivery of the survey contemplated by Section 3.2 above, Landlord shall deliver, or cause to be delivered, to HT, a commitment for title insurance, issued by Lawyers Title Insurance Company or such other title insurance company as is reasonably satisfactory to Tenant, insuring Tenant's proposed leasehold estate under the Lease in the amount of $1,000,000, free and clear of all liens, claims, charges or encumbrances of any kind or nature whatsoever other than the Permitted Exceptions listed and described on Exhibit E hereto, subject to the execution, delivery, acknowledgment and recordation of the Lease. Said commitment shall provide for the issuance, by the title insurance company issuing the same, of an ALTA Form B Leasehold Title Insurance Policy, with extended coverage over all general exceptions, and shall otherwise conform to the following additional requirements: (i) shall commit to insure, affirmatively, for the benefit of the Tenant under the Lease, the availability of all easements and other rights intended to be granted to, and for the benefit of, the Demised Premises as contemplated by Sections 3.8 and 3.9 above, which rights, for the benefit of the Demised Premises, shall be free and clear of all liens, claims, charges or encumbrances of any kind or nature whatsoever other than the aforesaid Permitted Exceptions and other than liens or encumbrances which are subordinate to the rights and interests of the Tenant under the Lease and which the aforesaid title insurance company insures as being subordinate; (ii) shall commit to issue a Form 3 Zoning Endorsement

confirming that the Demised Premises may lawfully be used for Hotel purposes; and (iii) shall commit to issue such additional special endorsements and affirmative coverage as HT or any proposed Leasehold Mortgagee may reasonably request. Delivery of the aforesaid title insurance commitment shall be a condition precedent to the obligations of HT to execute and deliver the Lease, but failure by Landlord to deliver such title insurance commitment complying in all respects with the aforesaid requirements shall not be deemed a breach of this Agreement by Landlord or Developer, and Tenant's sole right with respect thereto shall be the termination of this Agreement and its obligation to execute and deliver the Lease as hereinafter provided. The cost and expense of the issuance of such commitment, as well as any premiums for title insurance issued in accordance with the commitment, shall be the sole responsibility and obligation of HT, but shall constitute a Cost to the Project. Every title commitment issued as above provided shall be conclusive evidence of title as therein shown. In the event any title insurance commitment obtained in accordance with the provisions of this Section 3.10 shall contain objections to title other than the Permitted Exceptions, or in the event the title insurance company shall fail or refuse to issue commitments for any special endorsements requested by HT, Landlord shall have thirty (30) days to have such exceptions removed from the commitment, or to cause the title insurance company to issue such special endorsements, and if it fails to do so, HT shall have the right, at any time thereafter and so long as any such exceptions shall remain encumbrances on the title to the Leased Premises or the title company shall fail or refuse to issue a commitment for such special endorsements, to terminate this Agreement, and its obligation to execute and deliver the Lease, upon written notice to that effect to Landlord, in which event this Agreement, and all of the obligations and rights of the parties hereto, shall terminate effective immediately upon the delivery of such notice by HT.

3.11 Final Building Permit and Governmental Approvals. After receipt of FDP approval, HT agrees to use due diligence and all reasonable best efforts to obtain any necessary governmental permits and consents, including, without limitation, a final building permit for the construction of the Hotel in accordance with the Drawings, as soon as reasonably practicable but in any event on or prior to April 1, 19[redacted]. The issuance of the final building permit and all other required governmental permits and consents shall be a condition precedent to the obligations of both HT and Landlord to execute and deliver the Lease in accordance with the provisions hereof. In the event all such governmental permits and consents shall not have been obtained by HT on or prior to April 1, 19[redacted] after using its best efforts therefor, either party shall have the right at any time thereafter and until the aforesaid permits and consents shall have been issued by the appropriate governmental authorities, to terminate this Agreement, and the rights, powers, privileges, liabilities and obligations of the parties hereto (including, without limitation, the right and obligation to execute and deliver the Lease) by delivery of written notice to that effect to the other party, such termination to be effective immediately upon the delivery of such notice. Notwithstanding any such termination, each party shall be responsible and shall bear the full cost and expense which each has incurred in accordance with the provisions of this Agreement, and neither party shall be liable to the other for reimbursement, indemnity or otherwise in connection with such termination.

3.12 Identity of Guarantor. As soon as reasonably practicable after the execution and delivery hereof, HT shall advise Landlord of the identity of the Guarantor which HT proposes to provide in accordance with the provisions of Section 12.2 of the Lease in the event HT elects to cause a subordination of the rent under the Lease in favor of an Eligible Leasehold Mortgagee as contemplated

by Article 11 of the Lease. HT shall also deliver to Landlord, for its review, copies of the most recent financial statements of the proposed Guarantor and such other information as Landlord may reasonably request in order to determine whether or not the proposed Guarantor is acceptable to Landlord, or a letter from the independent certified public accountant which conducted the audit of such entity as of the end of the previous fiscal year attesting that net worth of said entity, as set forth on its most recent audited financial statements, is in excess of the net worth required of the Guarantor under the Lease. It shall be a condition precedent to the obligations of HT to execute and deliver the Lease, and otherwise satisfy and perform its obligations hereunder, that Landlord, shall have approved the identity of the proposed Guarantor, subject, however, to the maintenance of the net worth required under the Lease after the date of such approval.

