AGREEMENT OF PURCHASE AND SALE

- between -

CHATEAU OTTAWA HOTEL INC.

(Vendor)

- and -

SUNRAY GROUP OF HOTELS INC.

(Purchaser)
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THIS AGREEMENT OF PURCHASE AND SALE made as of October 6, 2023 (the “Effective Date”).

B E T W E E N:

CHATEAU OTTAWA HOTEL INC.,

(hereinafter referred to as the “Vendor”),

- and -

SUNRAY GROUP OF HOTELS INC.

(hereinafter referred to as the “Purchaser”).

WHEREAS the Vendor and the Purchaser have agreed that the Vendor shall sell, transfer, assign, set over and convey all of its right, title and interest in and to the Hotel Assets to the Purchaser and the Purchaser shall purchase and acquire all of the Vendor’s right, title and interest in and to the Hotel Assets, all on and subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Ten Dollars ($10.00) paid by each of the Vendor and the Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

The terms defined in this Section shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

“Additional Deposit” has the meaning ascribed thereto in Section 3.1(b).

“Adjustment Date” means 11:59 p.m. (Toronto time) on the date immediately prior to the Closing Date.

“Adjustments” has the meaning ascribed thereto in Section 3.3.

“Affiliate” for the purposes hereof a Person (the “first Person”) is the affiliate of another Person (the “second Person”) where the second Person controls the first Person or the first Person controls the second Person or both Persons are controlled by the same Person and for these purposes “control” is the power, whether by contract or ownership of equity
interests, to select a majority of the board of directors or other supervisory management authority of a Person, whether directly or indirectly through a chain of Persons that are “controlled” within the foregoing meaning.

“Agreement” means this agreement of purchase and sale together with all Schedules hereto, as amended from time to time, and “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement taken as a whole.

“Applicable Laws” means all statutes, laws, by-laws, regulations, ordinances, orders and requirements of Governmental Authorities having jurisdiction.

“Approvals Costs” has the meaning ascribed thereto in Section 3.3(c)(iii).

“Approved Hotel Contracts” means Hotel Contracts created after the Effective Date in accordance with Section 8.4.

“Approved Leases” means Leases created after the Effective Date in accordance with Section 8.4.

“Article” and “Section” mean and refer to the specified article, section and subsection of this Agreement.

“Assignment and Assumption of Hotel Contracts” means an assignment and assumption of all of the Vendor’s right, title and interest in, to and under the Existing Hotel Contracts and the Approved Hotel Contracts, such document to be substantially in the form attached hereto as Schedule B.

“Assignment and Assumption of Leases” means an assignment and assumption of all of the Vendor’s right, title and interest in, to and under the Existing Leases and the Approved Leases, such document to be substantially in the form attached hereto as Schedule C.

“Balance” has the meaning ascribed thereto in Section 3.2(b).

“Bill of Sale” means a bill of sale for the Vendor’s interest in and to the Hotel FF&E and the Hotel Inventory, such document to be substantially in the form attached hereto as Schedule D.

“Block Reservations” means Room Reservations in respect of guests pursuant to contracts for multiple rooms on predetermined fixed dates such as, but without limitation, tour groups, airline and railway crews, and similar groups.

“Building” means, collectively, all buildings, structures and fixed improvements located on, in or under the Lands, including the Hotel and improvements and fixtures contained in or on such buildings and structures, but excluding improvements and fixtures: (i) not owned by or on behalf of the Vendor; and/or (ii) removable by any Tenant pursuant to its Lease.
“Business Day” means any day other than a Saturday, Sunday or statutory holiday in Toronto, Ontario.

“Claims” means claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis, interest, demands and actions of any nature or any kind whatsoever, and “Claim” means any of the foregoing.

“Closing” means the closing of the Transaction including the payment of the Purchase Price and delivery of the Closing Documents.

“Closing Date” means the first Business Day which is 45 days following the date on which the Purchaser gives Notice to the Vendor that the Due Diligence Condition has been satisfied or waived, subject to Sections 4.3, 4.7 and 8.2.

“Closing Documents” means the agreements, instruments and other documents to be delivered by the Vendor pursuant to Section 5.2 and the agreements, instruments and other documents to be delivered by the Purchaser pursuant to Section 5.3.

“Collective Agreement” means the agreement made and entered into March 3, 2022 between Hospitality & Service Trades Union, Local 261 Affiliated with the C.L.C. and the Vendor.

“Confidential Information” means all information with respect to the Hotel Assets, the Hotel, the Hotel Business or the Vendor furnished to the Purchaser or its Representatives by the Vendor, the Franchisor or the Vendor’s Representatives, plus all information with respect to the Purchaser, or the Purchaser’s principals or Affiliates furnished to the Vendor or its Representatives by the Purchaser or its Representatives in connection with the Transaction, in each case whether furnished before or after the Effective Date, whether oral or written, and regardless of the manner in which it is furnished, and includes, without limiting the generality of the foregoing, all notes, analyses, compilations, studies, interpretations, financial statements and other financial or operating data, customer lists and descriptions, research data, trade secrets, processes, technology and other intellectual property, sales records, advertising material, personnel records, supply records, inventory controls, or other documents which contain, reflect or are based upon, in whole or in part, such information.

“Confidentiality Agreement” means the confidentiality agreement executed on May 24, 2023 from the Purchaser to the Vendor.

“Data Site” means the electronic data site hosted by the Vendor’s Broker.

“Deposit” means, collectively the Initial Deposit and, if applicable, the Additional Deposit.

“Direct Claim” has the meaning ascribed thereto in Section 7.4.
“Disclosed to the Purchaser” means written information which is delivered or made available to the Purchaser and/or the Purchaser’s Representatives whether at the Property, in the Data Site or otherwise delivered or made available to the Purchaser and/or the Purchaser’s Representatives, in each case prior to the Due Diligence Date.

“DRA” has the meaning ascribed thereto in Section 5.6(a).

“Due Diligence Condition” has the meaning ascribed thereto in Section 4.2(a).

“Due Diligence Date” means 5:00 p.m. (Toronto time) on the first Business Day which is 30 days after the Vendor gives Notice to the Purchaser that the KSI Approval has been obtained.

“Effective Date” has the meaning ascribed thereto on page 1.

“Employees” means all individuals employed as of the Closing Date by the Vendor exclusively in connection with the Hotel Business, including such individuals hired by the Vendor exclusively in connection with the Hotel Business after the Effective Date in accordance with Section 8.7(g).

“Encumbrance” means any mortgage, pledge, charge, lien, debenture, hypothec, trust deed, assignment by way of security, security interest, conditional sales contract or other title retention agreement, option to purchase or other instrument, agreement, contract, restriction, execution or encumbrance charging, or creating a security interest in, or otherwise encumbering, the Vendor’s title to any of the Hotel Assets.

“Encumbrances to be Discharged” means those Encumbrances listed in Schedule F hereto.

“Escrow Agreement” has the meaning ascribed thereto in Section 8.1(b).

“Excluded Assets” means: (i) the Hotel Receivables; (ii) the Vendor’s insurance policies; (iii) any bank accounts (and all cash therein) or cash (other than the cash floats referred to in Section 3.3(b)(ii)); and (iv) payments from any realty tax appeals properly belonging to the Vendor pursuant to Section 3.7.

“Existing Hotel Contracts” means all Hotel Contracts in existence and in effect on the Effective Date, all of which are set forth in Schedule G.

“Existing Leases” means all Leases in existence and in effect on the Effective Date, all of which are set forth in Schedule H.

“Expert” has the meaning ascribed thereto in Section 3.5.

“Final Adjustment Date” has the meaning ascribed thereto in Section 3.4.
“**Franchise Agreement**” means the franchise agreement for relicensed hotel dated May 28, 2015 between the Franchisor and the Vendor, as amended, supplemented and restated from time to time.

“**Franchisor**” means Franchise and License (Canadian) OPS Limited Partnership.

“**Governmental Authority**” means any government, legislature, municipality, regulatory authority, agency, commission, department, board, tribunal or court or other law, regulation or rule-making entity (including a Minister of the Crown) having jurisdiction.

“**Hotel**” means the hotel known as the Sheraton Hotel Ottawa and having the municipal address of 150 Albert Street, Ottawa, Ontario, and all related facilities, lands and appurtenances.

“**Hotel Assets**” means, collectively, the Property, the Hotel FF&E, the Existing Hotel Contracts, the Approved Hotel Contracts, the Existing Leases, the Approved Leases, the Hotel Intangibles and the Hotel Inventory but specifically excluding the Excluded Assets.

“**Hotel Assets Documents**” has the meaning ascribed thereto in Section 2.5(f).

“**Hotel Business**” means the business of offering and providing to the general public lodging and accommodation at the Hotel and related recreational facilities, meeting facilities at the Hotel and other related services, food and beverages services and other services that are ancillary thereto.

“**Hotel Contracts**” means all contracts, agreements and commitments (including all unfilled orders and forward commitments to purchase) made by, or binding upon, the Vendor in connection with the Hotel Business or the Hotel Assets, together with any security relating thereto; without limiting the generality of the foregoing, the Hotel Contracts shall include any Permitted Encumbrances that are contracts, agreements or commitments made by or binding upon the Vendor in connection with the Hotel Business or the Hotel Assets, the Collective Agreement, all written agreements with Employees, the unexpired warranties of manufacturers, service providers, contractors or sellers which apply to any of the Hotel Assets and are assignable (if any), all maintenance contracts, equipment leases in respect of any Hotel Assets, any existing pay-for-view movie contracts, Room Reservations, the Hotel Permits and the Approved Hotel Contracts; “**Hotel Contracts**” shall exclude Leases, Hotel Intangibles, Encumbrances to be Discharged, Employee plans, the Franchise Agreement, contracts relating to the intellectual and industrial property rights which are excluded from the Hotel Assets pursuant to Section 8.8, policies of insurance.

“**Hotel FF&E**” means all machinery, tools, chattels, movables, furniture, furnishings, artwork, equipment, computer hardware and software, radios, televisions, electronics equipment and tangible personal property (including china, glassware, silverware, linen, uniforms and office supplies) used or held for use on site at the Hotel as at the Effective
Date subject to any changes or additions made by the Vendor in the ordinary course of business and, in any event, excluding Hotel Inventory, any personal property owned by Tenants or leased by Tenants from Persons other than the Vendor and located within the Tenants’ leased premises in the Hotel or any personal effects of guests of the Hotel.

“Hotel Intangibles” means all of the files, records, documents, market studies, customer lists, guest reservation cards, advance reservations, correspondence and telephone numbers owned by the Vendor to the extent they relate to the Hotel, the rights to any domain names owned by the Vendor or any of its Affiliates to the extent they relate to the Hotel and all other rights (other than rights otherwise included in Hotel Assets) owned by the Vendor to the extent they relate to the Hotel, all intellectual and industrial property rights owned by the Vendor relating to the Hotel, including any trademark, trade name, business name, internet domain name, website, related linked websites, or similar rights and interests used for the Hotel Business, whether or not such name is registered, all of the Vendor’s rights in respect of the Hotel Business, trade-names, logos, and goodwill relating to the Hotel (with the exception of the intellectual and industrial property rights which are excluded from the Hotel Assets pursuant to Section 8.8).

“Hotel Inventory” means all inventories, consumables and operating supplies (including all unopened food and beverages in containers but excluding all perishable items and all “past due” items) used or held for use on site at the Hotel as at the Closing Date.

“Hotel Permits” means all licenses and permits issued by any Governmental Authorities and used in connection with or pertaining to the operation of the Hotel Business (but expressly excluding the Liquor Licence), all of which are in existence and in effect on the Effective Date are set out in Schedule G.

“Hotel Receivables” means all accounts receivable arising out of the Property, the Hotel Business, the Existing Leases or the Approved Leases, and outstanding as of 11:59 p.m. on the date immediately preceding the Closing Date.

“HST” means the harmonized sales tax payable pursuant to the *Excise Tax Act* (Canada).

“Impark Estoppel Certificate” has the meaning ascribed thereto in Section 8.4(e);

“include”, “includes” or “including” means include, includes or including, without limitation.

“Indemnifying Party” has the meaning ascribed thereto in Section 7.4;

“Initial Deposit” has the meaning ascribed thereto in Section 3.1(a).

“KSI” has the meaning ascribed thereto in Section 4.3.

“KSI Approval” has the meaning ascribed thereto in Section 4.3.
“Lands” means the lands and premises described in Schedule A.

“Leases” means all leases, licenses, and agreements to lease or license space in the Building to third parties granted by or on behalf of the Vendor or its predecessors in title as owner of the Property which entitle any Person to lease or license space within the Property, including the Parking Management Agreement, together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed or otherwise varied; for greater certainty, Leases do not include Room Reservations.

“Liquor Licence” means all of the licenses and permits held in respect of the Hotel pursuant to which the sale of alcoholic beverages is permitted in, on or at the Hotel or the restaurants, bars, function rooms or guest rooms located therein, which are held by the Vendor.

“Losses”, in respect of any matter, means all losses, damages, liabilities, diminution in value, deficiencies, costs and expenses (including all reasonable legal and other professional fees and disbursements, harmonized sales taxes, sales taxes or other similar taxes, interest, penalties and amounts paid in settlement) arising directly or indirectly.

“LRO” has the meaning ascribed thereto in Section 5.6.

“Night Audit Cut-Off” means the time on the Closing Date at which the regularly conducted night audit at the Hotel is completed (which will be approximately 3:00 a.m. on the Closing Date and will be based on the posting of all revenue and receipts for the prior calendar day, including room revenue for the guests in occupancy).

“Non-Assignable Rights” has the meaning ascribed thereto in Section 8.5(a).

“Non-Unionized Employees” means those Employees not governed by a Collective Agreement.

“Notice” has the meaning ascribed thereto in Section 9.15.

“Ongoing Vendor’s Work” has the meaning ascribed thereto in Section 8.1(b).

“Ongoing Vendor’s Work Escrowed Funds” has the meaning ascribed thereto in Section 8.1(b).

“Original Purchaser” has the meaning ascribed thereto in Section 9.19(b).

“Parking Management Agreement” means the agreement made as of June 1, 2013 between the Vendor and Imperial Parking Canada Corporation.

“Permitted Claim” has the meaning ascribed thereto in Section 7.3(a).
“Permitted Encumbrances” means, collectively, the following:

(a) those Encumbrances which, or notice of which, are registered against title to the Property as of the Effective Date, in any of the foregoing cases, other than the Encumbrances to be Discharged;

(b) without limiting the generality of paragraphs (a) and (c), those Encumbrances described in Schedule E hereto; and

(c) those Encumbrances which come into existence after the Effective Date and, except as set out in Schedule E, are approved in writing by the Purchaser (in its sole discretion).

“Person” means an individual, partnership, corporation, trust, unincorporated organization, Governmental Authority, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

“Post Closing Adjustments” means the adjustments to be made on a post-Closing basis pursuant to Section 3.4(a).

“Property” means, collectively, the Lands and the Building.

“Property Conditions” has the meaning ascribed thereto in Section 6.4(b).

“Purchase Price” means $43,200,000.00.

“Purchaser’s Closing Certificate” has the meaning ascribed thereto in Section 5.3(g).

“Purchaser’s Solicitors” means Baker & Company, Barristers & Solicitors, or such other firm or firms of solicitors or agents as are appointed by the Purchaser from time to time and notice of which is provided to the Vendor.

“Receiving Party” has the meaning ascribed thereto in Section 5.6(c).

“Representatives” means, in respect of the Vendor or Purchaser, as applicable, its officers, directors, employees, solicitors and advisors who are participating in the Transaction, their Affiliates and those otherwise specifically in writing approved by the other party.

“Room Reservations” means reservations for guest rooms, function rooms or other facilities of the Hotel.

“Safety Deposit Boxes Inventory” has the meaning ascribed thereto in Section 3.3(g).

“Section 2.5(c) Claimed Amount” has the meaning ascribed thereto in Section 2.5(c).

“Site Tests” has the meaning ascribed thereto in Section 2.5(a).
“Substantial Damage” has the meaning ascribed thereto in Section 8.2(a).

“Survival Period” has the meaning ascribed thereto in Section 6.3.

“Tax” or “Taxes” means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profit, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, local improvement rates or charges and any other taxes, customs duties, fees, assessments, royalties, duties, deductions or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments, and any interest, fines and penalties, imposed by any Governmental Authority, whether disputed or not.

“Tenants” means all Persons having a right to possess or occupy the Property or any part thereof now or hereafter pursuant to an Existing Lease or an Approved Lease.

“Tendering Party” has the meaning ascribed thereto in Section 5.6(c).

“TERS” has the meaning ascribed thereto in Section 5.6.

“Third Party Claim” has the meaning ascribed thereto in Section 7.4.

“Third Party Sale” has the meaning ascribed thereto in Section 3.1(c).

“Transaction” means the transaction of purchase and sale of the Hotel Assets provided for in this Agreement.

“Transfer” has the meaning ascribed thereto in Section 5.2(a).

“Transient Guests” means all guests of the Hotel in guest rooms, function rooms or other facilities of the Hotel other than guests of the Hotel pursuant to Block Reservations.

“Undertaking and Access Agreement” has the meaning ascribed thereto in Section 8.1(b).

“Unionized Employees” means those Employees governed by the Collective Agreement.

“Unsatisfied Condition” has the meaning ascribed thereto in Section 4.4(a).

“Vendor’s Broker” has the meaning ascribed thereto in Section 9.14.

“Vendor’s Closing Certificate” has the meaning ascribed thereto in Section 5.2(m).

