

**BEFORE THE
ILLINOIS COMMERCE COMMISSION**

IN THE MATTER OF:)	
)	
CHIKU ENTERPRISES, INC.,)	
)	
Complainant,)	No. 10-0157
)	
v.)	Administrative Law Judge
)	John Riley
GDF SUEZ ENERGY RESOURCES)	
N.A., INC.,)	
)	
Respondent.)	
)	
Complaint as to billing/charges in)	
Matteson, Illinois.)	

**RESPONDENT GDF SUEZ ENERGY REOUSRCES N.A., INC.'S
MOTION TO DISMISS**

Respondent GDF Suez Energy Resources N.A., Inc. (“Suez”), hereby respectfully moves to dismiss the Complaint filed by Complainant Chiku Enterprises, Inc. (“Chiku”) for lack of subject matter jurisdiction. This dispute involves the interpretation and enforceability of a real estate purchase agreement and competitive service contracts for electricity which are not within the subject matter jurisdiction of the Illinois Commerce Commission (“ICC”). Accordingly, Chiku’s Complaint should be dismissed with prejudice.

I. BACKGROUND

A. Suez Services the Subject Property Under the Old Energy Contract.

Suez is engaged in the business of selling electric energy and related services to commercial and industrial customers, and is duly licensed and authorized to engage in such business in the State of Illinois. Suez provided electric services to property located at 950 Lake Superior, Matteson, Illinois 60443 (the “Property”) under a 59-month, fixed

“B”

price Illinois Short Form Energy Sales Agreement (the “**Old Energy Contract**”). A true and correct copy of the Old Energy Contract is attached hereto as **Exhibit A**. The Old Energy Contract obligated the customer (“**Old Customer**”) to purchase electric services for the Property from Suez through November 30, 2013, and the Old Customer agreed to pay a penalty if it terminated the contract early. (Ex. A., Old Energy Contract §§ 1.2, 2.7.)

B. Chiku Purchases the Property Assumes “All Contracts” Related to the Property, Including the Old Energy Contract With Suez.

On June 3, 2009, the Property was sold to Chiku through a purchase agreement (the “**Purchase Agreement**”). A true and correct copy of the Purchase Agreement is attached hereto as **Exhibit B**. In addition to purchasing the Property, Chiku also “purchase[d] from Seller, all of Seller’s right, title and interest in and to . . . *all* contracts, agreements, permits, licenses, warranties and websites, held solely for use in connection with all or any portion of the Property.” (Ex. B, Purchase Agreement § 1.A(4) (emphasis added) [hereinafter the “**Contract Purchase Clause**”].) The Contract Purchase Clause did not reference any exhibit, schedule, or another other document listing the contracts to be assumed by Chiku, or not to be assumed. (*See id.*) Accordingly, under the plain language of the Purchase Agreement, Chiku assumed the Old Customer’s obligations under the Old Energy Agreement to purchase electric services for the Property from Suez.

C. Chiku Fails to Assume the Old Energy Contract, and Enters the New Energy Contract with Suez Then Attempts to Terminate the New Energy Contract.

After Chiku assumed ownership of the Property, it failed to assume Old Customer’s obligations under the Old Energy Contract, and transferred electricity service to a different provider. As a result, Suez sent Old Customer a letter requesting an early

termination payment in exchange for the early termination of the remaining term of the Old Agreement as it related to the Property. The termination payment was not received by Suez from Old Customer; rather, Old Customer indicated Chiku was to have assumed all obligations under the Old Agreement for the Property after the closing of the sale to Chiku. Subsequently, Chiku contacted Suez requesting that it be allowed to return to service with Suez, presumably to avoid breaching its contractual obligation under the Contract Purchase Clause of the Purchase Agreement.

On August 6, 2009, Chiku entered a fixed price Illinois Energy Sales Agreement to purchase electric services for the Property from Suez for the balance of the term of the Old Energy Agreement, and promised to pay a penalty for early termination of the contract (the "New Energy Contract"). A true and correct copy of the New Energy Contract is attached hereto as Exhibit C. In connection with the New Energy Contract, Chiku paid Suez a security deposit in the amount of \$8,950 and a gap in service fee in the amount of \$4,328 (covering the loss Suez suffered as a result of liquidating the excess electricity supply it held as a result of Chiku's switch to another provider after the Purchase Agreement was entered). Suez provided the agreed-upon services, but as of approximately March 23, 2010, Chiku stopped paying its monthly invoice. Suez notified Chiku via certified mail on May 13, 2010, that failure to pay its bill would result in an early termination of the New Energy Contract, but was informed by Chiku that it would not pay while the complaint was pending at the ICC. Notice was sent to Chiku via certified mail on May 20, 2010 that service was going to be discontinued. Service to Chiku was terminated effective as of May 27, 2010 when electricity service to Chiku was transferred to another provider. Currently, Chiku's account with Suez is past due; early

termination fees as a result of the breach of the New Energy Contract have not yet been assessed.

D. Chiku Files an ICC Complaint Alleging a Contract Dispute.

In March, Chiku filed the formal complaint against Suez (the “**Complaint**”) with the Illinois Commerce Commission (“**ICC**”), as docketed above. Chiku essentially alleges that the energy rate it agreed to pay under the fixed price New Energy Contract was unreasonable, and requests that the ICC cancel the New Energy Contract, forgive Chiku from paying Suez the early termination fee which Chiku contractually agreed to pay, and force Suez to return the security deposit and gap service fee Chiku paid.

At the first hearing in the matter on April 20, 2010, the Administrative Law Judge (“**ALJ**”) recognized that the adjudication of this controversy is dependent on whether Chiku was bound by the Purchase Agreement and Old Energy Agreement to assume the Old Customer’s obligation to purchase energy services from Suez, or bound by the New Energy Agreement. (*See, e.g.*, Apr. 20, 2010 Tr. of Proceedings at 10:10-18, attached hereto as **Exhibit C** [hereinafter “**Tr.**”]) Counsel for Chiku agrees that this is a contract dispute, and argues that the Purchase Agreement and its Contract Purchase Clause does not obligate Chiku to assume the Old Energy Agreement, and that the New Energy Agreement is not enforceable. (*See, e.g.*, Tr. at *id.* (agreeing with ALJ that the matter comes down to “whether or not [the parties] were bound by the prior contract”); 13:6-18 (agreeing with the ALJ that the outcome depends on the interpretation of the Old Energy Agreement and Purchase Agreement); 24:7-15 (counsel for Chiku stating “I think really the ultimate analysis in this one is, is the contract really a viable contract as against my client?”)).

Suez contends that the Contract Purchase Clause of the Purchase Agreement obligated Chiku to assume the Old Energy Agreement. Further, Suez contends that the New Energy Agreement is enforceable and Chiku is thereby not entitled to the return of its security deposit or gap service charge, that it is liable to pay for the energy services Suez provided which Chiku has not paid for, and the early termination fees pursuant to the early termination of the New Energy Contract as a result of Chiku's failure to pay, which is a clearly described termination event pursuant to Sections 2.6 and 2.7 of the New Energy Contract.

II. ARGUMENT

The ICC does not have subject matter jurisdiction over this controversy because it involves a contract dispute which is not reviewable by the ICC, and does not involve a traditional utility rate dispute which is reviewable by the ICC. The Illinois Public Utilities Act (the "Act"), 220 ILCS §§ 5/1-102 *et seq.*, governs public utility services provided in Illinois and created the ICC to, *inter alia*, implement, enforce, and adjudicate controversies which arise under the Act. Article IX of the Act states that utility rates must be reasonable, and the ICC is generally empowered to adjudicate controversies regarding the reasonableness of utility rates. *Id.* §§ 5/9-101, *et seq.* However, utility providers are exempt from the rate-making provisions of Article IX under certain circumstances, which are present here.

Under the Act, the commercial utility services Suez provided the Old Customer and Chiko were "contract services" within the meaning of Section 16-102 of the Act, because they were services "provided by mutual agreement between an electric utility and a retail customer." *See Id.* § 5/16-102 (defining "contract services"). Such contract services are "competitive services." *Id.* (defining "competitive service" to include

“contract service”). Because parties are free to contract for competitive utility services, the legislature has determined that the ICC “shall not increase or decrease the prices, and may not alter or add to the terms and conditions for the utility’s competitive services, from those agreed to by the electric utility and the customer or customers.” *Id.* Because parties are free to contract to whatever rates they wish in a competitive service contract, the legislature has further provided that such contracts are exempt from the rate-making provisions in Article IX of the Act, except under limited circumstances not relevant here. *Id.*

Based upon the allegations of the Complaint and the facts of this case, it is plain that the Old Energy Contract and New Energy Contract are contracts for competitive services not subject to Article IX’s rate-making provisions. Thus, the ICC does not have jurisdiction to scrutinize the reasonableness of the rates in either the Old Energy Contract or New Energy Contract. Indeed, the legislature has specifically stripped the ICC of jurisdiction to change the price or alter the terms or conditions of such competitive service contracts, instead determining that parties to such contracts should be free to pursue their own commercial interests. Chiku’s challenge to the reasonableness of the rates in Suez’s competitive service contracts, therefore, is not properly a matter for consideration by the ICC.

In addition to challenging the rates in the Old and New Energy Contracts, Chiku also argues that it was not obligated to assume the Old Energy Contract or enter the New Energy Contract in the first place because the Purchase Agreement did not require it to continue utility service with Suez. This argument further highlights why the ICC does not have jurisdiction over this dispute. The interpretation and enforceability of the

Purchase Agreement has nothing to do with the Illinois Public Utility Act and certainly the ICC does not have jurisdiction to adjudicate controversies related to a real estate purchase agreement.