3.13 Landlord Legal Opinions. It shall be a condition precedent to the obligations of HT to execute and deliver the Lease that it shall have received, concurrently with the execution and delivery thereof, a favorable written opinion of counsel for Landlord and Developer to the following effect: (i) Landlord is a partnership which has been duly organized and is validly existing and in good standing under the laws of the [redacted], with full power and authority to execute and deliver the Lease, and to perform its obligations thereunder; (ii) the execution and delivery of the Lease by Landlord has been duly authorized by all necessary action required therefor under the applicable provisions of Landlord's partnership agreement or other governing instrument, and, to the extent the execution and delivery thereof by Landlord, or the performance of its obligations thereunder, requires, to the knowledge of such counsel, the consent or approval of any governmental agency or other third party, all such consents or

approvals shall have been obtained; (iii) assuming the due authorization, execution and delivery thereof by and on behalf of HT, the Lease constitutes the valid, binding and enforceable obligation of Landlord, in accordance with its terms, subject only to the effect of bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application relating to the rights of creditors in general; and (iv) to the knowledge of such counsel there are then pending or threatened no actions or proceedings, including, without limitation, any bankruptcy, reorganization, insolvency or other similar proceedings, by or against Landlord or Developer which, if adversely determined, could affect the validity or enforceability of the Lease, the enjoyment of the premises by Tenant in accordance with the provisions of the Lease, or the ability of HT to construct or equip or operate the Hotel as contemplated by the Lease. Such legal opinion shall be addressed to HT, and shall be dated as of the date of the execution and delivery of the Lease.

3.14 HT Legal Opinions. It shall be a condition precedent to the obligations of Landlord to execute and deliver the Lease that it shall have received, concurrently with the execution and delivery thereof, a favorable written opinion of counsel for HT to the following effect: (i) HT is a corporation which has been duly organized and is validly existing and in good standing under the laws of the State of Delaware and is duly qualified as a foreign corporation in the [redacted] with full power and authority to execute and deliver the Lease, and to perform its obligations thereunder; (ii) the execution and delivery of the Lease by HT has been duly authorized by all necessary action required therefor under the applicable provisions of HT's Certificate of Incorporation and By-laws, and, to the extent the execution and delivery thereof by HT, or the performance of its obligations thereunder, requires, to the knowledge of such

counsel, the consent or approval of any governmental agency or other third party, all such consents or approvals shall have been obtained; (iii) assuming the due authorization, execution and delivery thereof by and on behalf of Landlord, the Lease constitutes the valid, binding and enforceable obligation of HT, in accordance with its terms, subject only to the effect of bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application relating to the rights of creditors in general; and (iv) to the knowledge of such counsel there are then pending or threatened no actions or proceedings, including, without limitation, any bankruptcy, reorganization, insolvency or other similar proceedings, by or against HT which, if adversely determined, affect the validity or enforceability of the Lease, or the ability of HT to construct or equip or operate the Hotel as contemplated by the Lease. Such legal opinion shall be addressed to Landlord, and shall be dated as of the date of the execution and delivery of the Lease.

4. Duration. Each of the parties hereto agrees to use its best efforts to satisfy and perform all of the covenants and obligations required to be satisfied and performed under the above provisions, and to cause all conditions precedent to the execution and delivery of the Lease to be fully satisfied as soon as reasonably practicable. In the event the foregoing conditions precedent shall not have been satisfied in full, or waived in writing, on or prior to April 1, 19[redacted] then either party (provided said party shall not then be in default hereunder) shall have the right, exercisable by written notice to the other party delivered any time after April 1, 19[redacted] and prior to the date on which all conditions precedent shall have been satisfied, to terminate this Agreement and all of the rights, powers, privileges, liabilities and obligations of the parties hereto, including, without limitation, the obligation of each of the parties to execute and deliver the Lease. Termination as aforesaid shall be effective for all purposes upon delivery of the aforesaid notice.

5. **Miscellaneous.** In construing the provisions of this Agreement, time shall be deemed of the essence hereof. This Agreement may not be amended, modified, cancelled or surrendered except in writing signed by both parties and no claimed oral modification shall be binding or admitted in evidence in any action. Any and all approvals and consents required hereunder must be in writing signed by the party to be charged. This Agreement is made pursuant to and shall be construed and enforced in accordance with the laws of the [redacted] The headings appearing in this Agreement are not part of this instrument and shall not affect the true meaning and intent of the terms and provisions hereof. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on their behalf as of the day and year first above written.

[redacted]

By: [redacted]
a General Partner

By: [redacted]
a General Partner

[redacted] HOTEL LIMITED PARTNERSHIP

By: [redacted]
a General Partner

By: [redacted]
a General Partner

HT-[redacted] INC.

By: [redacted]
Vice President