“Vendor’s Insurance Proceeds” has the meaning ascribed thereto in Section 3.3(e).
“Vendor’s Knowledge” means to the actual knowledge of Peter Wong, in his capacity as President, after reasonable investigation and inquiry of those employees of the Vendor who would reasonably be expected to have knowledge of matters in relation to the Property, the Hotel Business, the Hotel Assets, and the Property Conditions.

“Vendor's Representations and Warranties” means the Vendor’s representations and warranties in this Agreement, all of which are contained in Section 6.1, and “Vendor Representation and Warranty” means any one of the foregoing.

“Vendor's Solicitors” means Blake, Cassels & Graydon LLP, or such other firm or firms of solicitors or agents as are appointed by the Vendor from time to time and notice of which is provided to the Purchaser.

ARTICLE 2
AGREEMENT OF PURCHASE AND SALE

2.1 Agreement of Purchase and Sale

The Vendor hereby agrees to sell, transfer, assign, set over and convey all of the Vendor’s right, title and interest in and to the Hotel Assets to the Purchaser and the Purchaser hereby agrees to purchase and acquire all of the Vendor’s right, title and interest in and to the Hotel Assets from the Vendor for the Purchase Price, all on and subject to the terms and conditions of this Agreement.

2.2 Authorizations for Off-Title Searches

The Vendor shall execute and deliver to the Purchaser within two Business Days of the Effective Date, an authorization to Governmental Authorities necessary to permit the Purchaser to obtain information from their files with respect to the Property, which authorization expressly states that there shall not be any inspections by any Governmental Authority with respect to the Property and none is authorized. The Purchaser shall not request or authorize any Governmental Authority to inspect the Property.

2.3 Confidentiality

(a) The Purchaser agrees that all Confidential Information received by it in connection with the Hotel Assets or as a result of its due diligence is proprietary and confidential and will be received and held in confidence by the Purchaser and the Purchaser’s Representatives. The Purchaser further agrees that:

(i) all Confidential Information will be used by the Purchaser and the Purchaser’s Representatives only for the purpose of evaluating the Purchaser’s proposed acquisition of the Hotel Assets;

(ii) it will transmit the Confidential Information only to such of the Purchaser’s Representatives who need to know the Confidential Information for the
purpose of evaluating the Purchaser’s proposed purchase of the Hotel Assets and only if those Purchaser’s Representatives are aware of the provisions of this Section 2.3 and agree to be bound by the terms hereof as if a party hereto. The Purchaser acknowledges that it will be fully liable for any breach of this confidentiality provision by any of the Purchaser’s Representatives; and

(iii) if for any reason the Purchaser does not acquire the Hotel Assets, the Purchaser will forthwith return and cause the Purchaser’s Representatives to return all Confidential Information together with all copies, extracts and reproductions thereof and all notes and other records thereof or relating thereto.

(b) The Purchaser and the Purchaser’s Representatives further agree to keep in strict confidence the terms of this Agreement and not to disclose the terms of this Agreement or the Transaction except as required by law.

(c) If the Purchaser or any of the Purchaser’s Representatives believes it is legally compelled to disclose any Confidential Information to a Governmental Authority or other Person not authorized pursuant to the provisions of this Agreement to receive the Confidential Information, the Purchaser or the Purchaser’s Representatives, as the case may be, shall immediately deliver Notice of same to the Vendor so that the Vendor may seek a protective court order or other appropriate remedy and/or waive compliance with this Agreement before the release of such Confidential Information. If such protective order or other remedy is not obtained or a waiver granted, the Purchaser and its Representatives shall only reveal that portion of the Confidential Information which the Purchaser is advised, in writing, by its legal counsel is legally required to be disclosed, and the Purchaser will exercise reasonable commercial efforts to obtain assurances that such Confidential Information so revealed will be treated as confidential.

(d) The Purchaser will indemnify and hold harmless the Vendor from any liabilities arising from any breach by the Purchaser of this Section 2.3.

(e) The Vendor acknowledges and agrees that it has heretofore had access to and been entrusted with Confidential Information relating to the Hotel, Hotel Assets, and the Hotel Business and that the disclosure of any Confidential Information to competitors of the Hotel Business or to the public would be highly detrimental to the interests of the Purchaser and the Hotel Business. The Vendor further acknowledges and agrees that the right to keep confidential the Confidential Information and to preserve the goodwill associated with the Hotel Business constitute proprietary rights which the Purchaser is entitled to protect. Accordingly, the Vendor agrees with the Purchaser that, without the prior written consent of the Purchaser, neither the Vendor nor any of its Affiliates, agents, associates, or those for whom the Vendor is responsible at law shall disclose any Confidential Information to any person other than the Vendor’s professional advisors or otherwise use any Confidential Information in any manner whatsoever except: (i) for any Confidential Information which is generally available to the public at the time of such disclosure or use, other than by reason of a breach of this Agreement; or (ii) to the extent that Confidential Information is
required to be disclosed in connection with any court proceedings, or to the extent that Confidential Information is required to be disclosed by law or by any governmental authority having jurisdiction.

(f) The provisions of this Section 2.3 shall survive the Closing or any termination of this Agreement regardless of the cause of such termination.

2.4 Settlement of Documents

The parties shall proceed diligently and in good faith to attempt to settle, on or before the Closing or such earlier date as may be expressly set out herein, the contents of all Closing Documents to be executed and delivered by the Vendor and the Purchaser; provided that in the case of any Closing Documents to be executed and delivered in the form set out in a Schedule to this Agreement, such form shall not be subject to further negotiations and the Vendor and the Purchaser shall provide all details and/or information necessary to complete such documents, subject to the other’s approval of the accuracy of such details and information, such approval not to be unreasonably withheld. The parties agree that any Schedules to this Agreement not completed as of the Effective Date shall be completed no less than 10 Business Days before the Due Diligence Date.

2.5 Access to Property

(a) Subject to the rights of: (i) Tenants under the Leases; (ii) Transient Guests and guests of the Hotel pursuant to Block Reservations; (iii) the Employees; and (iv) the Franchisor pursuant to the Franchise Agreement, from and after the Effective Date until Closing or termination of this Agreement, the Purchaser and its Representatives shall have access to the Property from time to time at reasonable times and upon at least 48 hours’ prior written notice to the Vendor, at the Purchaser’s sole risk and expense, for the purpose of conducting:

(i) any visual inspections of the Property that the Purchaser considers to be necessary or desirable;

(ii) a review of any records in the possession or control of the Vendor and its Affiliates relating to the Hotel Assets and the Hotel Business that the Purchaser considers necessary or desirable; and

(iii) any tests on, in, under or relating to the Property, including physical and structural inspections, tests (including geotechnical soil tests and roof core samples) and environmental audits, including Phase I and/or Phase II environmental site assessments of soil and groundwater conditions, or other tests, measurements or surveys, provided that any of the foregoing tests to be undertaken by or on behalf of the Purchaser shall have been pre-approved by the Vendor, acting reasonably (including conditions in respect of advance notice being provided to the Vendor prior to each entry and, to the extent the Purchaser wishes to conduct such tests prior to the delivery of the
Initial Deposit, security to be provided to the Vendor in respect of such tests) on terms and conditions acceptable to the Vendor, acting reasonably (including the amount of the security to be provided to the Vendor in respect of such tests, if applicable), and if and to the extent so approved shall be conducted in a manner which minimizes interference with the Hotel Business and does not contravene any existing Leases or Hotel Contracts or unreasonably interfere with any Tenants, Transient Guests, guests of the Hotel pursuant to Block Reservations or Employees (such testing, after it has been approved by the Vendor pursuant to this Section 2.5(a), shall be referred to herein as “Site Tests”).

As a condition to the Vendor considering whether to approve any tests on, in, under or relating to the Property to be undertaken by or on behalf of the Purchaser, including those referred to in Section 2.5(a)(iii), the Purchaser shall deliver to the Vendor a detailed outline or scope of work of the testing that is so contemplated.

(b) Any inspections contemplated in Sections 2.5(a)(i) or 2.5(a)(ii) or Site Tests shall, in each case, be conducted in a manner that minimizes interference with the use of the Property and does not contravene any Leases or Hotel Contracts or unreasonably interfere with any Tenants, Transient Guests, guests of the Hotel pursuant to Block Reservations, Employees or the Franchisor. The date and time of all inspections of the Property or Site Tests shall be coordinated by the Purchaser with the Vendor at least two complete Business Days in advance of such inspections or tests. The Vendor (or Representatives thereof) shall have the right to accompany the Purchaser and its Representatives on any inspections or Site Tests contemplated under this Section 2.5; provided that the Vendor does not delay the Purchaser or its Representatives in undertaking same.

(c) The Purchaser shall restore the Property to its pre-Site Test (if any Site Tests are conducted) condition and repair any damage caused by inspections or Site Tests performed by or on behalf of the Purchaser or its Representatives and fully indemnify the Vendor and its Affiliates from all costs of repairing any damage caused by such inspections or Site Tests and all Claims (including Claims made by a third party) relating to any such physical damage arising from such inspections or Site Tests and from all Claims (including Claims made by a third party) incurred by the Vendor or its Affiliates as a result thereof. If: (i) there are any Claims (including Claims made by a third party) or physical damage for which the Purchaser is responsible to indemnify the Vendor and its Affiliates pursuant to this Section 2.5(c); (ii) the Transaction is not completed for any reason; and (iii) the Purchaser has not paid to the Vendor and its Affiliates by the date of termination of this Agreement an amount (the “Section 2.5(c) Claimed Amount”) equal to the value of such Claims or physical damage for which the Purchaser is responsible to indemnify the Vendor (or its applicable Affiliates) pursuant to this Section 2.5(c) (provided such damages are liquid), then the Vendor (and its applicable Affiliates) shall have recourse to the Deposit and/or to any security provided by the Purchaser pursuant to Section 2.5(a)(iii), if applicable, for the Section 2.5(c) Claimed Amount (and the Purchaser hereby irrevocably authorizes and directs the Vendor’s Solicitors to pay to the Vendor (or as it may direct) the amount of the Deposit and/or any security provided by the Purchaser pursuant to Section 2.5(a)(iii), if applicable, equal to the Section 2.5(c)
Claimed Amount). Notwithstanding the foregoing, the Vendor shall not have recourse to the Deposit or to any security provided by the Purchaser pursuant to Section 2.5(a)(iii), if applicable, for the Section 2.5(c) Claimed Amount if the Purchaser disputes, in good faith, any liability for physical damage arising from its inspections of the Property or Site Tests or any Claim related thereto until the dispute with respect to such liability or Claim is resolved in accordance with the procedure outlined in Section 7.5 of this Agreement. This Section 2.5(c) shall survive the termination of this Agreement regardless of the cause of such termination.

(d) During the period from the Effective Date to the Closing Date, the Purchaser will ensure that all consultants retained by the Purchaser to perform any inspections and Site Tests referred to in Section 2.5(a) are maintaining industry standard commercial general liability insurance with a minimum limit of $5,000,000 per occurrence insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by any such acts of, or any investigations or Site Tests by or on behalf of, the consultants.

(e) The Purchaser and its Representatives shall not be entitled to have any communications with any Tenants or any of the Employees or any employees of a Tenant without the prior written consent of the Vendor, in its sole and absolute discretion. If the Vendor’s consent is granted, the Vendor will be entitled to have a Representative present at any meeting with any of the foregoing.

(f) Within Five (5) Business Days of the Effective Date, the Vendor shall produce for inspection and provide copies to the Purchaser of (collectively, the “Hotel Assets Documents”), in each case to the extent in the possession or control of the Vendor:

(i) all agreements and other documents referred to in Schedule G and Schedule H;

(ii) the following reports: (A) Designated Substance Report (DSR) dated November, 2021 prepared by Kanellos Consulting; (B) Designated Substance Report (DSR) dated May, 2023 prepared by Kanellos Consulting; (C) Building Condition Assessment (MEP) dated October 7, 2022 prepared by Morisson Hershfield; and (D) Building Condition Assessment (Structural) dated October 21, 2022 prepared by Morisson Hershfield;

(iii) the Collective Agreement;

(iv) a summary of each Employee’s: (i) identification number; (ii) location of employment; (iii) length of service; (iv) position or title; (v) overtime exempt/non-exempt status; (vi) total compensation, including basic wage or salary rate, and any incentive compensation entitlements; (vii) participation in any benefit plans; (viii) active/inactive status (including the reason for any leave of absence, the date such leave commenced, and the expected return to work date); (ix) accrued but unused paid time off entitlements; and
(x) work permit type and status, but in all cases excluding any Employee identifiable information other than the foregoing (and the Vendor will provide names of the Employees corresponding with the abovementioned summary within five Business Days following the date on which the Purchaser gives Notice to the Vendor that the Due Diligence Condition has been satisfied or waived);

(v) and copies of wage grids for Employees, excluding any personal identifying information;

(vi) a summary of all group bookings and crew contracts in place for the 12 months following the Effective Date (and the Vendor will provide to the Purchaser copies and all details of same, plus a reporting of all future reservations on a numeric and day-by-day basis, and access to the Vendor’s reservation system on-site at the Property, within five Business Days following the date on which the Purchaser gives Notice to the Vendor that the Due Diligence Condition has been satisfied or waived); and

(vii) profit and loss statements of the Vendor for each of the five years immediately preceding the Effective Date.

ARTICLE 3
PURCHASE PRICE

3.1 Deposit

(a) Prior to 5:00 p.m. on the first Business Day after the Vendor gives Notice to the Purchaser that the KSI Approval has been obtained, the Purchaser shall pay $500,000.00 (the “Initial Deposit”) by wire transfer to the Vendor’s Solicitors, in trust, as an initial deposit, which shall be held in an interest-bearing account pending completion or termination of this Agreement.

(b) Prior to 5:00 p.m. on the first Business Day following the date on which the Purchaser gives Notice to the Vendor that the Due Diligence Condition has been satisfied or waived, the Purchaser shall pay $1,500,000.00 (the “Additional Deposit”) by wire transfer to the Vendor’s Solicitors, in trust, as a further deposit, which shall be held in an interest-bearing account pending completion or termination of this Agreement.

(c) Subject to the rights of the Vendor with respect to the Deposit pursuant to Section 2.5(c), if the Transaction is not completed for any reason other than the default of the Purchaser, the Deposit (together with all interest earned thereon) shall be returned to the Purchaser forthwith after termination without any set-off, abatement or deduction whatsoever and the parties shall have no further rights and remedies, at law or in equity, against each other unless the Transaction is not completed by reason of the default of the Vendor, in which case the Purchaser shall have all other rights and remedies available to the Purchaser hereunder, at law or in equity provided that the Purchaser agrees that the maximum liability of the Vendor in the case of the Transaction not being
completed by reason of the Vendor’s default is an amount equal to the amount of the Deposit then paid by the Purchaser, subject to the next sentence. Notwithstanding the previous sentence or anything to the contrary herein, in the event: (i) the Transaction is not completed by reason of the Vendor’s default; (ii) subsequent to such default, the Vendor completes the sale of the Hotel Assets to a third party within one year after the later to occur of: (A) the Effective Date; or (B) the scheduled Closing Date (a “Third Party Sale”); and (iii) the Purchaser obtains a declaration or judgment from an arbitrator (pursuant to a referral to binding arbitration in such manner as the parties may agree) or a court of competent jurisdiction that the reason for the Vendor’s default was to complete the Third Party Sale, with the Purchaser having the right in its sole discretion to elect the forum to seek such a declaration or judgment relating to a Third Party Sale (subject to the parties agreeing to the form of arbitration as aforesaid in the event the Purchaser elects for arbitration as the forum), then the Vendor, in addition to its obligation to return the Deposit (together with all interest earned thereon, and any security provided by the Purchaser pursuant to Section 2.5(a)(iii), if applicable) to the Purchaser, subject to the Vendor’s rights pursuant to Section 2.5(c), shall be liable to pay to the Purchaser an amount equal to: (x) the Purchaser’s reasonable and actual, out-of-pocket costs incurred by the Purchaser in conducting due diligence on the Hotel Assets, up to a maximum of $300,000 (inclusive of HST); plus (y) any amount of purchase price paid by the abovementioned third party purchaser pursuant to the Third Party Sale that is greater than the Purchase Price. If the Transaction is not completed as a result of the default of the Purchaser, the Deposit then paid by the Purchaser, together with all interest earned thereon, shall be forfeited to the Vendor, without prejudice to any further rights or remedies available to the Vendor at law or in equity.

(d) If the Transaction is completed, the Deposit shall be credited against the Purchase Price due on Closing and shall be paid by the Vendor’s Solicitors to the Vendor (or as it may direct) on Closing and any interest earned on the Deposit shall be paid to the Purchaser as soon as reasonably possible following the Closing.

(e) The Vendor and Purchaser acknowledge and agree that the Vendor’s Solicitors shall be a mere holder of the Deposit and in that regard the parties agree as follows:

(i) the Vendor’s Solicitors do not, and will not be deemed to, assume any duty, liability or responsibility other than to hold the Deposit in accordance with the provisions of this Agreement and to pay the Deposit to the Person becoming entitled thereto in accordance with the terms of this Agreement;

(ii) the Vendor’s Solicitors will not, under any circumstances, be required to verify or determine the validity of any Notice or other document whatsoever delivered to the Vendor’s Solicitors, and the Vendor’s Solicitors are hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Vendor’s Solicitors of any such Notice or other document received in good faith by the Vendor’s Solicitors;

(iii) if the Vendor’s Solicitors are uncertain as to their duties or rights hereunder or receive instructions, claims or demands from any party hereto or from
any third party with respect to the Deposit which, in their opinion, conflict with any provision of this Agreement or with any other instruction, claim or demand from any party hereto, they may pay the Deposit into a court of competent jurisdiction or refrain from taking any action authorized and directed hereunder until they have been authorized or directed otherwise in writing by both the Vendor and Purchaser, or by an order of a court of competent jurisdiction from which no further appeal may be taken;

(iv) neither the disbursement of the Deposit to any other party or into court or pursuant to an order of the court, as provided herein, nor any dispute between the Vendor and Purchaser, whether or not involving the Deposit, will in any way hinder the ability of the Vendor’s Solicitors to continue to act as legal counsel to the Vendor; and

(v) It is the intention of the parties that this Section 3.1(e) will benefit the Vendor’s Solicitors, notwithstanding that they are not party to this Agreement, and the parties acknowledge that the Vendor’s Solicitors have agreed to hold the Deposit in reliance upon this Section 3.1(e).