Accordingly, because the instant dispute involves the interpretation and enforceability of contracts which are not reviewable by the ICC, the ICC has no subject matter jurisdiction over the controversy and Chiku's Complaint should be dismissed with prejudice.

III. CONCLUSION

For the foregoing reasons, Suez respectfully requests that, Chiku's Complaint be dismissed with prejudice.

Dated: June 25, 2010

By: _____


Jason S. Austin
GDF SUEZ ENERGY RESOURCES N.A., INC.
1990 Post Oak Boulevard, Suite 1900
Houston, TX 77056
713-636-1742

Exhibit A

ILLINOIS SHORT FORM ENERGY SALES AGREEMENT
FIXED PRICE

This Illinois Short Form Energy Sales Agreement (the "Agreement") is entered into effective as of the 17th day of January 2008 (the "Effective Date") by and between SUEZ Energy Resources NA, Inc. ("Suez"), a Delaware corporation and MONTCLAIR HOTEL INVESTORS, INC ("Customer"). Suez and Customer are also referred to herein individually as a "Party" and collectively as the "Parties." Unless provided to the contrary, capitalized terms are defined in Section 3.

SECTION 1. TRANSACTION TERMS AND CONDITIONS

- 1.1 **Purchase and Sale.** Subject to the terms and conditions set forth herein, Suez shall sell and deliver and Customer shall purchase and receive Firm Full Requirements Service for the facility(ies) specified in Attachment A, Exhibit 1.
- 1.2 **Term.** This Agreement shall be effective on the Effective Date and the service contemplated herein shall commence on the Utility Transfer Date immediately following December 1, 2008. Provided further, this Agreement shall remain in effect through the Utility Transfer Date immediately following November 30, 2013 ("End Date"). Notwithstanding the foregoing, Customer's options for service beyond the End Date include i) executing an agreement with Suez for new terms and conditions of service, ii) transferring the accounts to another competitive supplier or iii) providing a written request to Suez to transfer Customer's accounts to the applicable default service provider. In the event Customer does not timely exercise one of the options above, service may continue hereunder following the End Date until the next available Utility Transfer Date following Customer's exercise of one of the above options or Suez's transfer of the accounts to the applicable default service provider, whichever occurs first (the "Transition Period"). For service during the Transition Period, in lieu of the pricing as described in this Agreement, Customer shall pay Suez an amount equal to the applicable Real Time Locational Marginal Price as posted by the PJM for the relevant delivery point (the "Real Time Market Price") plus an adder charge of \$0.0180 for each kWh of electric energy consumed.
- 1.3 **Billing and Payment.** For each Billing Cycle, Suez will deliver to Customer an invoice setting forth the charges due for the preceding Billing Cycle. Such invoice shall include the monthly charges for energy consumption and any other charges or fees imposed pursuant to the terms of the Agreement, and any applicable Taxes and Utility Related Charges. Suez may, however, use estimated data for billing purposes hereunder provided that such estimates will be subject to future reconciliation upon receipt of final data regarding the actual quantity of energy consumed for the applicable Billing Cycle. Payment shall be due to Suez by check, electronic transfer or any other mutually agreed upon payment method within seventeen (17) days after receipt of the invoice. Overdue payments will accrue interest at the Interest Rate from the due date to the date of payment. If any amount of an invoice is disputed in good faith, the entire invoice shall be paid when due. Any disputed amounts that are ultimately determined to be owed to Customer shall be repaid by Suez with interest accrued at the Interest Rate from the date payment was due through the date of re-payment to Customer. Any dispute with respect to an invoice is waived unless the other Party is notified within twenty-four months after the invoice is rendered or any specific adjustment to the invoice is made.
- 1.4 **Contract Price.** Customer shall pay Suez the Contract Price per kWh of electric energy consumed in a Billing Cycle. This price is inclusive of all non-utility charges including energy, ancillary services, installed (or unforced) capacity, congestion, losses, network integrated transmission services, and other PJM charges or administrative fees incurred in connection with delivery of energy to the delivery point specified in Attachment A, Exhibit 1. The Contract Price does not include Taxes and Utility Related Charges.
- 1.5 **Classification.** Customer represents and warrants that the facilities to be served hereunder during the term are not residential facilities and shall be classified as (mark the applicable choice with an X): a) _____ Health b) _____ Industrial c) _____ Light d) Lodging e) _____ Market f) _____ Misc. Comm. g) _____ Office h) _____ Post Office i) _____ Pub. Assembly j) _____ Pump k) _____ Religious l) _____ Restaurant m) _____ Retail n) _____ School o) _____ Service p) _____ Warehouse.

SECTION 2. GENERAL TERMS AND CONDITIONS

- 2.1 **Notices.** Notices, correspondence, and address changes shall be in writing and delivered by regular or electronic mail, facsimile, or similar means or in person. Notice by facsimile, electronic mail or hand delivery shall be deemed to have been received on the date transmitted or delivered (after business hours deemed received on next Business Day) and notice by overnight mail or courier are deemed received two Business Days after it was sent. All notices shall be provided to the person and addresses specified in Section 4, or to such other person and address as a Party may from time to time specify in writing to the other Party.
- 2.2 **Taxes.** "Taxes" shall mean any and all taxes and fees imposed on the purchase and sale of electric energy by any Governmental Authority. Customer will be responsible for, pay, and indemnify Suez for all Taxes hereunder, whether imposed on Customer or Suez. Suez may collect such Taxes from Customer by increasing Suez charges for the amount of such Taxes.
- 2.3 **Title, Risk of Loss.** Title, liability and risk of loss associated with the electric energy purchased and sold hereunder shall pass from Suez to Customer at the delivery point specified in Attachment A, Exhibit 1.
- 2.4 **Credit Assurances.** If Suez has commercially reasonable grounds to believe Customer's creditworthiness or performance under this Agreement has become unsatisfactory, then Suez shall provide the other Party with written notice requesting Performance Assurance in an amount not to exceed three times the average amount invoiced by Billing Cycle. Upon receipt of such notice, Customer shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Suez. In the event that Customer fails to provide such Performance Assurance within three (3) Business Days of receipt of such notice, then an Event of Default shall be deemed to have occurred and Suez shall be entitled to any remedies set forth in this Agreement.
- 2.5 **Force Majeure.** "Force Majeure" shall mean an event that is beyond the reasonable control of the Party claiming an event of Force Majeure that could not have been prevented by the exercise of due diligence. If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations under this Agreement, such Party shall give notice and provide full details of the event to the other Party in writing as soon as practicable after the occurrence of the event. During such Force Majeure period, the obligations of the Parties (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) will be suspended to the extent required. The Party claiming Force Majeure will make all reasonable attempts to remedy the effects of the Force Majeure and continue performance under this Agreement with all reasonable dispatch; provided, however, that no provision of this Agreement shall be interpreted to require Suez to deliver, or Customer to receive, electric energy at points other than the delivery point(s). Force Majeure shall not include (a) Customer's decision to shut down, sell or relocate its facilities or (b) economic loss due to Customer's loss of markets or suppliers.
- 2.6 **Events of Default.** An "Event of Default" means, with respect to a Party alleged to have taken or been affected by any of the actions set forth below in this section (the "Defaulting Party"): (a) the failure by Customer to make, when due, any payment required under this Agreement if such failure is not remedied within five Business Days after written notice of such failure is given to Customer by Suez or (b) any representation or warranty made by the Defaulting Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the Term; or (c) the failure by the Defaulting Party to perform any covenant set forth in this Agreement and for which a remedy is not provided herein and such failure is not excused by the other Party in writing or by Force Majeure or cured within five Business Days after written notice thereof to the Defaulting Party; or (d) the Defaulting Party: (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) otherwise becomes bankrupt or insolvent.
- 2.7 **Remedies Upon an Event of Default.** (a) If an Event of Default described in Section 2.4 or 2.6 above occurs under this Agreement with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to designate a day, no earlier than the day such notice is effective and no later than twenty days after such notice is effective, as an early termination date ("Early Termination Date") to (i) terminate this Agreement; (ii) withhold any payments due to the Defaulting Party under this Agreement; and/or (iii) immediately suspend performance upon written notification to the Defaulting Party. In the event of such a termination for any Event of Default, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment for this Agreement effective as of the Party

Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such related transactions, if applicable, are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two Business Days after receipt of such notice. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment. (b) Without limiting its rights under this Agreement, after an Event of Default, the Non-Defaulting Party may set off any or all amounts the Defaulting Party owes to it against any or all amounts it owes the Defaulting Party (whether under the Agreement or otherwise and whether or not then due), provided that any amount not then due that is included in such setoff shall be discounted to present value to take in account the period between the date of setoff and the date on which such amount would have otherwise been due. This Section 2.7(b) shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). The Non-Defaulting Party shall minimize and mitigate any and all damages that may accrue hereunder.