(f) The provisions of this Section 3.1 shall survive the Closing or any termination of this Agreement regardless of the cause of such termination.

3.2 Method of Payment of Purchase Price

On Closing the Purchase Price shall be satisfied, subject to the escrow terms of the DRA, as follows:

(a) by payment to the Vendor (or as it may direct) of the Deposit; and

(b) by payment to the Vendor, or as the Vendor directs in writing, of an amount (the “Balance”) equal to the Purchase Price, as adjusted pursuant to Section 3.3, less the amount referred to in Section 3.2(a).

The Balance shall be paid on Closing by the Purchaser to the Vendor (or to whom the Vendor may direct in writing) by wire transfer of immediately available funds.

On or before the Closing Date, the Vendor and the Purchaser will attempt in good faith to agree upon a written allocation of the Purchase Price among the Lands, the Building, the Hotel FF&E, the Hotel Inventory, the Hotel Intangibles and the other Hotel Assets; provided, however, that the failure to agree upon such allocation of the Purchase Price shall not, under any circumstances, constitute a condition to either party’s obligation to complete the Transaction or otherwise relieve the parties from their obligations to complete the Transaction pursuant to this Agreement. The allocation of the Purchase Price to the Hotel Assets as agreed to by the Vendor and the Purchaser, if applicable, shall be adopted for the purposes of all tax returns and filings respectively made by them or on their behalf. Notwithstanding the foregoing, if, despite the good faith efforts of the Vendor and the Purchaser, the parties fail to agree upon the allocation of the
Purchase Price to the Hotel Assets, then the Vendor and the Purchaser shall be entitled to allocate the amount of the Purchase Price among the Hotel Assets as each such party may so choose.

3.3 **Adjustments**

(a) The Purchase Price shall be adjusted as set out in this Section 3.3 (such adjustments being referred to, collectively, as the “**Adjustments**”). Except as otherwise expressly provided for in this Agreement, all: (i) revenues, receivables and expenses with respect to the Property, the Hotel Assets and the Hotel Business accrued prior to the Night Audit Cut-Off shall belong to, and be for the account of, the Vendor; (ii) other liabilities and obligations with respect to the Property, the Hotel Assets and the Hotel Business accrued prior to the Adjustment Date shall belong to, and be for the account of, the Vendor; (iii) all revenues, receivables and expenses with respect to the Property, the Hotel Assets and the Hotel Business accruing after the Night Audit Cut-Off shall belong to, and be for the account of, the Purchaser; and (iv) other liabilities and obligations with respect to the Property, the Hotel Assets and the Hotel Business accruing after the Adjustment Date shall belong to, and be for the account of, the Purchaser.

(b) Without limiting the provisions of Section 3.3(a), the Adjustments to be made as of the Night Audit Cut-Off shall include:

(i) **Room Charges.** The Vendor shall receive a credit for all of the Hotel room rents and other charges of guests of the Hotel attributable to the period prior to Closing, including for the night before the Closing Date. Cleaning costs for rooms on the Closing Date shall also be borne by the Vendor. For greater certainty, the “night before the Closing Date” means the night which begins on the day before the Closing Date and ends on the Closing Date;

(ii) **Cash Floats.** The Vendor will transfer, or cause to be transferred, to the Purchaser on the Closing Date any cash floats and any petty cash normally used in connection with the operation of the Hotel and the Purchase Price will be adjusted accordingly as of the Night Audit Cut-Off, with the Vendor receiving a credit on the statement of Adjustments for the full amount of such cash floats and petty cash; and

(iii) **Hotel Inventory.** The Vendor shall be credited at Closing with the book value of all unopened Hotel Inventory as at the Night Audit Cut-Off, such book value to be determined by reference to the most recent purchase invoices for the relevant items comprising such Hotel Inventory. Notwithstanding Section 3.2, the amount of the Purchase Price allocated to such unopened Hotel Inventory shall be equal to the amount of the credit to the Vendor pursuant to this Section 3.3(b)(iii).

(c) Without limiting the provisions of Section 3.3(a), the Adjustments to be made as of the Adjustment Date shall include:
(i) **Taxes.** All real estate taxes, personal property taxes, local improvement charges, levies, taxes, rates, business taxes, retail sales taxes and other assessments and similar taxes, rates or charges levied or assessed by a municipal or other Governmental Authority, whether special or general, (including water and sewer service charges and other charges for governmental services) in respect of the Hotel Business or Hotel Assets for the period prior to (but excluding) the Closing Date shall be the responsibility of the Vendor and all of those for the period from and including the Closing Date shall be the responsibility of the Purchaser;

(ii) **Prepaid Revenues.** Prepaid amounts received by the Vendor or the Franchisor, in each case on behalf of the Vendor, in respect of the Hotel Business or the Hotel Assets including prepaid rents, security deposits and any other amounts paid in advance by Tenants, prepaid amounts and deposits in respect of Block Reservations and other advance bookings, parking spaces and catering contracts, and all other prepaid amounts and prepaid room commissions for services to be provided on or after the Closing Date shall be credited to the Purchaser;

(iii) **Hotel Contracts and Hotel Intangibles.** Unpaid amounts owing by, and other liabilities of, the Vendor under any Existing Hotel Contracts, Approved Hotel Contracts, the Franchise Agreement or Hotel Intangibles relating to the supply of goods, equipment or services delivered or performed, or the exercise of rights, prior to the Adjustment Date shall be credited to the Purchaser, save and except for any fees (including any application fees and PIP fees), payments or other costs (collectively, “**Approvals Costs**”) payable to obtain a consent or approval required for a new franchise licence agreement or for the assignment of the Hotel Contracts relating to the Property (or the amounts payable under the Franchise Agreement in order for the Purchaser to obtain the consent required thereunder for the Transaction), which fees, payments and costs shall be for the account of the Purchaser in accordance with Section 8.5(a) hereof;

(iv) **Utilities.** Any water and sewer charges, hydro, gas, oil and charges for all other utilities or governmental services (if any) shall be adjusted as of the Closing Date. To the extent possible, all meters in respect of the Hotel Assets will be read on the Closing Date. To the extent meters in respect of utilities cannot be read as at the Closing Date, then such utility shall be estimated for the Adjustments and re-adjusted as part of the Post Closing Adjustments;

(v) **Leases.** With respect to each Existing Lease and Approved Lease where the Tenant thereunder has paid rent for a month or other payment period which includes one or more days after the Closing Date, the Purchaser shall receive
credit for the rent and all other amounts paid under the Lease attributable to the days in such month or other payment period which occur on or after the Closing Date;

(vi) **Prepaid Costs.** The Vendor shall be credited with any reasonable and customary expenses paid in advance by the Vendor or the Franchisor, in each case on behalf of the Vendor, for goods or services to be delivered to the Hotel by third parties dealing at arm’s length or rendered with respect to the Hotel Business, in each case, after the Adjustment Date; and

(vii) **Employee Related Adjustments.** All items in respect of Employees that require adjustments shall be adjusted pursuant to Section 8.7(b).

(d) **Hotel Receivables.** All Hotel Receivables, including arrears of rent and other charges owed by Tenants that are due and payable prior to the Closing Date, shall remain the property of the Vendor and shall not be adjusted for at Closing. The Purchaser agrees to make commercially reasonable efforts to assist the Vendor in collecting Hotel Receivables from and after Closing. In the event the Purchaser receives or recovers any Hotel Receivables after Closing, the Purchaser shall receive same and hold same in trust for the Vendor and shall pay over such Hotel Receivables to the Vendor forthwith without deduction or set-off. All Hotel Receivables paid after the Closing Date shall be applied first to current amounts owing under the applicable underlying Hotel Contract or Lease and the balance, if any, shall be applied to arrears;

(e) **Active Insurance Claims.** All insurance proceeds received from the Vendor’s insurer(s) in connection with any active claim commenced prior to Closing (the “**Vendor’s Insurance Proceeds**”) shall remain the property of the Vendor and shall not be adjusted for at Closing. The Purchaser agrees to make commercially reasonable efforts to assist the Vendor in collecting the Vendor’s Insurance Proceeds, if applicable. In the event the Purchaser receives or recovers any Vendor’s Insurance Proceeds after Closing, the Purchaser shall receive same and hold same in trust for the Vendor and shall pay over such Vendor’s Insurance Proceeds to the Vendor forthwith without deduction or set-off.

(f) **Inventory of Baggage.** The Vendor’s Representatives and the Purchaser’s Representatives shall prepare an inventory of baggage at the Hotel as of the Adjustment Date (which inventory of baggage shall be binding on the parties) of: (i) all luggage, valises and trunks checked or left in the care of the Hotel by guests then or formerly occupying the Hotel; (ii) parcels, laundry, valet packages and other property of guests checked or left in the care of the Hotel by guests then or formerly occupying the Hotel; and (iii) all items contained in the “lost and found” at the Hotel (the items in (i), (ii) and (iii) being collectively referred to as “**Guest Inventory**”). The Purchaser shall be responsible from and after the Closing Date for all Guest Inventory listed in such inventory of baggage. The Purchaser shall indemnify, defend and hold harmless the Vendor from all Claims incurred, suffered or sustained by the Vendor in connection with the Guest Inventory to the extent evidenced in the inventory of baggage prepared in accordance with this Section 3.3(d) arising or attributable to the period from and after the Adjustment Date. The Vendor shall indemnify, defend and hold harmless the Purchaser from all Claims incurred, suffered or
sustained by the Purchaser in connection with the Guest Inventory to the extent evidenced in the inventory of baggage prepared in accordance with this Section 3.3(d) arising or attributable to the period prior to the Adjustment Date. The indemnities referred to in this Section 3.3(d) shall survive Closing; and

(g) **Locked Safety Deposit Boxes.** The Vendor’s Representatives and the Purchaser’s Representatives shall prepare an inventory of the locked safety deposit boxes at the Hotel as of the Adjustment Date (the “**Safety Deposit Boxes Inventory**”). The Vendor shall indemnify, defend and hold harmless the Purchaser from any Claims incurred, suffered or sustained by the Purchaser as a result of any fault or negligence of the Vendor prior to the Adjustment Date with respect to the contents in the locked safety deposit boxes set forth on the list of Safety Deposit Boxes Inventory prepared in accordance with this Section 3.3(g). The Purchaser shall indemnify, defend and hold harmless the Vendor from any Claims incurred, suffered or sustained by the Vendor as a result of any fault or negligence of the Purchaser from and after the Adjustment Date with respect to the contents in the locked safety deposit boxes set forth on the list of Safety Deposit Boxes Inventory prepared in accordance with this Section 3.3(g). The indemnities in this Section 3.3(g) shall survive Closing.

(h) **Further Adjustments shall be made as reasonable in the circumstances based upon generally accepted accounting principles applicable to the hotel industry in Canada. Notwithstanding the foregoing, no Adjustments shall be made with respect to:**

(i) insurance premiums with respect to insurance policies obtained or maintained by the Vendor (and the Purchaser shall not assume or take an assignment of the Vendor’s insurance policies);

(ii) any bank accounts or cash, other than the cash floats referred to in Section 3.3(b)(ii); or

(iii) payments from any realty or business tax appeals properly belonging to the Vendor pursuant to Section 3.7,

none of which is included in the Hotel Assets and all of which shall remain the sole property of the Vendor.

(i) The Vendor shall deliver a proposed statement of Adjustments to the Purchaser not later than the fourth Business Day prior to the Closing Date and the Purchaser shall approve such statement, or give the Vendor its detailed written comments on such statement, within two (2) Business Days after receipt of such draft statement. As of the Night Audit Cut-Off, the parties shall cause a physical count and tally of the Hotel Inventory to be prepared by representatives of the Vendor and the Purchaser, and the results of such physical count and tally shall be incorporated in the statement of Adjustments. The parties shall cause the statement of Adjustments to be finalized prior to Closing and any disputes relating thereto shall be resolved by an Expert pursuant to Section 3.5.
The provisions of this Section 3.3 shall survive Closing.

3.4 Adjustments - Post Closing

(a) If the cost or amount of any item which is to be adjusted pursuant to Section 3.3 cannot be finally determined as at the Closing Date, including as a result of a dispute between the Vendor and the Purchaser, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be estimated by the Vendor and the Purchaser, each acting reasonably, as of the Closing Date on the basis of the best information available at the Closing as to what the final cost or amount of such item will be. All amounts which have been estimated as at the Closing Date because they have not been finally determined at that date shall be finally adjusted on a post-Closing basis once they have been determined and finalized in accordance with the provisions set out below. There will be no adjustments made after the Closing Date in respect of any revenues or expenses regardless of whether such revenues or expenses have been estimated on the statement of Adjustments, incorrectly adjusted on the statement of Adjustments or were incorrectly omitted from the statement of Adjustments unless the party requesting the adjustments makes such request or requests on or before the Final Adjustment Date.

(b) In each case when a Post Closing Adjustment can be finally determined, the Vendor or the Purchaser, as the case may be, shall, within 30 days of determination, make a request for Post Closing Adjustment by providing a complete written statement of such final Post Closing Adjustments, together with particulars relating thereto in reasonable detail, to the other and within 30 days thereafter (or such shorter period of time if less than 30 days remain prior to the Final Adjustment Date) the parties hereto shall make a final adjustment as of the Closing Date for the Post Closing Adjustment in question. In the case of dispute between the parties hereto with respect to any Post Closing Adjustment, the final determination of such Post Closing Adjustment shall be made by the Expert pursuant to Section 3.5.

(c) Subject only to Section 3.7, all requests for adjustments and Post Closing Adjustments to be made pursuant to Sections 3.3 and 3.4 shall, in any event, be made on or before 5:00 p.m. on the date (the “Final Adjustment Date”) which is 365 days after the Closing Date and no request for any re-adjustment may be made by either party thereafter.

(d) The Purchaser shall provide the Vendor and its auditors, during normal business hours at any time and from time to time after Closing, upon reasonable prior notice to the Purchaser, access to the books, files and records of the Purchaser relating exclusively to the Hotel Assets and the Hotel Business for the purpose of calculating or verifying the amount of any Post Closing Adjustments and dealing with any realty tax appeals.

(e) The Vendor shall pay to the Purchaser (or to whom the Purchaser may in writing direct) the redemption cost of any gift certificates or coupons, if any, issued prior to the Adjustment Date by or on behalf of the Vendor for use of Hotel rooms or other Hotel facilities and redeemed on or after the Closing Date and prior to the Final Adjustment Date; provided that: (i) reasonable evidence of such redemption is provided to the Vendor; and (ii) the parties had not adjusted for
such amounts at the Adjustment Date. The cost of such redemptions shall be deemed one of the Post Closing Adjustments within the meaning of this Agreement.

(f) The provisions of this Section 3.4 shall survive the Closing and, in confirmation thereof, the Vendor and the Purchaser shall execute and deliver on the Closing Date an undertaking to re-adjust and to pay the amount of any Post Closing Adjustments as may be owing pursuant to the provisions of this Agreement.

3.5 Disputes

If there is any dispute concerning Adjustments or Post Closing Adjustments, either party may submit such dispute to one of the big four accounting firms agreed upon by the Vendor and Purchaser (the “Expert”) for resolution and the Expert shall be given access to all materials and information reasonably required for such purpose.

If the Vendor and the Purchaser are unable to agree upon the identity of the Expert within five Business Days after such first notice of such dispute is delivered, then the Vendor shall submit to the Purchaser the names of two (2) of Deloitte Canada, EY Canada, KPMG Canada, PwC Canada and MNP Canada, each of which are, in the Vendor’s opinion, acting reasonably, qualified to serve as the Expert, provided that each such accounting firm shall be independent at such time of each of the Vendor and the Purchaser. If the Vendor is unable to submit the names of two of the big four accounting firms as a result of the independence requirement set out above, then the Vendor may nominate any qualified accounting firms practicing in Ontario with the expertise to resolve the dispute. After the Vendor has submitted to the Purchaser the names of such two accounting firms, the Purchaser shall then select, within five Business Days after having been provided with such names, one of such firms to act as the Expert and such firm so chosen by the Purchaser shall thereafter constitute the Expert for all purposes of this Section 3.5 and “Expert” shall mean such firm so selected by the Purchaser.

The Expert’s determination of all such matters shall be final and binding on both parties and shall not be subject to appeal by either party. The fees and expenses of the Expert shall be borne equally by the parties.

3.6 Payment Provisions

When a Post Closing Adjustment has been finalized pursuant to Section 3.4 (or Section 3.5, if applicable), the party which owes the other party money as a result of such Post Closing Adjustment shall pay such amount to the other party within five Business Days after such final determination.