- 2.8 **Limitation of Liability.** FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT, AND ALL OTHER DAMAGES OR REMEDIES HEREBY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES IN TORT, CONTRACT UNDER ANY INDEMNITY PROVISION OR OTHERWISE.
- 2.9 **Indemnification.** Except as limited by Section 2.8, each Party shall indemnify, defend and hold the other Party harmless from claims, demands and causes of action asserted against the Indemnitee by any person arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to electric energy is vested in such Party as provided in Section 2.3.
- 2.10 **Representations and Warranties.** As a material inducement to entering into this Agreement, each Party, with respect to itself, represents and warrants to the other Party as of the Effective Date of the Agreement as follows: (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement; (b) It has all regulatory authorizations, permits and licenses necessary for it to legally perform its obligations under this Agreement; (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (e) it is not Bankrupt or insolvent and there are no reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and (f) it has read this Agreement and fully understands its rights and obligations under this Agreement, and has had an opportunity to consult with an attorney of its own choosing to explain the terms of this Agreement and the consequences of signing it. Customer further represents and warrants to Suez throughout the term of this Agreement that no facility or account listed on Attachment A, Exhibit 1 is classified by the applicable utility as a residential account. With the exception of any warranty that is expressly set forth in this Agreement, Suez and its successors, assigns and delegates make NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. With regard to the services Suez provides, or the activities Customer undertakes, pursuant to this Agreement, Suez acts solely as counter-party in all transactions with Customer under this or any other Agreement. Accordingly, Suez has no duty to advise Customer or exercise judgment on Customer's behalf as to the merits or suitability of any transactions that Suez proposes to enter into with Customer.
- 2.11 **Assignment and Binding Effect.** Neither Party will assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party. Consent to assignment shall not be unreasonably withheld. Any assignment in violation of this Section shall be void.
- 2.12 **Change in Law.** In the event that there is a change in law, administrative regulation, or any fees or costs imposed by the PJM or by a Governmental Authority and such change causes Suez to incur any capital, operating or other costs relating to the provision of services contemplated herein, such costs shall be passed through to the Customer. Provided that, in the event such a change in law renders performance under this Agreement illegal, the Parties shall meet as soon as practicable to attempt to renegotiate the Agreement to comply with such change. If the Parties are unable to amend the Agreement, the Parties' obligations hereunder shall terminate upon the earlier of the date the change in law becomes effective or on the date Customer commences service with a retail energy provider in lieu of Suez.
- 2.13 **Governing Law.** INCLUDING ANY COUNTERCLAIMS AND CROSS CLAIMS ASSERTED IN SUCH ACTION, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF ILLINOIS, WITHOUT REGARD TO THE LAWS OF ILLINOIS REQUIRING THE APPLICATION OF THE LAWS OF ANOTHER STATE.
- 2.14 **Entirety.** This Agreement, any Appendix or Exhibits attached hereto executed in accordance with this Agreement constitute the entire agreement between the Parties. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. No amendment, modification or change will be enforceable unless reduced to writing and executed by both Parties.
- 2.15 **Non-Waiver.** No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement will be construed as a waiver of any other default or defaults whether of a like kind or different nature.
- 2.16 **Severability.** Any provision or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.
- 2.17 **Survival.** All confidentiality, indemnity and audit rights will survive the termination of this Agreement. All obligations provided in this Agreement will remain in effect for the purpose of complying herewith.
- 2.18 **Counterparts.** This Agreement may be executed in several counterparts, each of which will be an original and all of which constitute one and the same instrument.

SECTION 3. DEFINITIONS

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under a Bankrupt, insolvent, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

"Billing Cycle" means, for each account, the period between meter read dates rendered either by Suez or the applicable utility during the applicable Term.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"Claiming Party" means the Party claiming an event of Force Majeure.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party entering into new arrangements that replace a terminated transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a transaction.

Customer: MONTCLAIR HOTEL INVESTORS, INC
 PR #: I-NYPSY, 2
 Contract #: I-ORBP

"Firm Full Requirements Service" means that either Party shall only be relieved of its obligations to sell and deliver or purchase and receive electric energy hereunder without liability to the extent that, and for the period during which, such performance is prevented by Force Majeure or any type of curtailment as ordered by the PJM.
 "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs) resulting from the termination of a transaction, determined in a commercially reasonable manner.
 "Governmental Authority" means any federal, state, local, municipal or other government, any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise jurisdiction over the Parties or any transaction contemplated herein.
 "Interest Rate" means, for any date, the lesser of (a) one and one-half percent (1 1/2 %) and (b) the maximum rate permitted by applicable law.
 "Losses" means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a transaction in a commercially reasonable manner.
 "Performance Assurance" means collateral in the form of either cash, letter(s) of credit, corporate guarantees, or other security acceptable to Suez.
 "PJM" means the Pennsylvania Jersey Maryland Independent System Operator.
 "Termination Payment" means, with respect to a transaction and the Non-Defaulting Party, the Losses and Costs (or Gains), expressed in U.S. Dollars, that such Party incurs as a result of the liquidation, including, but not limited to, Losses and Costs (or Gains) based upon the then current replacement value of the transaction together with, at the Non-Defaulting Party's option, but without duplication, all Losses and Costs that such Party incurs as a result of maintaining, terminating, obtaining or re-establishing any hedge or related trading positions pursuant to this Agreement.
 "Utility Related Charges" means charges or surcharges by a utility arising from or related to, including but not limited to, (i) transmission and distribution of energy (other than network integrated transmission service); (ii) stranded costs or transition costs and any other similar types of charges associated with the opening of the Illinois electric market to competition; (iii) system reliability, rate recovery, future payback of under-collections, amortization, of above market purchases or energy load repurchases, public purpose programs and all similar items.
 "Utility Transfer Date" means the time and date on which the applicable utility has completed the process necessary to permit Suez to commence or discontinue providing the services hereunder. The process may include, as necessary and without limitation, recognizing Suez as Customer's electric supplier and/or limited agent; processing and acting on direct access service requests; installation of meters and the final meter read date.

SECTION 4: NOTICES

Customer Name	Dennis Langley Montclair Hotel Investors, Inc	Dennis Langley Montclair Hotel Investors, Inc	SUEZ Energy Resources NA, Inc. Attn: SERNA Retail
Address	2801 Lakeside Drive Suite 208 Bannockburn, IL 60015	2801 Lakeside Drive Suite 208 Bannockburn, IL 60015	1990 Post Oak Blvd., Ste 1900 Houston, TX 77056
Phone	847-457-3900	847-457-3900	1-888-844-1014
Phone	847-457-3901	847-457-3901	713-638-1601
Email			SERNAcontract@suezenergyna.com

CUSTOMER INFORMATION	SUEZ INFORMATION
DUNS #:	DUNS #: 098868332
FEDERAL TAX ID #:	FEDERAL TAX ID#: 76-0685946

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement effective as of the Effective Date. This Agreement will not become effective as to either Party unless and until executed by both Parties.

SIGNATURES	
Customer: Montclair Hotel Investors, Inc	SUEZ Energy Resources NA, Inc.
Signature: <i>Dennis Langley</i>	Signature: <i>Craig Sutter</i>
Print Name: DENNIS LANGLEY	Print Name: Craig Sutter
Print Title: Co-President	Print Title: Sr. Vice President, Sales
Date: Jan. 17, 2008	Date: 1/23/08

ML

ORIGINAL

Customer: MONTCLAIR HOTEL INVESTORS, INC
Effective Date: 01/16/2008
Agreement #: 1-OIPEP, 1
PR #: 1-NYP5Y, 2
Product Code: FP01
Product: Fixed Price RTC

ATTACHMENT A: AGREEMENT SUMMARY INFORMATION

Exhibit 1: Facilities and Accounts

#	Facility Name Service Address	City, State, Zip	County	Utility	Delivery Point	Account Number	Rate Schedule	Start Date	End Date
1	UNKNOWN	UNKNOWN, IL 00000		COMED	COMED	0420074013	R04	12/01/2008	11/30/2013
2	UNKNOWN	UNKNOWN, IL 00000		COMED	COMED	0758084025	R04	12/01/2008	11/30/2013
3	UNKNOWN	UNKNOWN, IL 00000		COMED	COMED	1383097097	R04	12/01/2008	11/30/2013
4	UNKNOWN	UNKNOWN, IL 00000		COMED	COMED	9285226010	R04	12/01/2008	11/30/2013

Contract Price (\$/KWh): 0.09088

OS

Exhibit 2: Monthly Anticipated Consumption (in MWh)

Delivery Point: COMED

Month	MWh
Jan	581
Feb	631
Mar	489
Apr	399
May	401
Jun	489
Jul	498
Aug	545
Sep	400
Oct	417
Nov	419
Dec	513

Daniel J. [Signature]
1/17/08

Exhibit B

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is made as of April 27, 2009 (the "Effective Date"), by and between CHICAGO SUITES, L.L.C., a Delaware limited liability company ("Seller"), and Chiku Enterprise, Inc. ("Buyer").

RECITALS

A. Seller is the owner of the real property (the "Land"), more particularly described in Exhibit A attached hereto and made a part hereof, and the improvements situated thereon operated by Seller as the Country Inn & Suites (the "Hotel") located in Matteson, Illinois.

B. Buyer and Seller have executed that certain letter of intent (the "Letter of Intent") dated as of November 17, 2008, respecting the Property (as defined below).

C. Seller operates the Hotel in accordance with that certain agreement (the "Franchise Agreement") captioned "COUNTRY INN & SUITES BY CARLSON LICENSE AGREEMENT," by and between Country Inn & Suites By Carlson, Inc. ("Franchisor") and Seller.