3.7 Realty Tax Appeals

In the event that there are any pending (as at the Closing Date) realty or business tax appeals relating to the Hotel Assets or the Hotel Business for the period prior to the Closing Date, the Vendor may, at its option, continue such appeals and shall be entitled to receive, as its own property, any payment resulting therefrom except to the extent, if any, that such payment is
properly payable to any Tenants; provided that the Vendor shall consult with the Purchaser with respect to, and the Purchaser, acting reasonably and without undue delay, shall have the right to approve any final settlement or disposition of any such appeal. Any refund or reassessment for the calendar year in which Closing occurs (after deduction of reasonable out-of-pocket third party expenses of the Vendor and the Purchaser in connection with any such appeal or re-assessment, including any commissions payable to agents or consultants) shall be re-adjusted as of the Closing Date after the conclusion of any assessment appeal and notwithstanding such re-adjustment occurs after the Final Adjustment Date. The Purchaser and the Vendor agree to co-operate with respect to all such appeals or reassessments and to provide each other with access to any necessary documents or materials required to continue any such appeals or reassessments, provided reasonable out-of-pocket expenses in connection with such cooperation are paid from any refund or reassessment as contemplated above. To the extent the Purchaser receives payment of any refund or reassessment for the period prior to the Closing Date, the Purchaser shall receive such refund or reassessment payment in trust for the Vendor and shall endorse (without recourse) in favour of the Vendor and deliver to the Vendor all such payment cheques forthwith upon receipt after deduction for the Purchaser’s reasonable out-of-pocket expenses and amounts owing to Tenants, if any. To the extent the Vendor receives payment of any refund or reassessment for the period from and after the Closing Date, the Vendor shall receive such refund or reassessment payment in trust for the Purchaser and shall endorse (without recourse) in favour of the Purchaser and deliver to the Purchaser all such payment cheques forthwith upon receipt after deduction of the Vendor’s reasonable out-of-pocket expenses, if any. Notwithstanding any other provisions of this Article 3, the Final Adjustment Date does not apply to this Section 3.7.

ARTICLE 4
CONDITIONS

4.1 Conditions for Vendor

The obligation of the Vendor to complete the Transaction shall be subject to fulfilment of each of the following conditions on or before the Closing Date or such earlier date or time as may be herein specified:

(a) payment by the Purchaser of the Purchase Price (as adjusted) and all of the other terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects (including the delivery of all of the Closing Documents on the part of the Purchaser to be delivered pursuant to this Agreement);

(b) on Closing, the representations and warranties of the Purchaser set out in Section 6.2 shall be true and correct in all material respects as if made as of the Closing; and

(c) on or before the Closing Date, the Purchaser shall have obtained, at the Purchaser’s cost, the written approval of the Franchisor to the sale of the Hotel Assets by the Vendor to the Purchaser, the execution and delivery by the
Purchaser of a new franchise licence agreement with the Franchisor, and a full and absolute release and discharge of the Vendor from its obligations under the Franchise Agreement (which release may take effect from and after Closing).

The conditions set forth in this Section 4.1 are for the benefit of the Vendor and may be waived in whole or in part by the Vendor by notice to the Purchaser.

4.2 **Conditions for Purchaser**

The obligation of the Purchaser to complete the Transaction shall be subject to fulfilment of each of the following conditions on or before the Closing Date or such earlier date or time as may be herein specified:

(a) prior to the Due Diligence Date, the Purchaser shall be satisfied in its sole and absolute discretion with its investigation of all aspects of the Hotel Assets, including the Vendor’s title thereto and shall have provided Notice to the Vendor of the waiver or satisfaction of this condition (the “**Due Diligence Condition**”);

(b) all of the material terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects (including the delivery of all Closing Documents on the part of the Vendor to be delivered pursuant to this Agreement);

(c) on Closing, the Vendor’s Representations and Warranties shall be true and correct in all material respects as if made as of the Closing;

(d) on or before the Closing Date, the Purchaser shall have obtained, at the Purchaser’s cost, the written approval of the Franchisor to the sale of the Hotel Assets by the Vendor to the Purchaser, and the execution and delivery by the Purchaser of a new franchise licence agreement with the Franchisor; and

(e) no order, decision or ruling of any court, tribunal or regulatory authority having jurisdiction shall have been made, and no action or proceeding shall be pending or threatened which, in the opinion of the Purchaser, is likely to result in an order, decision or ruling:

(i) to disallow, enjoin, prohibit or impose any limitations or conditions on the purchase and sale of the Hotel Assets contemplated hereby or the right of the Purchaser to own the Hotel Assets; or

(ii) to impose any limitations or conditions which may have a material adverse effect on the conditions of the Hotel Business.
The conditions set forth in this Section 4.2 are for the benefit of the Purchaser and may be waived in whole or in part by the Purchaser by notice to the Vendor.

4.3 **KSI Shareholder Approval**

The parties acknowledge and agree that the obligation of the Vendor to complete the Transaction shall be subject to the Vendor obtaining the approval (the “KSI Approval”) of the shareholders of Keck Seng Investments (Hong Kong) Ltd (“KSI”), a Hong Kong listed company and the Vendor’s ultimate parent company, to this Agreement and the Transaction, and further acknowledge and agree as follows:

(a) the KSI Approval is a true condition precedent for the Vendor and may not be waived by the Vendor; and

(b) in the event the KSI Approval is not obtained prior to 5:00 p.m. (Toronto time) on the date that is 60 days after the Effective Date or such later date as the parties may mutually agree, then this Agreement shall be terminated and both parties hereto shall be released from all of their liabilities and obligations under this Agreement (other than the obligations which are stated in this Agreement to survive the termination of this Agreement), and the Vendor shall return any security provided by the Purchaser pursuant to Section 2.5(a)(iii), if applicable, subject to the Vendor’s rights pursuant to Section 2.5(c).

The conditions set forth in this Section 4.3 are for the benefit of the Vendor.

4.4 **Non-Satisfaction of Conditions**

(a) If on or before the applicable date or time referred to in Section 4.1, 4.2 or 4.3, as the case may be, the party having the benefit of a condition in Section 4.1, 4.2 or 4.3 delivers Notice to the other party that a condition in Section 4.1, 4.2 or 4.3, as the case may be, is not satisfied or waived (such condition being referred to as the “Unsatisfied Condition”), then this Agreement shall be terminated and both parties hereto shall be released from all of their liabilities and obligations under this Agreement (other than the obligations which are stated in this Agreement to survive the termination of this Agreement) unless the reason for the Unsatisfied Condition not being satisfied is a default of a party hereto, the breach by a party hereto of this Agreement or a representation or warranty made by a party hereto being materially untrue or incorrect, in which case Section 3.1(c) shall govern.

(b) If: (X) the Purchaser receives Notice from the Vendor or any of its Representatives before Closing of an event, instrument, circumstance, action, omission, matter or issue which causes the Vendor to be unable to satisfy or fulfill the conditions set out in Section 4.2(a) or 4.2(c); or (Y) the Vendor’s Closing Certificate sets out any exception or qualification to any of the Vendor’s Representations and Warranties, then:
(i) if the Purchaser delivers Notice to the Vendor that it is satisfied with or waives the conditions set out in Section 4.2(b) or 4.2(c) on or before Closing or the Purchaser fails to deliver Notice to the Vendor as to whether any of such conditions have been satisfied or waived and Closing occurs, then the Purchaser shall be deemed to have waived such breach and shall have no Claim against the Vendor with respect to such breach, the Vendor shall have no liabilities of any nature whatsoever in respect of or relating to the event, instrument, circumstance, action, omission, matter or issue disclosed in the Notice or in the Vendor’s Closing Certificate, as the case may be, and the Vendor’s Representations and Warranties shall be deemed to have been amended to fully set out such specific exception or qualification or such event, instrument, circumstance, action, omission, matter or issue; and

(ii) if the Purchaser delivers Notice to the Vendor on or before the Closing Date that the relevant condition in Section 4.2(b) or 4.2(c) is not satisfied or waived, then this Agreement shall be terminated (other than the obligations which are stated in this Agreement to survive the termination of this Agreement) and the provisions of Sections 3.1(c) and 4.4(a) shall govern.

(c) Any condition that is required to be satisfied on or before the Closing Date shall be deemed to have been satisfied if the Closing occurs.

4.5 **Reasonable Efforts to Satisfy Conditions**

Without derogating from any party’s other obligations under this Agreement (including, in the case of the Purchaser, the obligation to pay the Purchase Price as provided for in this Agreement or its obligations with respect to the Franchise Agreement provided for in Section 4.6), it is agreed that the Purchaser shall act in good faith and use commercially reasonable efforts and incur commercially reasonable costs to satisfy, or cause to be satisfied, the conditions set forth in Sections 4.1(b) and 4.1(c), and the Vendor shall act in good faith and use commercially reasonable efforts and incur commercially reasonable costs to satisfy, or cause to be satisfied, the conditions set out in Sections 4.2(b), 4.2(c) and 4.2(d). Subject to the previous sentence, nothing in this Agreement shall be interpreted as requiring the Vendor or the Purchaser to pay any amounts or otherwise spend money (other than fees of its own professional advisors) to satisfy any conditions (other than the Vendor’s and the Purchaser’s respective obligations set out in Section 4.6 with respect to the Franchise Agreement), or to address any defects, deficiencies or concerns identified by the Purchaser or Vendor, respectively, with respect to the Hotel, the Hotel Business or the Hotel Assets or any other matter or aspect of the Transaction whatsoever. Each of the Purchaser and the Vendor shall act in good faith in determining whether or not a condition in its favour has been satisfied.

4.6 **Franchise Agreement**

(a) Forthwith after the Purchaser has provided Notice to the Vendor of the waiver or satisfaction of the Due Diligence Condition, the Purchaser, entirely at its own cost and expense,
shall notify the Franchisor of the Transaction, complete the application for a new franchise license agreement, pay the application fee and any PIP fee required by the Franchisor and request the approval of the Franchisor to the sale of the Hotel Assets, a full and absolute release of the Vendor from its obligations under the Franchise Agreement and fulfill all reasonable requests of the Franchisor in connection with the foregoing, all in accordance with Article 9 of the Franchise Agreement.

(b) The Purchaser shall use all commercially reasonable efforts to obtain the approval of the Franchisor to the sale of the Hotel Assets and the Transaction and those other matters referred to in Section 4.6(a). The Purchaser shall fulfill, at its own cost and expense, all of the obligations of the Vendor under the Franchise Agreement in connection with the application for such approvals, save and except for the monthly franchise fee and all other sums due and payable by the Vendor to the Franchisor under the Franchise Agreement in respect of the period up to but not including the Closing Date, provided that the Purchaser shall be responsible for any Approvals Costs, any amount payable in respect of any matter contemplated in any quality assurance report(s) (whether such reports are delivered to the Vendor before or after the Effective Date) and any amount payable in respect of any matter contemplated in any property improvement plan(s) between the Vendor and the Franchisor). The Vendor shall have no responsibility to obtain any approvals required under the Franchise Agreement in connection with the Transaction.

(c) The Vendor agrees to co-operate with the Purchaser, as the Purchaser may require, in connection with the Purchaser’s efforts to obtain the approvals it is required to obtain pursuant to the provisions of this Agreement with respect to the Franchise Agreement in connection with the Transaction (including completing any forms and providing information required by the Franchisor in connection with the Purchaser’s application and the execution and delivery by the Vendor to the Franchisor at Closing of the general release of the Franchisor and its Affiliates (as defined in the Franchise Agreement) referred to in section 9.4(h) of the Franchise Agreement), provided that the Purchaser reimburses the Vendor for any reasonable out of pocket third party costs incurred by the Vendor in providing such cooperation.

(d) The provisions of this Section 4.6 shall survive the Closing.

4.7 Access to Books and Records

The Purchaser shall, upon the reasonable request from the Vendor, at any time and from time to time until: (i) the seventh anniversary of the Closing Date; or (ii) in the event a tax dispute or litigation involving the Vendor commences prior to the seventh anniversary of the Closing Date, until such dispute or litigation is resolved (including beyond the seventh anniversary of the Closing Date, if applicable), allow the Vendor and its Affiliates and their respective auditors to have access to the books, files and records that pertain to the Hotel Assets and the Hotel Business in order to allow the Vendor and its Affiliates to prepare their Tax returns, contest Tax assessments or reassessments, defend litigation or other claims, prepare their financial statements, calculate or verify the amount of any Post Closing Adjustments, deal with any realty tax appeals and for such other matters as may be reasonably incumbent on the Vendor and its Affiliates. Notwithstanding the foregoing, the Purchaser shall not be liable: (i) if any of the books, files and records are
destroyed prior to such seventh anniversary of the Closing Date as long as the Purchaser has used reasonable care in connection with the maintaining and safekeeping of such books, files and records; or (ii) for any inaccuracies or errors in any such books, files or records.

ARTICLE 5
CLOSING DOCUMENTS

5.1 Closing Arrangements

The Closing shall commence at 10:00 a.m. (Toronto time) on the Closing Date, or at such other time as the parties shall mutually agree upon in writing.

5.2 Vendor’s Deliveries

On or before Closing, the Vendor shall execute and deliver, or cause to be executed and delivered, the following, subject to the DRA:

(a) a registrable transfer of land transferring the Vendor’s registered interest in and to the Property, which shall contain the statements of the Vendor’s Solicitors pursuant to Section 50(22) of the Planning Act (Ontario) (the “Transfer”);

(b) a general conveyance conveying the Vendor’s right, title and interest in and to the Hotel Assets that is not conveyed pursuant to any other Closing Document, which general conveyance shall be made without any representation and warranty, express or implied, of any nature whatsoever;

(c) the Assignment and Assumption of Leases, and any specific assignment and/or assumption agreements which may be required under any of the Existing Leases or Approved Leases;

(d) the Assignment and Assumption of Hotel Contracts, and any specific assignment and/or assumption agreements which may be required under any of the Existing Hotel Contracts or Approved Hotel Contracts;

(e) the Bill of Sale in favour of the Purchaser;

(f) the Impark Estoppel Certificate, if obtained by the Vendor;

(g) notices to Tenants advising of the sale of the Hotel Assets;

(h) if applicable pursuant to Section 8.6, the Authorization to Contract Out executed by the Vendor in accordance with Section 8.6(b)(i) provided that the Purchaser delivers an indemnity in favour of the Vendor with respect to any Claims that may arise relating to or as a result of the use of the Liquor Licence by the Purchaser;
(i) a direction as to the payee or payees of the Purchase Price, as adjusted;

(j) an undertaking by the Vendor to re-adjust the Adjustments in accordance with Section 3.4;

(k) a certificate of the Vendor confirming that the Vendor is not a non-resident of Canada pursuant to Section 116 of the *Income Tax Act* (Canada);

(l) the elections contemplated in Section 5.4 below;

(m) a certificate of the Vendor (the “Vendor’s Closing Certificate”) to the effect that the Vendor’s Representations and Warranties are, as at the Closing Date, true and correct in all material respects (except as any such Vendor Representation and Warranty may be affected by the occurrence of events or transactions expressly contemplated and permitted hereby);

(n) the Undertaking and Access Agreement, if applicable;

(o) the Escrow Agreement, if applicable;

(p) all keys and passwords relating to the Hotel Assets;

(q) a transfer by the Vendor to the Purchaser of the telephone number(s) used by the Vendor with respect to the Hotel that are held in the name of the Vendor or its Affiliates;

(r) a transfer by the Vendor to the Purchaser of all of the Vendor’s right, title and interest in and to any domain names that relate solely to the Hotel, subject to Franchisor’s written consent with respect to any domain names that contain any trademarks, trade names, logos, commercial symbols, business names or property owned by the Franchisor; and

(s) all other documents which the Purchaser reasonably requests to give effect to the Transaction and to result in the proper sale, transfer and assignment of the Hotel Assets by the Vendor to the Purchaser in accordance with the terms of this Agreement.

All documentation shall be in form and substance acceptable to the Purchaser’s Solicitors and the Vendor’s Solicitors, each acting reasonably and in good faith. Notwithstanding the foregoing and Section 5.6, the Vendor shall be entitled to leave the items described in Section 5.2(n) at the Hotel or make other reasonable arrangements for the delivery of same to the Purchaser on Closing.
5.3 **Purchaser’s Deliveries**

On or before Closing, the Purchaser shall execute (where it is a party thereto) and shall deliver or cause to be executed and delivered to the Vendor, the following, subject to the DRA:

(a) the Balance in accordance with Section 3.2;

(b) the Assignment and Assumption of Leases, and any specific assignment and/or assumption agreements which may be required under any of the Existing Leases or Approved Leases;

(c) the Assignment and Assumption of Hotel Contracts, and any specific assignment and/or assumption agreements which may be required under any of the Existing Hotel Contracts or Approved Hotel Contracts;

(d) all third party consents, if any, with respect to any of the Hotel Contracts, Leases or Permitted Encumbrances that may be required pursuant to this Agreement and that have been obtained by the Purchaser;

(e) an undertaking by the Purchaser to re-adjust the Adjustments in accordance with Section 3.4;

(f) the elections contemplated in Section 5.4 below;

(g) a certificate of the Purchaser (the “**Purchaser’s Closing Certificate**”) to the effect that the representations and warranties of the Purchaser set forth in Section 6.2 are, as at the Closing Date, true and correct in all material respects;

(h) the Undertaking and Access Agreement, if applicable;

(i) the Escrow Agreement, if applicable;

(j) the list of the Employees who have accepted the Purchaser’s offer of employment made pursuant to Section 8.7(b);

(k) any documentation contemplated under the Collective Agreement (as may be amended in accordance with Section 8.4) in connection with the assignment and assumption thereof; and

(l) all other documents which the Vendor reasonably requests to give effect to the Transaction and to result in the proper sale, transfer and assignment of the Hotel Assets by the Vendor to the Purchaser, and assumption thereof by the Purchaser, all in accordance with the terms of this Agreement.
All documentation shall be in form and substance acceptable to the Purchaser’s Solicitors and the Vendor’s Solicitors, each acting reasonably and in good faith.

5.4 **Registration and Other Costs**

The Vendor and the Purchaser shall be responsible for the costs of the Vendor’s Solicitors and the Purchaser’s Solicitors, respectively, in respect of this Agreement and the Transaction. The Purchaser shall be responsible for and shall pay, in addition to the Purchase Price, the land transfer tax payable on registration of the Transfer, all registration fees payable in respect of registration by it of any documents on Closing, and all federal and provincial sales taxes payable in respect of the transfer of the Hotel Assets to the Purchaser. The Vendor and the Purchaser hereby agree to jointly execute and deliver, and the Purchaser hereby agrees to file, an election (which shall be in the prescribed form and shall be filed by the Purchaser within the prescribed time therefor) under subsection 167(1.1) of the *Excise Tax Act* (Canada) in respect of the transfer by the Vendor of the Hotel Assets so that no taxes are payable on Closing in respect of such transfer under such Act. Notwithstanding anything to the contrary in this Agreement, the Purchaser shall indemnify and hold the Vendor harmless in respect of any HST, penalties, interest and other amounts which may be assessed against the Vendor as a result of: (i) the Transaction not being eligible for such election; (ii) the Purchaser’s failure to file the election within the prescribed time; (iii) such election otherwise not being valid; or (iv) a breach of the representation and warranty in Section 6.2(d).

The Vendor and the Purchaser hereby agree to elect, if applicable, jointly under subsection 20(24) of the *Income Tax Act* (Canada) and any equivalent or corresponding provision under any applicable provisional or territorial tax legislation, in the prescribed form and within the prescribed time therefor, to have the rules in subsection 20(24) of the *Income Tax Act* (Canada) (or such equivalent or corresponding provision) apply to the amounts credited to the Purchaser under Section 3.3(c)(ii) and to the assumption by the Purchaser of any other obligations in respect of which an election can be made.

The indemnities set out in this Section 5.4 shall survive and shall not merge on Closing.

5.5 **Vacant Possession**

The Vendor shall deliver to the Purchaser vacant possession of all of the Hotel Assets immediately upon completion of the Transaction, subject only to: (i) Tenants; (ii) Transient Guests; (iii) guests at the Hotel pursuant to Block Reservations; (iv) Employees; (v) Permitted Encumbrances; and (vi) the Franchise Agreement.

5.6 **Document Registration Agreement**

The parties acknowledge that the Teraview electronic registration system (“TERS”) is operative on a mandatory basis in the Land Registry Office (“LRO”) in which the Property is registered and that the registration of the Transfer will be completed by electronic
registration pursuant to Part III of the *Land Registration Reform Act* (Ontario), and the parties further agree that the following provisions shall apply in this regard:

(a) each of the Purchaser’s Solicitors and the Vendor’s Solicitors are hereby authorized to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 or any successor version thereto (with such amendments as such solicitors may agree, being the “DRA”), together with the requirement that the registering solicitor shall be obligated to provide the non-registering solicitor with a copy of the registration report printed by TERS upon the submission for registration and receipt by the LRO of the electronic documents, as evidence of the registration thereof, within one Business Day of the Closing Date. It is understood and agreed that the DRA shall outline or establish the procedures and timing for completing the Transaction electronically, and shall be executed by both solicitors (such that each solicitor has a copy of the DRA duly executed by both solicitors) by no later than one Business Day before the Closing Date;

(b) the delivery and exchange of Closing Documents and the Balance, and the release thereof to the Vendor and the Purchaser, as the case may be, shall be governed by the DRA, pursuant to which the solicitor(s) receiving Closing Documents and/or the Balance will be required to hold them in escrow and will not be entitled to release them except in strict accordance with the provisions of the DRA;

(i) each of the parties hereto agrees that the delivery of any of the Closing Documents not intended or required to be registered on title to the Property shall, unless the parties otherwise agree, be by way of delivery of electronically signed copies thereof on the Closing Date to the other party;

(c) notwithstanding anything contained in this Agreement or in the DRA to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (the “Tendering Party”) upon the other party (the “Receiving Party”) when:

(i) the solicitor for the Tendering Party has delivered all applicable Closing Documents and funds to the Receiving Party’s solicitor in accordance with the provisions of this Agreement and the DRA;

(ii) the solicitor for the Tendering Party has advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement;
the solicitor for the Tendering Party has completed all steps required by TERS to complete the Transaction that can be performed or undertaken by the Tendering Party’s solicitor without the co-operation or participation of the Receiving Party’s solicitor, and specifically when the Tendering Party’s solicitor has electronically “signed” the Transfer for completeness and granted “access” to the Receiving Party’s solicitor (but without the Tendering Party’s solicitor releasing the Transfer for registration by the Receiving Party’s solicitor);

the DRA shall provide that if either the Vendor’s Solicitors or Purchaser’s Solicitors receives a Teraview message, telephone call or other communication from the Land Registry Office after Closing, regarding any problem or deficiency concerning any of the Closing Documents registered electronically on Closing, then the solicitor receiving such message or communication shall forthwith advise the other solicitor, and each of the Vendor’s Solicitors and the Purchaser’s Solicitors shall co-operate with each other in an expeditious manner and take all requisite steps to forthwith correct, re-sign for completeness, and re-register, as and when necessary, any of the Closing Documents intended to be registered to complete the Closing of the Transaction, so that such Closing Documents can thereafter be certified by the Land Registry Office.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Vendor’s Representations

The Vendor hereby represents and warrants to and in favour of the Purchaser as follows:

(a) the Vendor is a corporation formed under the laws of the Province of British Columbia and has the necessary authority, power and capacity to enter into this Agreement and the documents and transactions contemplated herein and to complete the Transaction on the terms and conditions herein contained;

(b) this Agreement and the obligations of the Vendor hereunder, and the documents and transactions contemplated herein, have been duly and validly authorized by all requisite proceedings of the Vendor and constitute, and will constitute at Closing (or, in the case of Closing Documents, will constitute when executed and delivered), legal, valid and binding obligations of the Vendor enforceable against the Vendor in accordance with its and their terms;

(c) the Vendor has all necessary corporate power to own its properties and to carry on the Hotel Business as it is now being conducted.
(d) the execution and delivery of this Agreement by the Vendor and the consummation of the Transaction will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the acceleration of any obligation of the Vendor under any provision of the articles of incorporation, shareholders agreements (if any), by-laws or resolutions of the board of directors (or any committee thereof) of the Vendor or, to the Vendor’s Knowledge, any Applicable Laws.

(e) the Vendor is the beneficial owner of all of the Hotel Assets;

(f) the Vendor is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada);

(g) No Other Purchase Agreements. No person has any agreement, option, understanding or commitment, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, option or commitment, for the purchase or other acquisition from the Vendor of any of the Hotel Assets, or any rights or interest therein, other than in the ordinary course of the Hotel Business;

(h) Absence of Certain Changes or Events. To the knowledge of the Vendor, in the past 12 months the Vendor has not, except as Disclosed to the Purchaser:

   (A) waived, cancelled or written-off any rights, claims, any amounts payable to the Vendor relating to the Hotel Business, in each case in excess of $50,000.00, except in the ordinary course of the Hotel Business;

   (B) had any supplier of the Hotel Business terminate its relationship with the Hotel Business in respect of a contract with an annual value in excess of $50,000.00, except in the ordinary course of the Hotel Business; and

   (C) made any material change in the method of billing Transient Guests, or guests of the Hotel pursuant to Block Reservations, or the credit terms made available by the Hotel Business to the Transient Guests or guests of the Hotel pursuant to Block Reservations, except in the ordinary course of the Hotel Business;

(i) Tax Matters. The Vendor has paid all Governmental Charges which are due and payable by it on or before the Effective Date. There are no actions, suits, proceedings, investigations, enquiries or claims now pending against the Vendor in respect of Governmental Charges that are not Permitted Encumbrances. The Vendor has withheld from each amount paid or credited to any person the amount of Governmental Charges required to be withheld
therefrom and has remitted such Governmental Charges to the proper tax or other receiving authorities within the time required under applicable legislation;

(j) **Litigation.** Except as Disclosed to the Purchaser, to the Vendor’s Knowledge, there is no litigation existing as of the Effective Date, and the Vendor has not received, as at the Effective Date, written notice of any pending or threatened litigation against the Vendor in respect of the Property which would materially adversely affect the Hotel Assets;

(k) **Title to Hotel FF&E.** The Vendor is the owner of and has good and marketable title to all of the Hotel FF&E, free and clear of all Encumbrances other than Permitted Encumbrances;

(l) **Inventory.** The Hotel Inventory is included in the Hotel Assets, and the Vendor represents and warrants that such inventory is good and usable in all material respects and is capable of being processed in the ordinary course of the Hotel Business;

(m) **Property.** The Vendor is the sole beneficial owner of the Property;

(n) **Restrictions on Doing Business.** The Hotel Business is not a bound by any agreement which would restrict or limit the right to carry on any activity or to solicit business from any person or in any geographical area or otherwise to conduct the Hotel Business;

(o) **Labour Matters and Employment Standards.**

(i) There are no existing or, to the Vendor’s Knowledge, threatened, labour strikes or labour disputes affecting the Hotel Business; and

(ii) To the best of the Vendor’s Knowledge, the Vendor has complied with Applicable Laws relating to employment in operation of the Hotel Business in all material respects. Except as Disclosed to the Purchaser, there are no outstanding charges or complaints against the Vendor relating to unfair labour practices or discrimination or under legislation relating to employees;

(p) **Employee Benefit Plans.**

(i) Other than the Collective Agreement, the Vendor does not have, and is not subject to any other present or future obligation or liability under, any pension plan, deferred compensation plan, retirement income plan, stock option or stock purchase plan, profit sharing plan, bonus plan or policy, employee group insurance plan, hospitalization plan, disability plan or other employee benefit plan, program, policy or practice, formal or informal, with
respect to any of the employees of the Hotel Business, other than the Canada Pension Plan and the Ontario Health Insurance Plan and other similar health plans established pursuant to statute;

(ii) There are no pending claims by any employee covered under the Employee plans or by any other person which allege a breach of fiduciary duties or violation of governing law or which may result in liability to the Purchaser. There are no employees or former employees of the Hotel Business who are receiving from the Vendor any pension or retirement payments or who are entitled to receive any such payments not covered by a pension plan to which the Vendor is a party.

(q) *Non-Arm’s Length Matters.* With respect to the Hotel Business, the Vendor is not a party to or bound by any agreement with, is not indebted to, and no amount is owing to the Vendor by, any person not dealing at arm’s length with any of the foregoing, except: (i) unsecured loans to the Vendor by its shareholders or related parties from time to time; or (ii) agreements that will be terminated, or amended to not apply to the Hotel Assets, by the Vendor prior to Closing; and

(r) *Copies of Hotel Assets Documents.* Except as Disclosed to the Purchaser, to the Vendor's Knowledge: (i) true and complete copies, in all material respects, of all of the Existing Hotel Contracts and Existing Leases shall be included in the Hotel Assets Documents; and (ii) the Hotel Assets Documents Disclosed to the Purchaser pursuant to Section 2.5(f) and prepared by the Vendor, as well as any other due diligence documents provided to the Purchaser by the Vendor and prepared by the Vendor, are true and complete in all material respects.

**6.2 Purchaser’s Representations**

The Purchaser hereby represents and warrants to and in favour of the Vendor that:

(a) the Purchaser is a corporation governed by the laws of Ontario and has the necessary authority, power and capacity to enter into this Agreement and the documents and transactions contemplated herein and to complete the Transaction on the terms and conditions herein contained;

(b) this Agreement and the obligations of the Purchaser hereunder, and the documents and transactions contemplated herein, have been duly and validly authorized by all requisite proceedings of the Purchaser and constitute and will constitute at Closing (or, in the case of Closing Documents, will constitute when executed and delivered) legal, valid and binding obligations of the Purchaser enforceable against the Purchaser in accordance with its and their terms;
the execution and delivery of this Agreement by the Purchaser and the
consummation of the Transaction will not result in the breach or violation of
any of the provisions of, or constitute a default under, or conflict with or cause
the acceleration of any obligation of the Purchaser under any provision of the
articles of incorporation, shareholders agreements (if any), by-laws or
resolutions of the board of directors (or any committee thereof) of the
Purchaser or any Applicable Laws;

(d) on Closing, the Person acquiring the beneficial interest in the Hotel Assets on
Closing shall be registered for purposes of the Excise Tax Act (Canada) (with
such registration, for greater certainty, being in good standing and not having
been revoked) and will be the recipient for such purposes of the property sold
to it under this Agreement; and

(e) the Purchaser is not, and the Person acquiring the beneficial interest in the
Hotel Assets on Closing will not at the time of Closing be, a non-Canadian
within the meaning of the Investment Canada Act (Canada).

6.3 Survival of Representations

(a) Subject to the provisions of Section 6.4, the representations and warranties
contained in this Agreement or in any Closing Documents shall not merge on Closing but shall
survive for a period of one year after the Closing Date (the “Survival Period”). The party that
has received a representation or warranty, whether in this Agreement or in any Closing Document,
shall give written notice to the other party of each breach of the representation or warranty, together
with details thereof, promptly after becoming aware of the breach and no later than the last day of
the Survival Period. Notwithstanding any other provision of this Agreement or of any Closing
Document, no claim may be asserted or pursued against any party hereto, or any action, suit or
other proceedings commenced or pursued, for or in respect of any breach of any representation or
warranty made by such party in this Agreement or in any Closing Document unless written notice
of such claim is received by such party describing in detail the facts and circumstances with respect
to the subject matter of such Claim on or prior to the last day of the Survival Period, irrespective
of whether the subject matter of such Claim shall have occurred before or after such date; and upon
the expiry of the Survival Period all such representations or warranties shall cease to have any
effect except to the extent a written notice of Claim has been previously given in respect thereof
in accordance with this Section. Notwithstanding the foregoing, any Claim resulting from or
arising out of fraud shall survive indefinitely and may be made by the claiming party at any time.

(b) This Section 6.3 shall survive Closing.

6.4 Limitations on Vendor’s Representations and Warranties

(a) The Purchaser acknowledges and agrees that the Hotel Assets are being sold and
purchased, and the Transaction is to be completed, on an “as-is, where-is” and “with all faults” in
its present condition basis, at the Purchaser’s own risk and peril, without any representation or
warranty of any nature whatsoever, express or implied, except for the Vendor’s Representations and Warranties, and subject to ordinary use, wear, tear and natural deterioration of the Hotel Assets between the Effective Date and the Closing Date. The Purchaser agrees that it is relying solely upon its own findings resulting from its due diligence and not upon any information, documentation, statement or opinion, written or oral, provided by the Vendor, the Franchisor or any agent or representative of the Vendor or the Franchisor other than the Vendor’s Representations and Warranties. Except as expressly set out herein or in any Closing Documents, neither the Vendor nor the Purchaser shall have any obligation or responsibility to the other after Closing with respect to the Hotel Business or the Hotel Assets, or the condition thereof.

(b) Except as expressly set out in the Vendor’s Representations and Warranties, the Vendor makes no declarations, representations or warranties of any nature whatsoever, express or implied, with respect to any information or documentation provided by the Vendor, the Franchisor or any agent or Representative of the Vendor or the Franchisor with respect to the Hotel Assets (including the Vendor’s title thereto and any Encumbrances), the Hotel, the Hotel Business or the Transaction including: the structural integrity or any other aspect of the physical condition of the Building or any other Hotel Assets; the conformity of the Building or any other Hotel Assets to any plans or specifications for the Property (including, but not limited to, any plans and specifications that may have been or which may be provided to the Purchaser); the conformity of the Property to past, current or future applicable zoning or building code requirements or other Applicable Laws; the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the Lands or any Building situated on or as part of a Property; the sufficiency of any drainage; whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area; the existence or non-existence of underground storage tanks; the availability of public utilities and services for the Property; the fitness or suitability of the Property for occupancy or any intended use (including matters relating to health and safety and the environment); the potential for further development of the Property; the existence of land use, zoning or building entitlements affecting the Property; the status of any Leases, Hotel Contracts or Permitted Encumbrances or the financial condition of any present or prospective tenant of the Property or any contractor or whether any of the Leases, Hotel Permits, Hotel Contracts or Permitted Encumbrances are assignable or in good standing; the presence of toxic wastes, hazardous materials or contaminants in, on or about the Property or any other environmental issue or condition; or the conformity of the Property to any municipal by-laws relating to the preservation of heritage, cultural or historical properties (collectively, the “Property Conditions”).

(c) Except as otherwise expressly provided herein or in any Closing Documents, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or claims the Purchaser might have against the Vendor, the Franchisor or any agent or representative of the Vendor or the Franchisor pursuant to any warranty, express or implied, of any kind or type, other than the Vendor’s Representations and Warranties, relating to the Transaction, the Hotel Assets, the Hotel, the Hotel Business or the Property Conditions. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties with respect to the condition of the Hotel Assets or any part thereof, the Hotel Assets’ compliance with any
Applicable Laws, the past or projected financial condition, performance, and operating results of
the Hotel Business and the Hotel Assets (including income or expenses thereof or occupancy rates
therefor) or the uses permitted on, the development requirements for, or any other matter or thing
relating to the property or any portion thereof, strict liability and claims of every kind and type
(other than claims which arise as a result of any breach or any inaccuracy of the Vendor’s
Representations and Warranties or the non-fulfillment by the Vendor of its covenants under this
Agreement), including, but not limited to, claims regarding defects, whether or not discoverable,
product liability claims, or similar claims, and to all other extent or later created or conceived of
strict liability or strict liability type claims and rights.

(d) The provisions of this Section 6.4 shall survive the Closing or the termination of
this Agreement regardless of the cause of such termination.