D. Buyer desires to purchase, and Seller desires to sell, the Property (as defined below), on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the respective promises contained in this Agreement, Buyer and Seller agree as follows:

AGREEMENTS

1. Purchase and Sale.

A. Property. Subject to the terms and conditions of this Agreement, Seller will sell to Buyer, and Buyer will purchase from Seller, all of Seller's right, title and interest in and to the following (collectively, the "Property"): (1) the real property located in Matteson, Illinois, as more particularly described in Exhibit A; (2) all improvements, structures and fixtures located upon the Land (the "Improvements"), including, without limitation, the Hotel, consisting of approximately 84 occupancy rooms; (3) all tangible personal property (the "Personal Property") located on and used solely in connection with the Improvements described in Exhibit B, including hotel equipment and operating supplies, furniture and equipment; (4) the Franchise Agreement, to the extent assignable without the consent of third parties, all contracts, agreements, permits, licenses, warranties and websites, held solely for use in connection with all or any portion of the Property (collectively, the "Intangible Property"); (5) all material service contracts and equipment leases that are presently in effect with respect to the Property and are referred to herein respectively as the "Service Contracts" and the "Equipment Leases"; and (6) all food and beverages and all consumable supplies and inventories of every kind and nature ("Consumables") owned by Seller and used in connection with the ownership, operation of or maintenance of the Hotel.

B. Excluded Property. All cash on deposit in banks on the Closing Date (as hereinafter defined) or in transit for deposit on the Closing Date, all cash in the cash drawers at the Hotel on the Closing Date, any leased equipment or personal property, any proprietary software used in connection with Seller's ownership, operation of or maintenance of the Hotel, deposits placed by Seller with third parties, such as utility providers, and reserves and house banks are not included in the term "Property."

2. Purchase Price; Closing Date.

A. Purchase Price. The purchase price (the "Purchase Price") for the Property will be (a) Five Million and No/100 Dollars (\$5,000,000.00).

B. Closing Date. The consummation of the transactions described in this Agreement shall occur on that date (as the same may be amended in accordance with the terms of this Agreement, the "Closing Date") which is seven (7) Business Days after the expiration of the "Due Diligence Period" (as defined in Paragraph 5B below).

3. Payment of Purchase Price. The Purchase Price will be paid to Seller by Buyer as follows:

A. Deposit. Within one (1) Business Day (as such term is defined in Paragraph 11H(4)) after the Effective Date, Buyer will deliver to Seller a cashier's check or wire transfer of immediately available federal funds, in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) (the "Deposit"). In the event Buyer terminates this Agreement by reason of any default by Seller in its obligation to close the transaction described in this Agreement pursuant to Paragraph 3C below, then Seller will promptly return the Deposit to Buyer. In all other events, Seller will be entitled to retain the Deposit.

B. Closing Payment. The Purchase Price, as adjusted by the pro rations and credits specified in this Agreement, will be paid to the Title Company (as defined in Paragraph 4A below) by wire transfer of immediately available federal funds not later than one (1) Business Day before the Closing Date. The amount of the Purchase Price to be paid on the Closing Date is referred to in this Agreement as the "Closing Payment."

C. REMEDIES, LIQUIDATED DAMAGES. IF THE CLOSING DOES NOT OCCUR DUE TO BUYER'S DEFAULT UNDER THIS AGREEMENT, IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE, THE PARTIES HAVE AGREED THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN SUCH EVENT IS AND WILL BE SELLER'S RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES, AS SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT (SUBJECT TO THOSE PROVISIONS OF THIS AGREEMENT WHICH, BY THEIR EXPRESS TERMS, SURVIVE A TERMINATION OF THIS AGREEMENT). SUCH LIQUIDATED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF APPLICABLE LAW. IF THE CLOSING DOES NOT OCCUR FOR ANY REASON OTHER THAN BUYER'S DEFAULT UNDER THIS AGREEMENT, THEN THIS AGREEMENT WILL TERMINATE AND NEITHER PARTY WILL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS TO EACH OTHER HEREUNDER, EXCEPT FOR (1) THOSE PROVISIONS OF THIS AGREEMENT WHICH, BY THEIR EXPRESS TERMS, SURVIVE A TERMINATION OF THIS AGREEMENT, (2) IF THE CLOSING FAILS TO OCCUR SOLELY BECAUSE OF SELLER'S DEFAULT THAT IS THE RESULT OF A CHANGE IN CIRCUMSTANCES (AS DEFINED IN PARAGRAPH 10B(1)), THEN, BUYER, AS ITS SOLE AND

EXCLUSIVE REMEDY MAY RECOVER THE DEPOSIT, AND (3) IF THE CLOSING FAILS TO OCCUR SOLELY BECAUSE OF SELLER'S DEFAULT THAT IS NOT THE RESULT OF A CHANGE IN CIRCUMSTANCES, THEN, BUYER, AS ITS SOLE AND EXCLUSIVE REMEDY MAY EITHER (A) RECOVER THE DEPOSIT OR (B) BRING AN ACTION FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT (BUYER WAIVES ANY RIGHT TO RECORD A LIS PENDENS AGAINST THE PROPERTY). IF THE CLOSING OCCURS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, THE DEPOSIT WILL BE APPLIED AS A CREDIT TOWARD THE PURCHASE PRICE. THIS PARAGRAPH 3C WILL SURVIVE THE TERMINATION OF THIS AGREEMENT AND NOTHING IN THIS PARAGRAPH 3C IS INTENDED TO LIMIT THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER PARAGRAPH 11E.

BUYER'S INITIALS

SELLER'S INITIALS

D. Financing Contingency. The Buyer and Seller agree that this contract is contingent on Buyer securing a commercial loan within thirty (30) days after the Effective Date in a principal amount of not less than four million dollars (\$4,000,000.00), with an annual interest rate not exceeding eight percent (8%), and that any points required by the lender not exceed 0.0025%. Buyer shall promptly notify Seller within the thirty (30) day period if this contingency fails. The failure of the Buyer to secure financing consistent with this paragraph shall be cause for the immediate cancellation and termination of this Agreement and Seller shall retain the Deposit as its sole remedy and agrees that Buyer is released from any and all further liability under this agreement.

4. Title.

A. Title Commitment. Seller will deliver to Buyer promptly upon receipt (1) a title insurance commitment covering the Property from River West National Title & Escrow, LLC, as issuing agent for Lawyers Title Insurance Corporation (the "Title Company") and (2) copies of the documents evidencing the exceptions to title stated therein (collectively, the "Title Commitment"). Seller shall also provide to Buyer a copy of the survey (the "Existing Survey") in Seller's possession covering the Land and Improvements. Buyer will be entitled to obtain, at its sole cost and expense, an update of the Existing Survey or a new survey (the "New Survey") of the Property, provided, however, delivery of the New Survey shall not be a condition to Closing and Buyer shall not be entitled to object to any matter set forth in the New Survey unless the Title Company identifies same as an exception to coverage in the Owner's Policy (defined below). Unless Buyer gives written notice ("Title Disapproval Notice") to Seller and the Title Company that it disapproves the exceptions to title shown on the Title Commitment or the matters (the "Survey Matters") disclosed by the Existing Survey, stating the title exceptions (the "Disapproved Exceptions") and Survey Matters so disapproved, not later than ten (10) Business Days prior to expiration of the Due Diligence Period (as hereinafter defined), Buyer will be conclusively deemed to have approved the Existing Survey and the Title Commitment. Any endorsements ("Title Endorsements") that Buyer desires, other than endorsements that Seller elects to provide pursuant to this Paragraph 4A, will be solely the responsibility of Buyer and will not be the subject of a Title Disapproval Notice. If Buyer provides a Title Disapproval Notice to Seller, Seller may provide notice (a "Response Notice") to Buyer, not later than five (5) Business Days prior to expiration of the Due Diligence Period indicating whether or not, on or before the Closing Date, Seller will (i) remove any such Disapproved Exceptions or cause the Title Company to insure over such exceptions or matters in a form reasonably acceptable to Buyer at no cost or expense to Buyer (other than instruments executed by Seller that secure monetary obligations and any real property taxes which will be past due as of the Closing Date, all of which Seller will be obligated to remove or cause the Title Company to insure over), and (ii) correct any disapproved Survey Matters. If Seller provides a Response Notice to Buyer stating that Seller will not remove or cause the Title Company to

insure over any such Disapproved Exception, or correct any disapproved Survey Matters or if Seller does not provide a Response Notice to Buyer, then, Buyer will have the right, which it may elect not later than the expiration of the Due Diligence Period, either to waive Buyer's objection to such disapproved exception or Survey Matter, or to terminate this Agreement, in which event the Deposit will be retained by Seller, and the parties will have no further obligations or liabilities hereunder (except for any obligations or liabilities that expressly survive termination of this Agreement).

B. Title Contingency. A condition precedent to Buyer's obligation to purchase the Property will be the willingness of the Title Company to issue to Buyer on the Closing Date an ALTA owner's policy of title insurance ("Owner's Policy") in the face amount of the Purchase Price, which Owner's Policy will show a fee simple estate in the Land to be vested of record in Buyer, subject solely to the following exceptions (the "Permitted Exceptions"): (1) the lien of any real estate taxes and assessments for the "Current Tax Year" not yet delinquent (as defined below) and subsequent periods; (2) easements, conditions, covenants and restrictions of record (but excluding any mortgage to Seller encumbering the Property unless Buyer is assuming such mortgage); and (3) such other matters set forth in the Title Commitment or shown on the Existing Survey which are not disapproved by Buyer during the Due Diligence Period. Any Title Endorsements that Buyer desires to obtain as part of the Owner's Policy will be at the sole expense of Buyer and will not constitute a condition precedent to Buyer's obligation to purchase the Property.