ARTICLE 7
INDEMNIFICATION

7.1 Indemnification by the Vendor

From and after the Closing (but subject to Sections 4.4(b), 6.3, 6.4 and 8.4(d)), the
Vendor agrees to indemnify and save harmless the Purchaser from and against any and all Claims
and Losses suffered or incurred by the Purchaser as a result of or arising directly or indirectly out
of or in connection with:

(a) any breach or any inaccuracy of the Vendor’s Representations and
Warranties; or

(b) any breach or non-performance by the Vendor of any covenant to be
performed by it which is contained in this Agreement.

7.2 Indemnification by the Purchaser

From and after the Closing (but subject to Section 4.4(c) and 6.3), the Purchaser
agrees to indemnify and save harmless the Vendor from and against any and all Claims and Losses
suffered or incurred by the Vendor as a result of or arising directly or indirectly out of or in
connection with:

(a) any breach or any inaccuracy of the Purchaser’s representations and
warranties; or

(b) any breach or non-performance by the Purchaser of any covenant to be
performed by it which is contained in this Agreement.

7.3 Limitations on Indemnification

Notwithstanding the foregoing or any other provision in this Agreement, the
obligations of the Vendor and the Purchaser to indemnify and save harmless the Purchaser or the
Vendor, as the case may be, in accordance with this Article 7 shall be subject to and limited by each of the following qualifications:

(a) the Vendor and the Purchaser shall have no obligation to indemnify the Purchaser and the Vendor, respectively, pursuant to this Article 7 unless the amount of the Loss (other than Losses which arise as a result of the non-fulfillment by the Indemnifying Party of its covenants under this Agreement, including any payments of the Purchase Price or adjustment thereto) under any claim for indemnification from Loss pursuant to this Article 7 in respect of a particular matter exceeds an amount equal to $100,000.00 (such a claim with an associated Loss in excess of this threshold shall be referred to herein as a “Permitted Claim”);

(b) notwithstanding anything to the contrary, the maximum aggregate liability of the Vendor with respect to any claim(s) for indemnification pursuant to this Article 7 for Losses suffered or incurred by the Purchaser that relate to any breach or any inaccuracy of the Vendor’s Representations and Warranties shall be limited in the aggregate to 10% of the Purchase Price;

(c) notwithstanding anything to the contrary, but subject to Section 7.3(b), the maximum aggregate liability of the Vendor with respect to any claim(s) for indemnification pursuant to this Article 7 for Losses suffered or incurred by the Purchaser shall be limited in the aggregate to 100% of the Purchase Price;

(d) the maximum aggregate liability of the Purchaser with respect to any claim(s) for indemnification pursuant to this Article 7 for Losses suffered or incurred by the Vendor shall be limited in the aggregate to 100% of the Purchase Price;

(e) no claim under this Article 7 or otherwise under this Agreement may be made by or through a party for indirect, consequential or punitive losses or damages and neither the Vendor nor the Purchaser shall have any obligation or liability to the other party (or any other Person claiming through the other party) therefor;

(f) each Indemnifying Party shall be given a reasonable opportunity to remedy any breach of representation, warranty or covenant capable of being remedied before any indemnity obligation will arise;

(g) a Claim based on a breach or inaccuracy of a representation and warranty may only be made if such breach or inaccuracy results in the condition in Section 4.1(b) or 4.2(c), as applicable, incapable of being satisfied on the Closing Date; and

(h) the liability of any Indemnifying Party for a claim for indemnification pursuant to this Article 7 of Losses suffered or incurred by an Indemnified
Party shall be reduced to the extent of: (i) any increase in the amount of any Loss resulting from the failure of an Indemnified Party to provide prompt Notice of a claim as required pursuant to Section 7.4; and (ii) any insurance proceeds received by the Indemnified Party in respect of such claim.

7.4 Notice of Claim

In the event that the Vendor or the Purchaser, as the case may be, (the “Indemnified Party”) shall become aware of any Claim in respect of which the Vendor or the Purchaser, as the case may be, (the “Indemnifying Party”) has agreed to indemnify the Indemnified Party pursuant to this Agreement, the Indemnified Party shall promptly give Notice thereof to the Indemnifying Party. Such Notice shall specify whether the Claim arises as a result of a Claim by a Person (excluding the Vendor and the Purchaser) against the Indemnified Party (a “Third Party Claim”) or whether the Claim does not so arise (a “Direct Claim”), and shall also specify with reasonable particularity (to the extent that the information is available) the factual basis for the Claim and the amount of the Claim, if known.

7.5 Direct Claims

With respect to any Direct Claim, following receipt of Notice from the Indemnified Party of the Claim, the Indemnifying Party shall have 60 days to make such investigation of the Claim as it considers necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Claim, together with all other information as the Indemnifying Party may reasonably request. If both the Indemnified Party and the Indemnifying Party agree at or prior to the expiration of such 60-day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnifying Party shall immediately pay to the Indemnified Party the full agreed upon amount of the Claim, failing which the matter shall be referred to binding arbitration in such manner as the parties may agree or shall be determined by a court of competent jurisdiction.

7.6 Third Party Claims

With respect to any Third Party Claim, the Indemnifying Party shall have the right, at its expense, to participate in or assume (to the extent permitted by Applicable Laws) control of the negotiation, settlement or defence of the Claim and, in such event, the Indemnifying Party shall reimburse the Indemnified Party for all the Indemnified Party’s out-of-pocket expenses as a result of such participation or assumption. If the Indemnifying Party elects to assume such control, the Indemnified Party shall have the right to participate in the negotiation, settlement or defence of such Third Party Claim and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party unless the Indemnifying Party consents to the retention of such counsel or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and the representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences) in which case such fees and disbursements shall be paid by the Indemnifying
Party. If the Indemnifying Party, having elected to assume control of the proceedings, thereafter fails to defend the Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control, and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. If any Third Party Claim is of a nature such that: (a) it would give rise to a statutory penalty or obligation to pay statutory interest; or (b) the Indemnified Party is required by any Applicable Laws or the order of any court, tribunal or regulatory body having jurisdiction to make a payment to any Person other than a party with respect to the Third Party Claim, before the completion of settlement negotiations or related legal proceedings, as the case may be, the Indemnified Party may make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which such payment was made, as finally determined, is less than the amount which was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after receipt of the difference from such Person other than a party hereto, pay the amount of such difference to the Indemnifying Party. If such payment, by resulting in settlement of the Third Party Claim, precludes a final determination of the merits of the Third Party Claim and the Indemnified Party and the Indemnifying Party are unable to agree whether such payment was reasonable in the circumstances having regard to the amount and merits of the Third Party Claim, such dispute shall be referred to binding arbitration in such manner as the parties may agree or shall be determined by a court of competent jurisdiction.

7.7 **Settlement of Third Party Claims**

If the Indemnifying Party fails to assume control of the defence of any Third Party Claim, the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed. Whether or not the Indemnifying Party assumes control of the negotiation, settlement or defence of any Third Party Claim, the Indemnifying Party shall not settle any Third Party Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the liability of the Indemnifying Party shall be limited to the proposed settlement amount if any such consent is not obtained for any reason.

7.8 **Co-operation**

The Indemnified Party and the Indemnifying Party shall co-operate fully with each other with respect to Third Party Claims, and shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available).

7.9 **Exclusivity**

Notwithstanding anything to the contrary contained in this Agreement, any Claim (and any Loss relating thereto) for breach of any covenant, representation, warranty or other provision of this Agreement or any agreement, certificate or other document delivered pursuant hereto (other than a claim for specific performance or injunctive relief) must be made by way of a claim for indemnification under this Article 7 with the intent that all Claims (other than a Claim
under Section 8.2) shall be subject to the limitations and other provisions contained in this Article 7.

7.10 Mitigation

For greater certainty, nothing in this Agreement shall be construed as limiting or otherwise affecting the duty which any party otherwise has at law to mitigate the damages suffered by it as a result of a breach by any other party of any covenant, representation, warranty or other provision of this Agreement or any agreement, certificate or other document delivered pursuant hereto.

ARTICLE 8
OPERATION UNTIL CLOSING

8.1 Operation Before Closing, Ongoing Work

(a) From the Effective Date until Closing, the Vendor shall cause the Hotel Assets and the Hotel Business to be operated only in the ordinary course, consistent with past practices, including that the Vendor shall make commercially reasonable efforts to:

(i) make commercially reasonable efforts to ensure the Vendor’s Representations and Warranties remain true and correct in all material respects at Closing;

(ii) promptly advise the Purchaser of any facts that come to its attention which would cause any of the Vendor’s Representations and Warranties to be untrue in any respect;

(iii) preserve the Hotel Assets and the Hotel Business and its goodwill and relationships with customers, suppliers, and others having dealings with the Hotel Business, to keep available the services of all employees of the Hotel Business, to maintain in full force and effect and to make commercially reasonable efforts to ensure the Vendor performs all of its material obligations falling due under all agreements relating to the Hotel Business to which the Vendor is a party;

(iv) promptly advise the Purchaser in writing of any material adverse change in the condition of the Hotel Business;

(v) maintain all of the tangible properties and assets of the Hotel Business in the same condition as they now exist;

(vi) maintain the books, records and accounts of the Hotel Business in the ordinary course and record all transactions on a basis consistent with past practice;
(vii) not create any Encumbrance on the Hotel Assets, except for Permitted Encumbrances or otherwise in the ordinary course of the Hotel Business;

(viii) not terminate or waive any right of substantial value to the Hotel Business;

(ix) not dispose of any of the Hotel Assets except in the ordinary course of the Hotel Business;

(x) maintain the inventories of the Hotel Business in accordance with past practice; and

(xi) keep in full force and effect all of the current insurance policies of the Vendor with respect to the Hotel Business, or replace same with reasonably comparable insurance policies in the ordinary course of the Hotel Business.

(b) The parties acknowledge and agree that the Vendor is currently completing:

(i) fire panel restoration work pursuant to purchase order number 30980 with Johnson Controls, Project 622-550368339; (ii) parking garage concrete restoration work pursuant to a CCDC 5B contract with Quest Project Management Inc.; (iii) electrical switchgear replacement pursuant to purchase order number 30847 with Quest Project Management; and (iv) mechanical exhaust louver replacement pursuant to purchase order number 31160 with Quest Project Management (collectively, the “Ongoing Vendor’s Work”). The Vendor covenants to make commercially reasonable efforts to complete the Ongoing Vendor’s Work, at the Vendor’s sole cost and expense, on or prior to the Closing Date. In the event the Ongoing Vendor’s Work is not completed as aforesaid on or prior to the Closing Date, such non-completion shall neither be a default nor provide the Purchaser with the right not to Close the Transaction or terminate this Agreement, and the Vendor shall elect one of the following by notice to the Purchaser sent not less than five Business Days prior to Closing (in the event the Ongoing Vendor’s Work is not completed as aforesaid on or prior to the Closing Date and the Vendor does not send such a notice, it shall be deemed to have elected option (i)):

(i) to complete the Ongoing Vendor’s Work at its sole cost and expense post-Closing, in which event the parties shall finalize the terms of an undertaking and access agreement prior to the Closing Date, which shall be delivered on the Closing Date (the “Undertaking and Access Agreement”); or

(ii) not to complete the Ongoing Vendor’s Work, in which event there shall be an Adjustment in favour of the Purchaser in the amount of the Ongoing Vendor’s Work Escrowed Funds, with such amount to be re-adjusted between the parties pursuant to and in accordance with the Escrow Agreement after the completion of the Ongoing Vendor’s Work by the Purchaser post-Closing (provided that the Vendor’s maximum aggregate liability for the Ongoing Vendor’s Work pursuant to this option (ii) shall be the amount of the Ongoing Vendor’s Work Escrowed Funds), and the
Vendor shall have no further responsibility in respect of the Ongoing Vendor’s Work.

In such event the Vendor shall further provide a holdback (the “Ongoing Vendor’s Work Escrowed Funds”) equal to the amount of One Hundred and Twenty-five percent (125%) of the estimated amount, as agreed between the parties, of the cost to complete such Ongoing Vendor’s Work. In the event the parties are not able to agree upon the estimated amount of the cost to complete the Ongoing Vendor’s Work, the matter shall be referred to an independent engineer or architect to provide such an estimate, which shall be binding upon the parties, and the costs of such engineer or architect shall be shared jointly between the parties. The Ongoing Vendor’s Work Escrowed Funds shall be held back from the Purchase Price on Closing and the Vendor, the Purchaser and the Vendor’s Solicitor, as escrow agent, shall enter into an escrow agreement (the “Escrow Agreement”) to govern the post-Closing release of the Ongoing Vendor’s Work Escrowed Funds.

8.2 Damage Before Closing

The Hotel Assets shall be at the risk of the Vendor for insurance purposes until the Closing Date. Prior to Closing, the Vendor shall maintain its current insurance on the Hotel Assets (or such other substantially similar insurance as reasonably determined by the Vendor). If loss or damage to the Hotel Assets occurs at any time prior to Closing, then:

(a) if such loss or damage is of such a nature and to such an extent that the cost of repair or restoration, in the reasonable opinion of the Vendor’s independent architect or engineer, will exceed an amount in aggregate equal to 25% of the Purchase Price (“Substantial Damage”), then the Purchaser may by notice to the Vendor within five Business Days after it receives written notice of the occurrence of such Substantial Damage, elect to terminate this Agreement and the Deposit (together with all interest earned thereon, and any security provided by the Purchaser pursuant to Section 2.5(a)(iii), if applicable) shall be returned to the Purchaser forthwith after termination, subject to the Vendor’s rights pursuant to Section 2.5(c); and

(b) if such loss or damage does not constitute Substantial Damage, or does constitute Substantial Damage but the Purchaser has elected not to exercise its right of termination pursuant to Section 8.2(a), then neither party shall have any right to terminate this Agreement by virtue thereof, the Vendor shall pay to the Purchaser on Closing (or, in the case of a right to proceeds of insurance, assign to the Purchaser on Closing) the total of all proceeds of insurance in respect of such loss or damage (except to the extent such proceeds compensate for income lost for the period before the Closing Date which proceeds shall be entirely the property of the Vendor) plus any deductibles relating to such insurance policies, and the parties shall complete the Transaction. With respect to the payments to be made by the Vendor to the Purchaser under this Section 8.2(b) with regard to the deductibles, the parties agree that such
amounts may be credited in favour of the Purchaser against the Purchase Price payable by the Purchaser on Closing (rather than paid by the Vendor to the Purchaser).

If the damage or destruction occurs at such time that there is insufficient time for the Purchaser to make its election hereunder, the Closing Date shall be postponed to a date which is five Business Days after the last day of the period for the Purchaser’s election, or if such date is not a Business Day, then the next Business Day thereafter.

The rights to proceeds of insurance as set out in Section 8.2(b) shall survive Closing.

8.3 Expropriation Before Closing

If any part of the Property is expropriated or is the subject of a written notice of expropriation delivered prior to Closing, the Vendor shall forthwith deliver written notice thereof to the Purchaser, including (if applicable) a copy of the notice of expropriation. If the part of the Property that is the subject of such expropriation: (i) will materially adversely affect access to the Property or otherwise have a material adverse effect on the Property; or (ii) if the proceeds of such expropriation, or cost to repair or mitigate the effect thereof, are estimated to exceed 5% of the Purchase Price, then the Purchaser shall have the option, exercisable by notice to the Vendor given within five Business Days of the Purchaser learning of the expropriation or potential expropriation, to elect to terminate this Agreement and the Deposit (together with all interest earned thereon, and any security provided by the Purchaser pursuant to Section 2.5(a)(iii), if applicable) shall be returned to the Purchaser forthwith after termination, subject to the Vendor’s rights pursuant to Section 2.5(c). In the event the Purchaser does not exercise its option to terminate in the previous sentence, or in the event of expropriation or potential expropriation that does not grant the Purchaser the option to terminate, the Purchaser will complete the Transaction and the Vendor shall, on Closing, assign to the Purchaser the Vendor’s Claim against the expropriating Governmental Authority and the Vendor’s rights to all proceeds receivable from the Governmental Authority as payment for the Property expropriated or seized. The rights to proceeds receivable from the Governmental Authority as payment for the Property expropriated or seized as set out herein shall survive Closing.

8.4 Leasing and Hotel Contracts

(a) The Vendor and Purchaser acknowledge and agree that from and after the Effective Date, the Vendor may not enter into any new Lease or a new Hotel Contract, and/or amend, terminate, or voluntarily accept a surrender of, any Lease or Hotel Contract, or release any Tenant or other Person from its liability under its Lease or Hotel Contract, all without the prior approval of the Purchaser, which approval shall not be unreasonably withheld, conditioned or delayed, unless in each case doing so would be in the ordinary course, consistent with the Vendor’s past practices, in which event the Vendor shall not be required to receive the prior approval of the Purchaser but shall provide Notice of same to the Purchaser.
(b) The Vendor and Purchaser acknowledge and agree that after the Due Diligence Date, the Vendor shall not enter into any new Lease or a new Hotel Contract without the prior approval of the Purchaser, which consent may be withheld in the Purchaser’s sole and absolute discretion. Such approval shall be deemed to have been given by the Purchaser if no written response is received from the Purchaser within three Business Days following written request for such approval, which request shall include a copy of the proposed new Lease or new Hotel Contract.

(c) The Vendor agrees that after the Due Diligence Date, the Vendor shall not amend, terminate, or voluntarily accept a surrender of, any Lease or Hotel Contract, or release any Tenant or other Person from its liability under its Lease or Hotel Contract, without the prior written approval of the Purchaser, which consent may be withheld in the Purchaser’s sole and absolute discretion. Such approval of the Purchaser shall be deemed to have been given if no response is received from the Purchaser within three Business Days following written request therefor which request shall include a copy of the proposed amendment, termination or surrender.