C. New Title Matter. If a new title matter ("New Matter") affecting the estate in the Land comes into existence after the expiration of the Due Diligence Period, and Buyer promptly notifies Seller of its disapproval of such New Matter after Buyer's discovery of same, Seller will, at its election, remove or cause the Title Company to insure over such New Matter within thirty (30) days after the date of receipt of notice from Buyer with respect to the New Matter (and the Closing Date will be extended to accommodate such cure period). In the event that Seller does not remove or cause the Title Company to insure over such New Matter within such thirty (30) day period, Buyer will have the right, as Buyer's sole and exclusive remedy hereunder for such failure, either (a) to terminate this Agreement by written notice to Seller, in which case, the Deposit will be retained by Seller, this Agreement will be null and void and of no further force or effect and the parties hereto will have no further obligations to the other (except for any obligations or liabilities that expressly survive termination of this Agreement), or (b) to waive the foregoing right of termination and all other rights and remedies on account of such New Matter and to close the transaction contemplated by this Agreement. Seller may extend the Closing Date up to thirty (30) days in order to endeavor to remove or cause the Title Company to insure over any Disapproved Exceptions, Survey Matters or New Matters.

5. Due Diligence Contingency.

A. Property Documents. Within three (3) Business Days after the full execution and delivery of this Agreement, Seller shall provide Buyer with copies of or access to information (the "Property Documents") relating to the Property and more particularly described in Exhibit D. Seller will have no obligation to make available to Buyer any of the following confidential and proprietary materials: (1) information contained in Seller's credit reports, credit authorizations, financial analyses or projections, steering committee sheets, and internal documents relating to the Property and deemed proprietary or confidential, including any valuation documents and the book value of the Property; (2) material that is subject to attorney client privilege or that is attorney work product; and (3) appraisal reports or letters.

B. Due Diligence Period. Commencing on the Effective Date and continuing until 5:00 p.m. Central Time on that day which is thirty (30) days after the Effective Date (the "Due Diligence Period"), Buyer will perform, at its sole expense, its due diligence review, examination and inspection of all

matters pertaining to its acquisition of the Property, including all financial, physical, environmental and compliance matters, entitlements and other conditions respecting the Property.

C. Conduct of Due Diligence.

(1) Due Diligence Generally. Buyer will at all times conduct its due diligence in compliance with applicable laws, and in a manner so as to not cause damage, loss, cost or expense to Seller, the Property or any tenants, licensees, guests, and other persons using or occupying the Property or any part thereof. Buyer will not contact any governmental authority having jurisdiction over the Property without Seller's prior written consent. Buyer may not conduct employee interviews of any persons using or occupying the Property or any part thereof, with the exception of the general manager and chief engineer of the Property. Buyer may also contact and interview any centralized accounting employees of Montclair Hotels Investors LLC regarding Seller's ownership, operation and maintenance of the Property.

(2) Insurance; Indemnification. At Seller's request, prior to entering the Property, Buyer will provide seller with certificates evidencing commercial general liability insurance (and such other policies of insurance as Seller may reasonably determine) to be maintained by Buyer or Buyer's agents, licensees, contractors or representatives in connection with its investigation of the Property, all in amounts reasonably determined by Seller but in no event less than \$1,000,000. Any insurance policies will name each of Seller, and its agents as additional insured to the extent allowable by law. Any intrusive physical testing (environmental, structural or otherwise) at the Property (such as soil borings or the like) will be conducted by Buyer only after obtaining Seller's prior written consent to such testing, which consent may be withheld in the sole and absolute discretion of Seller. Buyer will keep the Property free and clear of any liens and will indemnify, protect, defend, and hold Seller, its directors, shareholders, fiduciaries, officers, employees, agents, independent contractors and such other parties in interest as Seller may reasonably require, harmless from and against all claims ("Claims") (including any claim for damage to property or injury to or death of any persons), liabilities, obligations, liens or encumbrances, losses, damages, costs or expenses, including reasonable attorney's fees, in any way arising from, any entry onto or inspections or examinations of the Property by Buyer, its agents, employees or representatives, except claims, liabilities, obligations, liens or encumbrances, losses, damages, costs or expenses arising out of Seller's gross negligence.

D. Buyer's Election Not to Proceed. If Buyer determines that it does not intend to acquire the Property and Buyer, in its sole and absolute discretion, and for any reason, delivers notice (the "Due Diligence Termination Notice") to Seller and the Title Company of such determination in writing prior to the expiration of the Due Diligence Period, then the Deposit will be retained by Seller, this Agreement will be of no further force or effect, and the parties hereto will have no further obligations to the other (except for any obligations or liabilities that expressly survive termination of this Agreement). If Buyer does not deliver the Due Diligence Termination Notice to Seller and the Title Company prior to the expiration of the Due Diligence Period, this Agreement will continue in full force and effect.

6. Closing. The sale and purchase herein provided will be consummated at 10:00 a.m. Central Time on the Closing Date through an escrow administered by the Title Company as set forth in Subparagraph A below, time being of the essence.

A. Escrow. On or before 10:00 a.m. Central Time on the Closing Date, the parties will deliver to the Title Company the following (the "Escrow"):

(1) By Seller. Seller will deliver (a) a recordable special warranty deed (the "Deed") conveying the Land (and any other real property interests included in the Property) to Buyer, subject to the Permitted Exceptions, which Deed shall be in the form of Exhibit E; (b) four (4) duly executed and

acknowledged counterpart originals of the bill of sale, assignment and assumption covering the Personal Property, the Service Contracts, the Equipment Leases, the Consumables and Intangible Property, in the form of Exhibit F (the "Bill of Sale, Assignment and Assumption"); (c) certificates of Seller respecting the "non-foreign" status of Seller in the form of Exhibit G; (d) a closing statement (the "Closing Statement"), dated as of the Closing Date and duly executed by Seller; (e) transfer tax declarations ("Transfer Declarations") duly executed by Seller in the form required by applicable governmental authorities; (f) to the extent not covered by the Bill of Sale, Assignment and Assumption; and (g) evidence reasonably satisfactory to the Title Company that all necessary authorizations of the transaction provided herein have been obtained by Seller, and such other documents and instruments as may be reasonably requested by the Title Company in order to consummate the transaction contemplated hereby and to issue the Owner's Policy (provided that the same do not materially decrease Seller's rights or materially increase Seller's obligations hereunder).

(2) By Buyer. Buyer will deliver (a) the Closing Payment by wire transfer of immediately available federal funds; (b) four (4) duly executed and acknowledged counterpart originals of the Bill of Sale, Assignment and Assumption; (c) a duly executed counterpart of the Closing Statement; (d) duly executed Transfer Declarations in the form required by applicable governmental authorities; and (e) evidence reasonably satisfactory to the Title Company and Seller that all necessary authorizations of the transaction provided herein have been obtained by Buyer, and such other documents and instruments as may be reasonably requested by Seller and the Title Company in order to consummate the transaction contemplated hereby and to issue the Owner's Policy (provided that the same do not materially decrease Buyer's rights or materially increase Buyer's obligations hereunder).

B. Conditions to Closing: Delivery to Parties. The conditions to the closing of the Escrow will be the Title Company's receipt of the funds and documents described in subparagraph A(1) above and the items to be delivered by third parties as may be described in a closing escrow agreement to be entered into by and between Buyer, Seller and the Title Company with respect to the Escrow.

C. Closing Costs. Buyer will pay (a) the costs of all Title Endorsements to the Owner's Policy, except for the title endorsements which are Seller's obligation to pay pursuant to Paragraph 4A; (b) the costs and expenses of the New Survey (other than the Existing Survey provided by Seller to Buyer); (c) all recordation costs payable in connection with the transaction contemplated by this Agreement, except release recording fees as set forth below; (d) all sales and use taxes payable in connection with the transfer of the Personal Property, Intangible Property and Consumables to Buyer; (e) the cost of any of Buyer's examinations and inspections and audits of the Property, including the cost of any of its appraisals, environmental, physical and financial audits, and, if applicable, all costs associated with any financing to be obtained by Buyer (including any application and commitment fees, and the costs of meeting any lender requirements); (f) fifty percent (50%) of the costs and expenses of the Escrow arrangements; and (g) Buyer's customary share, if any, of all transfer taxes payable in connection with the sale of the Property. Seller will pay (a) the recording fees for any instrument in connection with the release of any existing liens; (b) the costs of the Owner's Policy inclusive of the costs of any endorsements that are Seller's obligation but exclusive of title endorsements that are Buyer's right to obtain pursuant to Paragraph 4A; (c) fifty percent (50%) of the costs and expenses of the Escrow arrangements; and (d) Seller's customary share, if any, of all transfer taxes payable in connection with the sale of the Property. All other closing costs not specifically allocated herein will be paid by the parties as is customary in the county in which the Land is located.

D. Pro Rations.

(1) Real Estate Taxes, Assessments and Franchisor P.I.P. Charges. Real property taxes and assessments due and payable for the year in which the Closing occurs (prorated on the basis of the most recent ascertainable bill) are to be pro rated or adjusted as of the Closing Date. Seller may

have filed and may continue to prosecute a complaint or appeal of the real property tax assessment for prior tax years, and may take related action which Seller deems appropriate in connection therewith. Buyer shall cooperate with Seller in connection with such complaint or appeal and collection of a refund of real property taxes paid. Seller owns and holds all right, title and interest in and to any appeals or refunds of real estate taxes payable for periods prior to the Closing, and all amounts payable in connection therewith shall be paid directly to Seller by the applicable authorities. If such refund or any part thereof is received by Buyer, Buyer shall promptly pay such amount to Seller. If and to the extent any such complaint or appeal covers the period after the Closing, Buyer shall have the right to participate in such complaint or appeal. Buyer and Seller also agree that all 2009 Franchisor P.I.P. costs and charges incurred by the Seller prior to Closing will not be prorated, and are costs of the Seller, and that Seller shall continue to reasonably perform the items on the Franchisor 2009 P.I.P. list prior to Closing. Buyer and Seller also agree that any items in the 2009 Franchisor P.I.P. list which have not been completed as of the date of Closing will be the sole responsibility of the Buyer. Seller shall provide Buyer a \$100,000.00 credit towards the Purchase Price on the day of Closing for Buyer's use to complete unfinished P.I.P. orders and other operations.

(2) Revenues and Expenses. Except as otherwise expressly provided herein, all Hotel expenses and revenues, will be for the account of Seller for the period prior to the Adjustment Time (as defined below), and all Hotel expenses and revenues, with respect to the period from and after the Adjustment Time, will be for the account of Buyer. Guest room revenues for the night immediately preceding the Closing will be divided equally between Seller and Buyer. Any and all expenses paid by Seller for the period from and after the Adjustment Time will be credited to Seller. Any item that cannot be ascertained with finality (such as utilities for which a final reading cannot be obtained) will be adjusted ratably as of the Adjustment Time. For purposes hereof, the term "Adjustment Time" means 11:59 p.m. Central Time on the day immediately prior to the Closing Date.

(3) Sales and Use Taxes. Seller will be and remain liable for the payment of all sales and use taxes which are payable on account of the operation of the Property for the period of its ownership prior to the Closing Date. Buyer will be and remain liable for the payment of all sales and use taxes which are payable on account of the operation of the Property for the period from and after the Closing Date, including the Closing Date.

(4) Receivables and Payables. All accounts receivable (the "Receivables") relating to the period prior to expiration of the Closing Date, including guest and customer receivables (but excluding guest room revenues and similar items which are to be prorated at Closing as set forth above) will be acquired by Buyer at face value. After the Closing, if Buyer receives any payment on account of the Receivables that it has not purchased, Buyer will promptly remit same to Seller. After the Closing, if Seller receives any payment on account of the Receivables that Buyer has purchased, Seller will promptly remit same to Buyer.

(5) Additional Credits in Favor of Buyer. The following items will be credited against the Purchase Price at Closing: (a) guest deposits for future bookings; and (b) advance deposits and other prepayments received by Seller not covered by item (a) above.

(6) Finality of Pro Rations. All pro rations are final unless provided otherwise herein. Except as expressly provided herein, the purpose and intent as to the provisions of this Agreement relating to pro rations, adjustments and apportionments is that Seller will bear all expenses of ownership and operation of the Property and will receive all income therefrom accruing through midnight at the end of the day preceding the Closing and Buyer will bear all such expenses and receive all such income accruing thereafter.

(7) Items for Which There Will Not be a Pro Ration. Seller and Buyer agree that (a) none of the insurance policies relating to the Property will be assigned to Buyer and Buyer will be responsible for arranging for its own insurance as of the Closing Date; (b) utility services will either be read on the Closing Date or paid and closed as of the Closing Date, and Buyer will be responsible for arranging utilities to be transferred to the name of Buyer on the Closing Date, including the posting of any required deposits; and (c) on the Closing Date, the Property will not be subject to any financing obtained by Seller or its predecessors, and Seller will be entitled to receive from the Property's mortgage lender any escrow deposits, impounds or similar payments made by or for the account of Seller. Accordingly, there will be no pro rations for insurance, utilities, payroll or debt service. In the event a meter reading is unavailable for any particular utility, such utility will be prorated in the manner provided in subsection (2) above.

(8) Employees. As of the moment of Closing, the employees (the "Property Employees") of the Manager operating the Property will cease to work for the Manager, and the Property Employees will become the employees of Buyer (or its property manager). Seller will pay all wages, salaries, accrued vacation pay, pension, if any, and benefits of Property Employees up to and including the day preceding the Closing Date. Buyer will pay all wages, salaries, vacation pay and benefits of Property Employees from and after the Closing Date.

(9) Indemnification. Buyer will indemnify, protect, defend and hold Seller harmless from and against any Claim (including Claims from third parties) in any way arising from and after the Closing Date or from the matters for which Buyer receives a credit or otherwise assumes responsibility pursuant to this Paragraph 6D or the Bill of Sale, Assignment and Assumption.

(10) Survival. This Paragraph 6D will survive the Closing Date.

7. Destruction/Condemnation of Property. In the event that all or any portion of the Land or Improvements is damaged or destroyed by any casualty or by a taking or condemnation under the provisions of eminent domain law after the Effective Date but prior to the Closing Date, Seller will give Buyer prompt written notice ("Casualty/Condemnation Notice") of such casualty or taking, but Seller will have no obligation to repair or replace any damage or destruction caused by the foregoing. Seller will, upon consummation of the transaction herein provided, assign to Buyer all claims of Seller under or pursuant to any casualty insurance coverage, or under the provisions of eminent domain law, as applicable, and all proceeds from any such casualty insurance or condemnation awards received by Seller on account of any such casualty or condemnation, as the case may be (to the extent the same have not been applied by Seller prior to the Closing Date to repair the resulting damage), and there will be no reduction of the Purchase Price (except that in connection with a casualty covered by insurance, Buyer will be credited with the lesser of the remaining cost to repair the damage or destruction caused by such casualty or the amount of the deductible under Seller's casualty insurance policy [except to the extent such deductible was expended by Seller to repair the resulting damage]). In the event the cost of repair or restoration of the damage to such improvements on account of such casualty or condemnation will exceed an amount equal to Five Hundred Thousand and No/100 Dollars (\$500,000.00), either party may, at its option, terminate this Agreement by written notice to the other, given within five (5) Business Days after the delivery of the Casualty/Condemnation Notice (and if the Closing Date falls within such five (5) Business Day period, the Closing Date will be extended until the day after the expiration of such five (5) Business Day period).

8. Representations, Warranties and Covenants.

A. Representations and Warranties of Seller. Seller hereby represents and warrants the following to Buyer:

(1) Authority. As of the date hereof and as of the Closing Date, Seller has all requisite corporate power and authority to execute and deliver, and to perform all of its obligations under, this Agreement, and Seller is qualified to transact business in the State of Illinois.

(2) Due Execution. As of the date hereof and as of the Closing Date, the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Seller and does not and will not (a) require any consent or approval that has not been obtained or (b) violate any provision of Seller's organizational documents.

(3) Enforceability. As of the date hereof and as of the Closing Date, this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting the enforcement of creditors' rights and general equitable principles.

(4) No Bankruptcy or Dissolution. As of the date hereof and as of the Closing Date, no Bankruptcy/Dissolution Event has occurred with respect to Seller. As used herein, a "Bankruptcy/Dissolution Event" means any of the following: (a) the commencement of a case under Title 11 of the U.S. Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy law or other similar law; (b) the appointment of a trustee or receiver of any property interest; (c) an assignment for the benefit of creditors; (d) an attachment, execution or other judicial seizure of a substantial property interest; (e) the taking of, failure to take, or submission to any action indicating an inability to meet its financial obligations as they accrue; or (f) a dissolution or liquidation.

B. Representations and Warranties of Buyer. Buyer hereby represents and warrants the following to Seller as of the date hereof and as of the Closing Date:

(1) Authority. Buyer has all requisite power and authority to execute and deliver, and to perform all its obligations under this Agreement.

(2) Due Execution. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of Buyer and does not and will not (a) require any consent or approval that has not been obtained or (b) violate any provision of Buyer's organizational documents.

(3) Enforceability. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting the enforcement of creditors' rights and general equitable principles.

(4) No Bankruptcy/Dissolution Event. No Bankruptcy/Dissolution Event has occurred with respect to Buyer, or if any permitted assignee of Buyer is a partnership, any of the general partners in Buyer, or if Buyer is a limited liability company, any of the managing members of Buyer. Buyer has sufficient capital or net worth to meet its obligations, including payment of the Purchase Price, under this Agreement.

(5) Patriot Act. Buyer has at all times been in compliance with and will continue to be in compliance through the Closing Date with (a) the Patriot Act, Pub. L. No. 107-56, the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*, the Money Laundering Control Act of 1986, and laws relating to the prevention and detection of money laundering in 18 U.S.C. §§ 1956 and 1957; (b) the Export Administration Act (50 U.S.C. §§ 2401-2420), the International Emergency Economic Powers Act (50

U.S.C. § 1701, *et seq.*), the Arms Export Control Act (22 U.S.C. §§ 2778-2994), the Trading With The Enemy Act (50 U.S.C. app. §§ 1-44), and 13 U.S.C. Chapter 9; (c) the Foreign Asset Control Regulations contained in 31 C.F.R., Subtitle B, Chapter V; and (d) any other civil or criminal federal or state laws, regulations, or orders of similar import.

(6) Buyer Parties. None of the Buyer Parties (as defined below) is now or shall be at any time until the Closing Date be a person who has been listed on (i) the Specially Designated and Blocked Persons List contained in Appendix A to 31 C.F.R., Subtitle B, Part V; (ii) the Denied Persons List, the Entity List, and the Unverified Parties List maintained by the United States Department of Commerce; (iii) the List of Terrorists and List of Debarred Parties maintained by the United States Department of State; and (iv) any other similar list maintained by any federal or state agency or pursuant to any Executive Order of the President of the United States of America. "Buyer Parties" means, collectively, (a) Buyer, (b) its officers, directors, managers, agents, and employees, (c) its shareholders, members, partners, and other investors, or any other person that owns or controls Buyer, and (d) any entity on whose behalf Buyer acts.