(d) If failure to: (i) enter into a new Lease or Hotel Contract; or (ii) amend, terminate, or voluntarily accept a surrender of, a Lease or Hotel Contract, or release of any Tenant or other Person from its liability under its Lease or Hotel Contract, would result in a default by the Vendor under the Franchise Agreement then, subject to delivery of prior Notice to the Purchaser, the Vendor may proceed with and enter into the applicable Lease, Hotel Contract, amendment, termination, acceptance of surrender or release without the consent of the Purchaser.

(e) The Vendor agrees to use best efforts to obtain, on or before the day that is five Business Days prior to the Closing Date, an estoppel certificate from the counterparty to the Parking Management Agreement (the “Impark Estoppel Certificate”) in a form satisfactory to the Purchaser, acting reasonably, provided that if the Vendor is not able to provide the Impark Estoppel Certificate same shall neither be a default nor provide the Purchaser with the right not to Close the Transaction or terminate this Agreement.

8.5 **Assignment of Hotel Contracts and Hotel Permits**

(a) Nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to the Purchaser, any Hotel Contract or Hotel Permit which is: (i) not assignable; or (ii) not assignable without the approval or consent of the other party or parties thereto, without first obtaining such approval or consent (collectively, the “Non-Assignable Rights”). The Purchaser shall apply for and use commercially reasonable efforts, at its own cost, to obtain all necessary consents or approvals in respect of the assignment of the Existing Hotel Contracts, the Approved Hotel Contracts and the Hotel Permits (including payment by the Purchaser of all fees and other costs payable to obtain such consents or approvals) and the Vendor shall not have any responsibility to obtain such consents or approvals. The Vendor agrees to co-operate with the Purchaser, as the Purchaser may reasonably require, in connection with the Purchaser’s efforts to obtain such consents or approvals provided that the Purchaser reimburses the Vendor for any reasonable out-of-pocket third party costs incurred by the Vendor in providing such co-operation. The Purchaser agrees to indemnify and save harmless the Vendor with respect to any Claims
arising from or relating to the failure by the Purchaser to obtain the necessary consents or approvals for the assignment of the Existing Hotel Contracts, the Approved Hotel Contracts and the Hotel Permits to the Purchaser. This indemnity shall survive Closing.

(b) With respect to each Non-Assignable Right for which the necessary consent or approval is not obtained prior to Closing, the Vendor shall, if requested by the Purchaser, cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Non-Assignable Rights to the Purchaser (including holding any such Non-Assignable Rights in trust for the Purchaser or acting as agent for the Purchaser), provided that such arrangements shall terminate no later than the 180th day after the Closing Date and that the Purchaser shall fully indemnify the Vendor in respect of any and all costs and liabilities arising from such arrangements incurred by the Vendor as a result of the Purchaser not complying with the terms and conditions under such Non-Assignable Right. The Purchaser and the Vendor shall, on or before Closing enter into such written agreement as they may reasonably require setting out the terms and conditions of such arrangements and the provisions for such indemnity by the Purchaser. If lawful arrangements cannot be made to provide the benefits of such Non-Assignable Rights to the Purchaser, then the Vendor shall terminate the relevant Hotel Contract or Hotel Permit, at the sole cost of the Purchaser, on or before Closing.

(c) For greater certainty, it is confirmed that the Vendor is not making any representations or warranties to the Purchaser that any Hotel Contracts and/or Hotel Permits are assignable to the Purchaser or that the Purchaser will be successful in obtaining its own liquor licence for the Hotel. There are no conditions in favour of the Purchaser with respect to the Hotel Contracts or the Hotel Permits being assignable to the Purchaser.

(d) The Vendor shall co-operate with the Purchaser in the Purchaser’s attempts to acquire (or take an assignment of) the Hotel Permits listed in the Schedules hereto but any fees chargeable by the issuing Governmental Authorities in connection with the Purchaser’s acquisition or taking assignments of Hotel Permits shall be paid by the Purchaser.

(e) The provisions of this Section 8.5 shall not apply to the Franchise Agreement, which shall be governed by Section 4.6.

8.6 Liquor Licence

(a) Nothing in this Agreement shall be construed as an assignment of the Liquor Licence or an attempt to transfer the Liquor Licence to the Purchaser.

(b) Forthwith after the Effective Date:

(i) the Purchaser and Vendor shall each execute: (A) an application for transfer of the Liquor Licence; and (B) an Authorization to Contract Out; and

(ii) the Purchaser shall file (or cause to be filed) with the applicable Governmental Authority, at the Purchaser’s sole cost and expense, each of the documents referred to in Section 8.6(b)(i).
(c) Notwithstanding any term or condition of this Agreement or of the Liquor Licence Act (Ontario), including the regulations thereunder, the Authorization to Contract Out shall be effective for a period commencing on Closing and terminating at the earlier of: (i) 5:00 p.m. on the date that is 180 days after the Closing Date; and (ii) the transfer of the Liquor Licence to the Purchaser, and thereafter shall be of no further force and effect.

(d) The parties acknowledge and agree that:

(i) the Vendor is not making any representations and warranties to the Purchaser with respect to the Liquor Licence, including that: (i) the Liquor Licence is transferable or assignable to the Purchaser; or (ii) the application for transfer of the Liquor Licence or Authorization to Contract Out will be accepted or approved by the applicable Governmental Authority; and

(ii) the acceptance or approval by the applicable Governmental Authority of: (i) the application for transfer of the Liquor Licence or the Authorization to Contract Out; (ii) the transfer of the Liquor Licence to the Purchaser; or (iii) any application by the Purchaser for a new liquor licence, in each case, shall not be a condition of Closing. If at any time any of the foregoing are temporarily or finally denied or delayed for any reason, such denial or delay shall not affect in any manner whatsoever the obligations of the parties under this Agreement and the Closing shall take place without delay or interruption.

(e) In the event that the Authorization to Contract Out is accepted and approved by the applicable Governmental Authority, then the Purchaser agrees to indemnify and save harmless the Vendor and their respective limited partners, shareholders, directors, officers, employees and agents from and against any and all Claims arising out of or relating to the use of the Liquor Licence by the Purchaser.

(f) If an Authorization to Contract Out is approved by the applicable Governmental Authority, then the Purchaser shall deliver a copy thereof at Closing.

(g) The provisions of this Section 8.6 shall survive the Closing.

8.7 Employees

(a) The Purchaser shall, or shall cause an Affiliate to, continue the employment of, at its own expense and liability, from and including the Closing Date, all Unionized Employees in accordance with, and subject to, the terms and conditions of the Collective Agreement. The Purchaser hereby agrees to: (i) recognize the bargaining rights of the union under the Collective Agreement; (ii) be bound by and comply with the Collective Agreement; (iii) recognize and be bound by the Unionized Employees’ respective seniorities at the Hotel in accordance with the Collective Agreement; and (iv) execute and deliver such documentation and give such further assurances the union may be entitled to under the Collective Agreement.
(b) After the Effective Date and not later than five Business Days prior to Closing, the Purchaser will make, or shall cause an Affiliate to make, at its own expense, a written offer of employment to each of the Non-Unionized Employees, effective as of and conditional on Closing. Each such offer of employment shall provide that the subject Non-Unionized Employee shall have the same job function, without change in job responsibility or authority, as is in existence immediately prior to the Closing, with no less favourable compensation and benefits in the aggregate as are in existence immediately prior to Closing, including any applicable Employee plans. Each offer shall provide that the employment of the relevant Non-Unionized Employee with the Vendor shall be deemed continuous employment with the Purchaser or its Affiliate, as the case may be, and the periods of employment of any Non-Unionized Employee with the Vendor shall be taken into account for all purposes as if such periods of employment had been with the Purchaser or its Affiliate, as the case may be. On Closing, the Purchaser or its Affiliate, as the case may be, will assume liability and responsibility, as employer, from and after Closing, for each Non-Unionized Employee who accepts the Purchaser’s offer of employment. The Vendor shall be responsible for any amounts associated with past service of Employees and all termination and severance obligations, and any related Claims, that may arise prior to the Closing date, including with respect to all Employees who do not accept the Purchaser’s offer of employment prior to Closing, and the Vendor shall indemnify and save the Purchaser harmless from and against any Claims related thereto.

(c) The Purchaser shall: (i) at the Vendor’s request, forthwith provide to the Vendor a copy of all offers of employment made pursuant to Section 8.7(b) above; and (ii) provide to the Vendor on Closing a list of all Employees who have accepted such offers. The Vendor agrees to cooperate with Purchaser in providing all assistance that is necessary and reasonable to facilitate the offers of employment required under Section 8.7(b), and to reduce any termination entitlements payable for those Non-Unionized Employees who do not accept such offers, including by re-offering the offers of employment made pursuant to Section 8.7(b) above for such Non-Unionized Employees upon Closing (concurrent with the Vendor’s termination of employment of such Non-Unionized Employees).

(d) The parties shall adjust on Closing for all wages, salaries, bonuses, profit sharing entitlement, earnings, monies, remittances, assessments, benefit plan contributions, vacation pay, sick pay and other monetary obligations which, pursuant to the Collective Agreement, any Applicable Laws or any other contracts (including oral contracts) with the Employees, are due or accruing due to the Employees as of the Closing Date or to Governmental Authorities in respect of Employees as of the Closing Date. The Purchaser shall pay and be responsible for, or the Purchaser shall cause its Affiliate referred to in Section 8.7(a) to, pay and be responsible for, all such amounts which accrue due to the Employees from and after the Closing Date. For greater certainty, the Vendor shall not have any obligations or be responsible for any accruals, including with respect to any pensions or other benefits, to any Employees relating to the period after Closing. Subject to the adjustment requirement set out in this Section 8.7(d), the Vendor shall pay and be responsible for all such amounts which accrue due to the Employees up to and including the date that is immediately prior to the Closing Date.
(e) The Purchaser shall indemnify and save harmless the Vendor and its shareholders, limited partners, directors, officers, employees and agents from any and all Claims relating to the period from and including the Closing Date incurred, suffered or sustained, whensoever or howsoever arising, in respect of or relating to any of the Employees who continue or accept employment with the Purchaser or any Affiliate of the Purchaser, including Claims against the Vendor by any Employees claiming that any variations in the terms of employment, including compensation, benefits and job function, as of and after Closing constitute or constituted a constructive dismissal by the Purchaser of such Employees. The Vendor shall indemnify and save harmless the Purchaser and, if an Affiliate of the Purchaser is the Person that continues the employment pursuant to Section 8.7(a) and/or makes the offers of employment pursuant to Section 8.7(b), the Affiliate employer and each of their respective shareholders, directors, officers, employees and agents from any and all Claims incurred, suffered or sustained in respect of or relating to matters or events which occurred or arose before the Closing Date with respect to any of the Employees, except in respect of those matters which are adjusted for pursuant to this Agreement or that relate to or arise out of Claims by any Employees claiming that any variations in the terms of employment, including compensation, benefits and job function, as of or after Closing constitute or constituted a constructive dismissal of such Employees.

(f) The Purchaser acknowledges and agrees that: (i) the Vendor makes no representation or warranty that any Employees will continue or accept their employment with the Purchaser; and (ii) the willingness of the Employees to continue their employment or the acceptance by Employees of offers of employment with the Purchaser shall not constitute a condition to the Purchaser’s obligation to complete the Transaction.

(g) The Vendor may, at any time prior to Closing and without the consent or approval of the Purchaser, hire additional employees to replace any Employees who are terminated by the Vendor or who voluntarily terminate their employment with the Vendor prior to Closing.

(h) The Vendor shall not increase Employees’ wages or any other Employee benefits after the Effective Date without prior written approval of the Purchaser, such approval not to be unreasonably withheld, conditioned or delayed, other than compensation increases in accordance with the Collective Agreement or in the ordinary course of business (which includes the Vendor matching salary offers obtained by Employees from third parties) and with Notice to the Purchaser.

(i) The provisions of this Section 8.7 shall survive Closing.

8.8 Trade-Marks and Other Intellectual Property Rights

The Purchaser acknowledges that, with the exception of Hotel Contracts and intellectual and industrial property rights in the Hotel Intangibles and the transfer contemplated in Section 5.2(r), the Purchaser is not acquiring or licensing any rights of any nature whatsoever to or in respect of:
(a) any trade-marks, trade-names, logos, commercial symbols, business names, internet domain names, copyrights or patents or any other intellectual or industrial property rights that do not relate to the Hotel; or

(b) the trade-mark, trade-names, logos, commercial symbols, business names and other property owned by the Franchisor or any of their respective successors or assigns except as, and only to the extent, provided for in the Franchise Agreement.

The provisions of this Section 8.8 shall survive Closing.

ARTICLE 9
GENERAL

9.1 Gender and Number

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

9.2 Captions

The caption and headings contained herein are for reference only and in no way affect this Agreement or its interpretation.

9.3 Obligations as Covenants

Each agreement and obligation of any of the parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

9.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.

9.5 Currency

All reference to currency in this Agreement shall be deemed to be reference to Canadian dollars.

9.6 Invalidity

If any covenant, obligation, agreement or part thereof or the application thereof to any Person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any Person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby.
9.7 **Amendment of Agreement**

No supplement, modification, waiver or termination (other than a termination pursuant to the terms of this Agreement) of this Agreement shall be binding unless executed in writing by the parties hereto in the same manner as the execution of this Agreement.

9.8 **Time**

Time shall be of the essence in all respects of this Agreement. If anything herein is to be done on a day which is not a Business Day, the same shall be done on the next succeeding Business Day. Unless otherwise provided herein, all references to time shall mean Toronto time.

9.9 **Further Assurances**

Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

9.10 **Entire Agreement**

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the parties hereto constitute the entire agreement between the parties hereto pertaining to the agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto except the Confidentiality Agreement (which shall continue in full force and effect), and there are no other warranties or representations and no other agreements between the parties hereto in connection with the agreement of purchase and sale provided for herein except as specifically set forth in this Agreement.

9.11 **Waiver**

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

9.12 **Solicitors as Agents and Tender**

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser’s Solicitors on behalf of the Purchaser and by the Vendor’s Solicitors on behalf of the Vendor and any tender of Closing Documents and the Balance may be made upon the Vendor’s Solicitors and the Purchaser’s Solicitors, as the case may be.
9.13 **Successors and Assigns**

All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement. This provision shall survive Closing.

9.14 **Real Estate Commissions**

The Vendor shall be responsible for the payment of all real estate fees, consulting fees and commissions due to Colliers Macauley Nicolls Inc. (the “**Vendor’s Broker**”), but not for any fees or commissions payable to any agent, broker or advisor other than the Vendor’s Broker. The Purchaser represents and warrants that it has not retained the services of any real estate broker, agent or advisor in connection with the Transaction. This Section shall not merge on, but shall survive, Closing.

9.15 **Notice**

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication (hereinafter referred to as a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be delivered in person, transmitted by fax or by e-mail or similar means of recorded electronic communication or sent by registered mail, charges pre-paid, addressed as follows or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) **Purchaser:** SUNRAY GROUP OF HOTELS INC.

Attention: Sandeep Gupta, President

E-mail: sandeep.gupta@sunraygroup.ca

with a copy to:

Attention: Kate Ye Won Moon, Director & General Counsel

E-mail: kate.moon@sunraygroup.ca

with a copy to: Baker & Company, Barristers & Solicitors

Attention: Andriy (Andre) Luzhetskyy

E-mail: aluzhetskyy@bakerlawyers.com

(b) **Vendor:** Chateau Ottawa Hotel Inc.

Attention: Peter Wong, President; Robert Roy, Regional Vice President

E-mail: peterwong@keckseng-na.com;

robertroy@keckseng-na.com
A Notice shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. at the place of receipt, then on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any Notice hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

9.16 **No Registration of Agreement**

The Purchaser shall not register this Agreement, or any notice of this Agreement, on or against title to the Lands. Breach of this provision shall constitute a fundamental breach of this Agreement.

9.17 **Counterparts**

This Agreement may be executed in several counterparts and may be delivered by electronic transmission.

9.18 **Survival**

Except for those aspects of this Agreement which by their nature are intended to survive Closing and except as otherwise expressly provided in this Agreement, no representations, warranties, covenants or agreements of the Vendor and Purchaser in this Agreement shall survive the Closing. This provision survives the Closing.

9.19 **Assignment**

(a) Subject to Section 9.19(b), the Purchaser shall not assign its rights and/or obligations hereunder or direct that title to any of the Hotel Assets be conveyed to any other Person (or agree or purport to do any of the foregoing) without the prior written consent of the Vendor, which consent may be withheld by the Vendor in its sole and absolute discretion. The Vendor shall not assign its rights and/or obligations hereunder (or agree or purport to do any of the foregoing) without the prior written consent of the Purchaser, which consent may be withheld by the Purchaser acting reasonably.
(b) Sunray Group of Hotels Inc. (the “Original Purchaser”) may assign its rights and/or obligations under this Agreement without the prior written consent of the Vendor, but upon prior written notice to the Vendor, to an Affiliate of the Original Purchaser, provided that: (i) notwithstanding any such assignment the Original Purchaser shall remain jointly and severally liable with the assignee in respect of all of the Purchaser’s representations, warranties, covenants, obligations and liabilities under this Agreement until Closing; and (ii) such assignment is not reasonably likely to adversely affect the consents, approvals or waivers that have been obtained or are required to be obtained by the Purchaser or the Vendor pursuant to this Agreement, as determined by the Vendor, acting reasonably. Contemporaneously with such assignment, the Original Purchaser and the assignee shall enter into an agreement with the Vendor, in form and content acceptable to the Vendor, acting reasonably, which shall, inter alia, provide that the Purchaser and the assignee shall be jointly and severally liable for all the Purchaser’s representations, warranties, covenants, obligations and liabilities under this Agreement until Closing.

[Balance of page left intentionally blank]
IN WITNESS WHEREOF the parties hereto have executed this Agreement by their properly authorized signatories in that behalf as of the Effective Date.

CHATEAU OTTAWA HOTEL INC.

by

Name: Mr Kian Guan Ho
Title: President

by

Name:
Title:
I/We have authority to bind the Corporation.

SUNRAY GROUP OF HOTELS INC.

by

Name:
Title:

by

Name:
Title:
I/We have authority to bind the Corporation.
IN WITNESS WHEREOF the parties hereto have executed this Agreement by their properly authorized signatories in that behalf as of the Effective Date.

CHATEAU OTTAWA HOTEL INC.

by ____________________________________________________________

Name:  
Title:  

by __________________________________________________________________

Name:  
Title:  

I/We have authority to bind the Corporation.

SUNRAY GROUP OF HOTELS INC.

by ____________________________________________________________

Name:  Ray Gupta  
Title:  President  

by __________________________________________________________________

Name:  
Title:  

I/We have authority to bind the Corporation.
SCHEDULE A

LEGAL DESCRIPTION OF LANDS

PIN 04115-0057 (LT)

LOTS 44, 45 & 46, PLAN 3922, S ALBERT ST, TOGETHER WITH N526240; OTTAWA
SCHEDULE B

FORM OF ASSIGNMENT AND ASSUMPTION OF HOTEL CONTRACTS

THIS AGREEMENT made as of ________________.

BETWEEN:

CHATEAU OTTAWA HOTEL INC.

(the “Assignor”)

– and –

[ASSIGNEE NAME]

(the “Assignee”),

WHEREAS the Assignor and Sunray Group of Hotels Inc. (the “Original Purchaser”) entered into an agreement of purchase and sale made as of __________, 2023, as assigned by the Original Purchaser to the Assignee pursuant to an assignment agreement dated __________, 2023, as may be further amended, supplemented, and/or restated from time to time (collectively, the “Purchase Agreement”) pursuant to which the Assignee agreed to purchase from the Assignor, and the Assignor agreed to sell to the Assignee, the Hotel Assets;

AND WHEREAS pursuant to the Purchase Agreement, the Assignor has agreed to execute and deliver this assignment of its interest in the Assigned Hotel Contracts (as defined below);

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Definitions. Unless otherwise defined herein, all capitalized terms used in this agreement (this “Agreement”) shall have the respective meanings ascribed to them in the Purchase Agreement.

2. Assignment. Subject to Section 8.5 of the Purchase Agreement, the Assignor hereby assigns absolutely and transfers unto the Assignee all of the Assignor’s right, title and interest in, to and under the Existing Hotel Contracts and the Approved Hotel Contracts, together with all benefits, proceeds and advantages which now or may hereafter be derived therefrom, all of which are set out in Exhibit 1 hereto (collectively, the “Assigned Hotel Contracts”). The Assigned
Assumption and Indemnity. The Assignee hereby accepts the assignment contained in Section 2 hereof and covenants and agrees with the Assignor that, from and after the date hereof, the Assignee will observe, perform and fulfill each and every covenant, proviso, obligation, term and condition of, or applicable to, the Assignor under the Assigned Hotel Contracts that is applicable and to be observed, performed or fulfilled any time from and including the date of this Agreement (as well as those to be observed, performed or fulfilled any time prior to the date of this Agreement where such matter has been adjusted between the parties as part of the Purchase Price or in accordance with the statement of adjustments agreed upon by the parties). The Assignee hereby agrees to fully indemnify and save harmless the Vendor from and against any and all Claims arising at any time after Closing from or in connection with, or resulting from: (i) any breach by the Assignee of its obligations under the Assigned Hotel Contracts and/or any act or omission of the Assignee or those for whom the Assignee is legally responsible with respect to the Assigned Hotel Contracts (other than those financial covenants in respect of which there has been an adjustment in favour of the Assignor as part of the Purchase Price or in accordance with the statement of adjustments agreed upon by the parties); (ii) the failure by the Assignee to obtain the necessary consents or approvals for the assignment of the Assigned Hotel Contracts or the sale of the Hotel; and (iii) the termination of any of the Assigned Hotel Contracts.

Indemnity by Assignor. The Assignor hereby agrees to fully indemnify and save harmless the Purchaser from and against any and all Claims arising from or in connection with, or resulting from, any breach by the Assignor of its obligations under the Assigned Hotel Contracts at any time prior to Closing and/or any act or omission of the Assignor or those for whom the Assignor is legally responsible with respect to the Assigned Hotel Contracts at any time prior to Closing (other than those financial covenants in respect of which there has been an adjustment in favour of the Assignor as part of the Purchase Price or in accordance with the statement of adjustments agreed upon by the parties). The parties agree that this indemnity shall not extend or relate to any failure by the Assignor to fulfill any obligation to obtain the consents or approvals necessary for the assignment by the Assignor to the Assignee of the Assigned Hotel Contracts.

Successors and Assigns. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

Counterparts. This Agreement may be executed in several counterparts and may be delivered by electronic transmission, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

Headings, Extended Meanings. The headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof and are not to be considered in the interpretation hereof. In this Agreement, words importing the singular include the plural
and *vice versa*; words importing the masculine gender include the feminine and *vice versa*; and words importing persons include firms or corporations and *vice versa*.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first mentioned.

**CHATEAU OTTAWA HOTEL INC.**

by __________________________

Name: ________________________
Title: _________________________

I have authority to bind the Corporation.

**[ASSIGNEE NAME]**

by __________________________

Name: ________________________
Title: _________________________

by __________________________

Name: ________________________
Title: _________________________

I/We have authority to bind the Corporation.
Exhibit 1

ASSIGNED HOTEL CONTRACTS

[NTD: List to be inserted prior to Closing.]
SCHEDULE C

FORM OF ASSIGNMENT AND ASSUMPTION OF LEASES

THIS AGREEMENT made as of the ________________.

BETWEEN:

CHATEAU OTTAWA HOTEL INC.

(the “Assignor”)

- and -

[ASSIGNEE NAME]

(the “Assignee”),

WHEREAS the Assignor and Sunray Group of Hotels Inc. (the “Original Purchaser”) entered into an agreement of purchase and sale made as of __________, 2023, as assigned by the Original Purchaser to the Assignee pursuant to an assignment agreement dated __________, 2023, as may be further amended, supplemented, and/or restated from time to time (collectively, the “Purchase Agreement”) pursuant to which the Assignee agreed to purchase from the Assignor, and the Assignor agreed to sell to the Assignee, the Hotel Assets;

AND WHEREAS pursuant to the Purchase Agreement, the Assignor has agreed to execute and deliver this assignment of its interest in the Assigned Leases (as defined below);

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. **Definitions.** Unless otherwise defined herein, all capitalized terms used in this agreement (this “Agreement”) shall have the meanings ascribed to them in the Purchase Agreement.

2. **Assignment.** Subject to Section 8.5 of the Purchase Agreement, the Assignor hereby assigns absolutely and transfers unto the Assignee all of the Assignor’s right, title and interest in, to and under the Existing Leases and the Approved Leases, together with all benefits, proceeds and advantages which now or may hereafter be derived therefrom, all of which are set out in Exhibit 1 hereto (collectively, the “Assigned Leases”). The Assigned Leases are being assigned to and assumed by the Assignee subject to and in accordance with the terms of the Purchase Agreement, including Sections 2.3 and 6.4 thereof.
3. **Assumption and Indemnity.** The Assignee hereby accepts the assignment contained in Section 2 hereof and covenants and agrees with the Assignor that, from and after the date hereof, the Assignee will observe, perform and fulfill each and every covenant, proviso, obligation, term and condition of, or applicable to, the Assignor under the Assigned Leases that is applicable and to be observed, performed or fulfilled any time from and including the date of this Agreement (as well as those to be observed, performed or fulfilled any time prior to the date of this Agreement where such matter has been adjusted between the parties as part of the Purchase Price or in accordance with the statement of adjustments agreed upon by the parties). The Assignee hereby agrees to fully indemnify and save harmless the Vendor from and against any and all Claims arising at any time after Closing from or in connection with, or resulting from, any breach by the Assignee of its obligations under the Assigned Leases and/or any act or omission of the Assignee or those for whom the Assignee is legally responsible with respect to the Assigned Leases (other than those financial covenants in respect of which there has been an adjustment in favour of the Assignor as part of the Purchase Price or in accordance with the statement of adjustments agreed upon by the parties).

4. **Indemnity by Assignor.** The Assignor hereby agrees to fully indemnify and save harmless the Purchaser from and against any and all Claims arising from or in connection with, or resulting from, any breach by the Assignor of its obligations under the Assigned Leases at any time prior to Closing and/or any act or omission of the Assignor or those for whom the Assignor is legally responsible with respect to the Assigned Leases at any time prior to Closing (other than those financial covenants in respect of which there has been an adjustment in favour of the Assignee as part of the Purchase Price or in accordance with the statement of adjustments agreed upon by the parties).

5. **Successors and Assigns.** This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

6. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

7. **Counterparts.** This Agreement may be executed in several counterparts and may be delivered by electronic transmission, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

8. **Headings, Extended Meanings.** The headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof and are not to be considered in the interpretation hereof. In this Agreement, words importing the singular include the plural and *vice versa*; words importing the masculine gender include the feminine and *vice versa*; and words importing persons include firms or corporations and *vice versa.*
IN WITNESS WHEREOF the parties have executed this Agreement as of the date first mentioned.

CHATEAU OTTAWA HOTEL INC.

by ________________________________
   Name: ____________________________
   Title: ____________________________

I have authority to bind the Corporation.

[ASSIGNEE NAME]

by ________________________________
   Name: ____________________________
   Title: ____________________________

by ________________________________
   Name: ____________________________
   Title: ____________________________

I/We have authority to bind the Corporation.
Exhibit 1

ASSIGNED LEASES

[NTD: List to be inserted prior to Closing.]
SCHEDULE D

FORM OF BILL OF SALE

THIS BILL OF SALE made as of the ________________.

FROM:

CHATEAU OTTAWA HOTEL INC.

(the “Vendor”)

TO:

[ASSIGNEE NAME]

(the “Purchaser”)

WHEREAS pursuant to the Purchase Agreement (as hereinafter defined), the Vendor agreed to sell, transfer, assign, set over and convey, and the Purchaser agreed to purchase and acquire, all of the Vendor’s right, title and interest in and to the Chattels (as hereinafter defined);

NOW THEREFORE THIS BILL OF SALE WITNESSES THAT in consideration of the sum of $10.00, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the Vendor hereby sells, assigns, transfers, conveys and sets over the Chattels to the Purchaser as hereinafter provided.

1. Definitions

In this Bill of Sale, unless otherwise provided herein, the following terms shall have the respective meanings hereby assigned to them:

(a) “Bill of Sale” means this bill of sale and “herein”, “hereof”, “hereunder” and similar expressions refer to this bill of sale taken as a whole;

(b) “Chattels” means the Hotel FF&E, the Hotel Intangibles and the Hotel Inventory;

(c) “Property” means the lands described in Exhibit 1 hereto; and

(d) “Purchase Agreement” means the agreement of purchase and sale made as of ________________, 2023 between the Vendor and Sunray Group of Hotels Inc. (the “Original Purchaser”), as assigned by the Original Purchaser to the Purchaser pursuant to an assignment agreement dated ______________, 2023, as may be further amended, supplemented, and/or restated from time to time.

Any other capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.
2. **Sale and Transfer**

The Vendor hereby sells, transfers, assigns, sets over and conveys to the Purchaser all of the Vendor’s right, title and interest in and to the Chattels. The Chattels are being sold to and purchased by the Purchaser subject to and in accordance with the terms of the Purchase Agreement, including Sections 2.3, 6.4 and 8.7 thereof.

3. **Further Assurances**

The Vendor shall promptly do, make, execute or deliver or cause to be done, made, executed or delivered all such further acts, documents and things as the Purchaser may reasonably require from time to time for the purpose of giving effect to this Bill of Sale and shall take all such steps as may be reasonably within its power to implement to the full extent the provisions of this Bill of Sale.

4. **Tenants’ Personal Property**

For greater certainty, it is agreed that the Chattels which are the subject of this Bill of Sale do not include any personal property owned or leased by Tenants of the Property or other third parties or persons claiming by, through or under them and, in each of the foregoing cases, located within the premises leased by the Tenants or any personal effects of guests of the Hotel.

5. **Governing Law**

This Bill of Sale shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

6. **Enurement**

This Bill of Sale shall enure to the benefit of the Purchaser and its successors and assigns and shall be binding upon the Vendor and its successors and assigns.
IN WITNESS WHEREOF the Vendor has executed this Bill of Sale as of the date first above written.

CHATEAU OTTAWA HOTEL INC.

by

______________________________
Name:
Title:

I have authority to bind the Corporation.
Exhibit 1

PROPERTY

PIN 04115-0057 (LT)

LOTS 44, 45 & 46, PLAN 3922, S ALBERT ST, TOGETHER WITH N526240; OTTAWA
SCHEDULE E

PERMITTED ENCUMBRANCES

1. Undetermined and inchoate liens (for amounts not due and owing) incurred or imposed in connection with worker’s compensation, unemployment insurance, old age pensions and similar legislation.

2. The reservations, limitations, exceptions, provisos and conditions expressed in any initial grants from the Crown (including the reservation of any mines and minerals in the Crown or in any other Person), as same may be varied by statute, together with any encumbrances arising from or as a result of any alleged defects or irregularities in the initial grant from the Crown.

3. Any municipal by laws, regulations, ordinances, codes or other similar instruments affecting the Property’s use and any other municipal land use restrictions including official plans and zoning and building by laws, as well as all decisions of a committee of adjustment or any other competent authority permitting variances therefrom, and all applicable building codes.

4. Any and all licences, easements, rights-of-way, restrictive covenants, servitudes, rights in the nature of easements and other similar rights in land and agreements granted with respect thereto including agreements, easements, licences, rights-of-way, restrictive covenants, servitudes and interests in the nature of easements, in each case for sidewalks, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone and telegraphic conduits, poles, wires and cables, provided that, in every case, copies of any of the foregoing which are not registered on title to the Property have been Disclosed to the Purchaser.

5. Restrictive covenants, private deed restrictions and other similar land use controls or agreements.

6. The provisions of Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning.

7. All exceptions, qualifications and like limitations to title set out or contemplated in the Land Titles Act (Ontario), the Certification of Titles Act (Ontario), and/or Registry Act (Ontario).

8. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or Ontario.

9. All Existing Leases, Approved Leases, Existing Hotel Contracts and Approved Hotel Contracts and registered notices, memorials, caveats or other registrations with respect to such Existing Leases, Approved Leases, Existing Hotel Contracts and Approved Hotel Contracts and moveable security interests relating to any Tenant secured by such Tenant’s interest in any Lease.
10. Any liens under the *Construction Act* (Ontario) which have not been preserved or perfected against the Property in accordance with such Act.

11. Any encumbrances for real property Taxes (which term includes charges, rates and assessments, other governmental charges or levies and like imposts) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to Section 3.3.

12. Any and all encumbrances of any nature whatsoever that may be recorded under the *Canada Transportation Act*, the *Railway Act* (Canada) or the *Railways Act* (Ontario).

13. All encumbrances in favour of adjacent property owners and/or Governmental Authorities in respect of shared facilities or mutual access rights (including facility sharing, cost sharing, tunnel, pedway, servicing, parking, reciprocal and other similar agreements), provided that copies of the agreements relating to the foregoing which are not registered on title to the Property have been Disclosed to the Purchaser.

14. Any existing irregularities, easements, servitudes, encroachments, rights of way or other discrepancies in title or possession relating to the Property, provided they are not of such a nature as to, individually or in the aggregate, have a material adverse effect on the value or use of the Property.

15. Any encroachments by the Property over neighbouring lands and any encroachments over the Property by improvements of neighbouring landowners or other discrepancies, in any of the foregoing cases, that are revealed on the survey for the Property Disclosed to the Purchaser or that would be revealed by an up-to-date survey of the Property.


SCHEDULE F

LIST OF ENCUMBRANCES TO BE DISCHARGED

None.
SCHEDULE G

LIST OF EXISTING HOTEL CONTRACTS AND HOTEL PERMITS

A. Existing Hotel Contracts:

1. The Collective Agreement.
2. All Room Reservations.
3. Contract with ADP Canada for Payroll, Data Processing & HR Services.
5. Contract with Orkin PCO Services for Pest Control Service.
7. Contract with Cintas for Rental of Floor Stand, Desktop Stand & Refill of Dispensers.
9. Contract with TravelClick for Business Intelligence.
10. Contract with NuEdge Communications for Call Accounting System.
11. Contract with NuEdge Communications for Maintenance of 38 SIP trunks, DID numbers and 911 service.
12. Contract with Encore (Freeman) for AV, Trade Show, Internet.
13. Contract with World Cinema for Guest Room Entertainment.
15. Contract with Rogers Cable Service for Cable Service.
17. Contract with Safety NetAccess for 24/7 Toll Free Live Guest Support for HSIA.
18. Contract with Bell Mobility for 26 Apple IPhone 8 Hardware & Service Contract.
27. Contract with Unifirst for Kitchen Uniform Rental.
29. Contract with Sage for Annual Subscription for Accounting Software License.
30. All existing pay-per-view movie contracts.

B. Hotel Permits:

1. Passenger Elevator License # EDLIC-022518.
2. Passenger Elevator License # EDLIC-022519.
3. Passenger Elevator License # EDLIC-022520.
4. Service Elevator License # EDLIC-023027.
5. Elevator from top guest floor to Rooftop level License # 292494.
SCHEDULE H

LIST OF EXISTING LEASES

1. The Parking Management Agreement.