C. Survival. Any cause of action with respect to a breach of the representations and warranties set forth in subparagraphs A and B above will survive for a period of three (3) months from the Closing Date, at which time such representations and warranties (and any cause of action resulting from a breach thereof not then in litigation) will terminate.

D. Knowledge as a Defense. Seller will have no liability with respect to a breach of the representations and warranties set forth in subparagraph A above to the extent that Buyer proceeds with the closing of the transaction contemplated hereby with actual knowledge of such breach.

E. Certain Limitations. Notwithstanding anything to the contrary in this Agreement and without limitation upon the limitations elsewhere in this Agreement: (1) neither Seller nor Buyer ("Benefiting Party") will make a Claim against the other (the "Non-Benefiting Party") for damages for breach or default of any representation or warranty under this Paragraph 8 or any other breach hereof (except for a breach or default under Paragraph 5 or 11A hereof), unless the amount of any and all such Claims, in the Benefiting Party's reasonable opinion, exceeds, in the aggregate, an amount equal to Twenty-Five Thousand Dollars (\$25,000) (the "Materiality Threshold"); and (2) under no circumstances will Seller be liable to Buyer on account of this Agreement, any covenant, representation, warranty, or indemnification obligation herein, any document executed in connection with this Agreement or any transaction or matter contemplated hereby, in an aggregate amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000). Nothing in the foregoing provisions of this Paragraph 8B is intended to limit the effect of the remedies provided for in Paragraph 3C with respect to a breach of this Agreement prior to the Closing. In the event of a breach of this Agreement, the Benefiting Party will not be entitled to recover consequential damages.

F. Certain Interim Covenants of Seller. Until the Closing Date or the sooner termination of this Agreement:

(1) Property Operation and Maintenance. Seller will operate and maintain the Property in substantially the same manner as prior hereto pursuant to its normal course of business (such operation and maintenance obligation not including capital expenditures or expenditures not incurred in such normal course of business), subject to reasonable wear and tear and further subject to destruction by casualty or eminent domain or other events beyond the control of Seller, including changes in laws, rules, ordinances and regulations.

(2) Service Contracts and Agreements. Following expiration of the Due Diligence Period, Seller will not enter into any additional service contracts, equipment leases or other similar agreements affecting the Property without the prior consent of Buyer (not to be unreasonably withheld or delayed); provided, however, that Seller may, without the consent of Buyer, enter into service contracts, equipment leases and agreements which are cancelable on thirty (30) days' notice without penalty.

G. Franchisor Consent. Seller will cooperate with Buyer's effort to obtain the consent (the "Franchisor Consent") of Franchisor to issuance of a franchise or license (the "New License") to Buyer. In connection therewith, Buyer acknowledges that it understands the requirements for issuance of the New License, and Buyer will promptly satisfy the reasonable requests of Franchisor made in connection therewith. Within one (1) business day after Buyer receives the Uniform Franchise Offering Circular (the "UFOC"), Buyer will provide written notice to Seller and Franchisor that it has received the UFOC. Buyer will make all submissions required by or relating to the UFOC in a timely manner in order to obtain Franchisor's Consent. Buyer shall abide by all UFOC-required timeframes for submission of information and execution and delivery of all required UFOC documentation; provided, however, that if such timeframes are longer than those required by applicable law, then Buyer shall abide by the timeframes required by applicable law. In all events, Buyer will work diligently and use all best efforts to obtain the Franchisor Consent. In the event that Buyer is unable to obtain the Franchisor Consent by the Closing Date through no default of Buyer, this Agreement shall terminate, in which event the terms of Paragraph 3C shall apply and Buyer will not be entitled to a return of the Deposit. If Buyer defaults in its obligations under this Paragraph 8G, the terms of Paragraph 3C shall apply.

9. DISCLAIMER AND RELEASE. AS AN ESSENTIAL INDUCEMENT TO SELLER TO ENTER INTO THIS AGREEMENT, BUYER ACKNOWLEDGES, UNDERSTANDS AND AGREES AS OF THE DATE HEREOF AND AS OF THE CLOSING DATE AS FOLLOWS:

A. DISCLAIMER.

(1) AS-IS, WHERE-IS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN PARAGRAPH 8A OR THE DEED, THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS, WHERE IS" BASIS AND THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY OR ANY OTHER MATTER WHATSOEVER.

(2) INVESTIGATIONS. BUYER HAS OR WILL HAVE ADEQUATE OPPORTUNITY TO COMPLETE ALL PHYSICAL AND FINANCIAL EXAMINATIONS RELATING TO THE ACQUISITION OF THE PROPERTY HEREUNDER IT DEEMS NECESSARY, AND WILL ACQUIRE THE SAME SOLELY ON THE BASIS OF SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER (OTHER THAN AS EXPRESSLY PROVIDED IN PARAGRAPH 8A OR IN THE DEED). BUYER HEREBY ASSUMES THE RISK THAT ADVERSE PAST, PRESENT OR FUTURE PHYSICAL CHARACTERISTICS AND CONDITIONS MAY NOT HAVE BEEN REVEALED BY ITS INSPECTIONS OR INVESTIGATIONS.

(3) NAME. BUYER ACKNOWLEDGES THAT SELLER DOES NOT HAVE EXCLUSIVE RIGHTS TO USE THE NAME "COUNTRY INN & SUITES MATTESON" OR ANY SIMILAR NAME.

B. RELEASE. BUYER RELEASES SELLER AND ALL SELLER RELATED PARTIES FROM ALL CLAIMS WHICH BUYER OR ANY PARTY RELATED TO OR AFFILIATED WITH BUYER (A "BUYER RELATED PARTY") HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE PROPERTY (EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN PARAGRAPH 8A AND THOSE OBLIGATIONS OF SELLER UNDER THIS AGREEMENT WHICH ARE EXPRESSLY INTENDED TO SURVIVE THE CLOSING), INCLUDING, WITHOUT LIMITATION, THE DOCUMENTS AND INFORMATION REFERRED TO HEREIN, ANY CONSTRUCTION DEFECTS, ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE PROPERTY AND ANY ENVIRONMENTAL CONDITIONS, AND BUYER WILL NOT LOOK TO ANY SELLER RELATED PARTIES IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN PARAGRAPH 8A OR THE DEED AND THOSE OBLIGATIONS OF SELLER UNDER THIS AGREEMENT WHICH ARE EXPRESSLY INTENDED TO SURVIVE THE CLOSING. THIS RELEASE WILL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. BUYER MAY HAVE NO REMEDY AGAINST SELLER'S PREDECESSORS (IF ANY).

C. SURVIVAL. THIS PARAGRAPH 9 WILL SURVIVE THE TERMINATION OF THIS AGREEMENT OR THE CLOSING DATE AND WILL NOT BE DEEMED TO HAVE MERGED INTO ANY OF THE DOCUMENTS EXECUTED OR DELIVERED AT CLOSING. TO THE EXTENT REQUIRED TO BE OPERATIVE, THE DISCLAIMERS OR WARRANTIES CONTAINED HEREIN ARE "CONSPICUOUS" DISCLAIMERS FOR PURPOSES OF ANY APPLICABLE LAW, RULE, REGULATION OR ORDER.

INITIALS OF BUYER

10. Conditions to Closing.

A. Seller's Conditions to Closing. In addition to the conditions provided in other provisions of this Agreement, Seller's obligations to perform its undertakings provided in this Agreement (including its obligation to sell the Property) are conditioned on the following:

(1) Performance by Buyer. The due performance by Buyer of each and every undertaking and agreement to be performed by it hereunder (including the delivery to Seller of the items specified to be delivered by Buyer in Paragraph 6 hereof).

(2) No Bankruptcy or Dissolution. That at no time on or before the Closing Date will any Bankruptcy/Dissolution Event have occurred with respect to Buyer, and if Buyer is a partnership, any general partners of Buyer.

(3) Accuracy of Representations and Warranties. The representations and warranties of Buyer that must be true and correct as of the Closing Date are true and correct in all material respects.

B. Buyer's Conditions to Closing. In addition to the conditions provided in other provisions of this Agreement, Buyer's obligations to perform its undertakings provided in this Agreement (including its obligation to purchase the Property) are conditioned on the following:

(1) Performance by Seller. The due performance by Seller of each and every undertaking and agreement to be performed by it hereunder (including the delivery to Buyer of the items specified to be delivered by Seller in Paragraph 6) and the material truth of each representation and warranty made by Seller in this Agreement as of the date such representation must be true and correct (i.e., on the date of this Agreement or on the Closing Date or on both such dates as expressly provided herein); provided, however, that this condition to Closing shall not apply in the event of a breach of any material representations or warranties involving monetary obligations that do not, in the aggregate, exceed the Materiality Threshold. In the event a material change of circumstances occurs through no fault of Seller on or prior to the Closing Date which causes any of Seller's representations or warranties set forth in subparagraph 8A above to become materially untrue or if a breach or default by Seller causes any of Seller's covenants to be materially untrue (a "Change of Circumstances"), Seller will have a period of thirty (30) days from the date of the discovery by Seller of such Change of Circumstances to cure such untrue fact, condition or covenant (and the Closing Date will be extended to accommodate such cure period). In the event that Seller does not cure such Change of Circumstances within such thirty (30) day period, Buyer will have the right, as Buyer's sole and exclusive remedies hereunder for such failure, either (a) to terminate this Agreement by written notice to Seller, in which case, this Agreement will be null and void and of no further force or effect and the parties hereto will have no further obligations to the other and the Deposit will be refunded to Buyer, or (b) to waive the foregoing right of termination and all other rights and remedies on account of such breach or default and to close the transaction contemplated by this Agreement.

(2) No Bankruptcy or Dissolution. That at no time on or before the Closing Date will a Bankruptcy/Dissolution Event have occurred with respect to Seller.

(3) Franchisor Consent. Buyer has received the Franchisor Consent.

(4) Receipt of Required Licenses and Permits. The receipt from Seller or the relevant authorities, as applicable, of all licenses and permits required to operate the property as it is currently operated.

11. Miscellaneous.

A. Brokerage Issues. Except for HREC Investment Advisors ("Broker"), to which a commission will be paid by Seller pursuant to a separate agreement, Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller, that no broker or finder has been engaged by it, respectively, in connection with any of the transactions contemplated by this Agreement or to its knowledge is in any way connected with any of such transactions. In the event of a claim for broker's or finder's fee or commissions in connection herewith, then Seller will indemnify, protect, defend and hold Buyer harmless from and against the same if it will be based upon any statement or agreement alleged to have been made by Seller, and Buyer will indemnify, protect, defend and hold Seller harmless from and against the same if it will be based upon any statement or agreement alleged to have been made by Buyer.

B. Limitation of Liability. No present or future partner, member, manager, director, officer, shareholder, employee, advisor, affiliate or agent of or in Seller or any affiliate of Seller, including,

without limitation, Oaktree Capital Management, L.P. and Montclair Hotel Investors, LLC, will have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or in connection with the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Buyer and its successors and assigns and, without limitation, all other persons and entities, will look solely to Seller and Seller's interest in the Property for the payment of any claim or for any performance, and Buyer hereby waives any and all such personal liability. For purposes of this subparagraph B, no negative capital account or any contribution or payment obligation of any partner or member in Seller will constitute an asset of Seller. The limitations of liability contained in this Paragraph will survive the termination of this Agreement or the Closing Date, as applicable, and are in addition to, and not in limitation of, any limitation on liability applicable to Seller provided elsewhere in this Agreement or by law or by any other contract, agreement or instrument.

C. Successors and Assigns. Buyer may not assign or transfer its rights or obligations under this Agreement (or make an offer or enter into negotiations to do so) without the prior written consent of Seller (in which event such transferee will assume in writing all of the transferor's obligations hereunder, but such transferor will not be released from its obligations hereunder). Any change in control or majority ownership of Buyer constitutes an assignment for purposes of this subparagraph. No consent given by Seller to any transfer or assignment of Buyer's rights or obligations hereunder will be construed as a consent to any other transfer or assignment. No transfer or assignment in violation of the provisions hereof will be valid or enforceable. Subject to the foregoing, this Agreement and the terms and provisions hereof will inure to the benefit of and will be binding upon the successors and assigns of the parties.

D. Notices. Any notice which a party is required or may desire to give the other party will be in writing and may be delivered (1) personally, (2) by United States registered or certified mail, postage prepaid, (3) by Federal Express or other reputable courier service regularly providing evidence of delivery (with charges paid by the party sending the notice); or (4) by telecopy. Any such notice will be addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given):

To Buyer:

c/o Jeffrey L. Janik, Esq.
Law Offices of Smith & Janik, LLC
326 East Main Street
P.O. Box 268
Twin Lakes, WI 53181
(262)877-8585 (facsimile)

To Seller:

c/o Montclair Hotel Investors, LLC
2801 Lakeside Drive
Suite 208
Bannockburn, Illinois 60015
Attention: Mr. Peter Cyrus and Mr. Dennis Langley
Telephone: (847) 457-3900
Telecopier: (847) 457-3901

With Copies To:

c/o Oaktree Capital Management, L.P.
1301 Avenue of the Americas
34th Floor
New York, New York 10019
Attention: Mr. Philip A. Hofmann
Telephone: (212) 284-1978
Telecopier: (212) 284-1905

c/o Oaktree Capital Management, L.P.
333 South Grand Avenue
28th Floor
Los Angeles, California 90071
Attention: Cary Kleinman, Esq.
Telephone: (213) 830-6316
Telecopier: (213) 830-6392

And With Copy To:

The Stejkowski Law Firm, LLC
211 North Clinton Street
Chicago, Illinois 60661
Attn: Real Estate Notices
Telephone: (312) 373-7242
Telecopier: (312) 212-5557

To Title Company:

River West National Title & Escrow LLC
211 North Clinton Street, Second Floor
Chicago, Illinois 60661
Attention: Meagan Williams
Telephone: (312) 646-1293
Telecopier: (312) 261-8022

Any notice so given by mail will be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be. Any such notice not so given will be deemed given upon actual receipt of the same by the party to whom the same is to be given. Notices may be given by facsimile transmission and will be deemed given upon the actual receipt of the same by the individual to which they are addressed. The attorneys for any party hereto will be entitled to provide any notice that a party desires to give or is required to give hereunder.

B. Legal Costs. In the event any action be instituted by a party to enforce this Agreement, the prevailing party in such action (as determined by the court, agency or other authority before which such suit or proceeding is commenced), will be entitled to such reasonable attorneys' fees, costs and expenses as may be fixed by the decision maker. The foregoing includes, but is not limited to, reasonable attorneys' fees, expenses and costs of investigation incurred in (1) appellate proceedings; (2) in any post-judgment proceedings to collect or enforce the judgment; (3) establishing the right to indemnification; and (4) any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code (11 United States Code Sections 101 *et seq.*), or any successor statutes. This provision is separate and several and will survive the consummation of the transaction contemplated by Agreement or the earlier termination of this Agreement.

F. Confidentiality. The terms of the transfers contemplated in this Agreement, including the Purchase Price and all other financial terms, as well as the information discovered by Buyer and its agents in connection with its due diligence investigation of the Property will remain confidential and will not be disclosed by either party hereto without the written consent of the other except (1) to such party's directors, officers, partners, shareholders, members, employees, legal counsel, lenders, investors, accountants, engineers, architects, financial advisors and similar professionals and consultants to the extent such party deems it necessary or appropriate in connection with the transaction contemplated hereunder (and such party will inform each of the foregoing parties of such party's obligations under this Paragraph); or (2) as otherwise required by law or regulation. Each party will indemnify, defend and hold the other party harmless from and against any Claims arising from a breach by it of this Paragraph. The restrictions in this Paragraph will survive a termination of this Agreement but will terminate upon the purchase of the Property by Buyer.

G. Further Instruments. Each party will, whenever and as often as it will be requested so to do by the other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Agreement.

H. Matters of Construction.

(1) Incorporation of Exhibits. All exhibits attached and referred to in this Agreement are hereby incorporated herein as fully set forth in (and are deemed a part of) this Agreement.

(2) Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

(3) Time of the Essence. Subject to subparagraph (4) below, time is of the essence of this Agreement.

(4) Non-Business Days. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a day that is not a Business Day, then such period (or date) will be extended until the immediately following Business Day. As used herein, "Business Day" means any day other than a Saturday, Sunday or federal holiday.

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

(6) Interpretation. Words used in the singular will include the plural, and vice-versa, and any gender will be deemed to include the other. Whenever the words "including," "include" or "includes" are used in this Agreement, they should be interpreted in a non-exclusive manner. The captions and headings of the Paragraphs of this Agreement are for convenience of reference only, and will not be deemed to define or limit the provisions hereof. Except as otherwise indicated, all Exhibit and Paragraph references in this Agreement will be deemed to refer to the Exhibits and Paragraphs in this Agreement. Each party acknowledges and agrees that this Agreement (a) has been reviewed by it and its counsel; (b) is the product of negotiations between the parties, and (c) will not be deemed prepared or drafted by any one party.

(7) No Waiver. Waiver by one party of the performance of any covenant, condition or promise of the other party will not invalidate this Agreement, nor will it be deemed to be a waiver by such party of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature). No failure or delay by one party to exercise any right it may have by reason of the default of the other party will operate as a waiver of default or modification of this Agreement or will prevent the exercise of any right by such party while the other party continues to be so in default.

(8) Consents and Approvals. Except as otherwise expressly provided herein, any approval or consent provided to be given by a party hereunder may be given or withheld in the absolute discretion of such party.

(9) Governing Law. SUBJECT TO SUBPARAGRAPH M BELOW, THE PROVISIONS OF WHICH SHALL CONTROL OVER THIS GRAMMATICAL PARAGRAPH, THIS AGREEMENT WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO CONFLICTS OF LAW).

(10) Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, Seller and Buyer do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party (express or implied), and no third party will be entitled to enforce or otherwise will acquire any right, remedy or benefit by reason of any provision of this Agreement.

(11) Amendments. This Agreement may be amended by written agreement of amendment executed by all parties, but not otherwise.

(12) Survival. Unless otherwise expressly provided for in this Agreement, the representations, warranties, covenants and conditions of the parties set forth in this Agreement will not survive the consummation of the transaction contemplated by this Agreement and the delivery and recordation of the Deed. Notwithstanding the foregoing, (a) all indemnification obligations in this Agreement will survive the closing of the transaction on the Closing Date (subject to any survival limitation periods provided expressly in this Agreement); and (b) the indemnification obligations set forth in Paragraphs 5 and 11A and 11F will survive the termination of this Agreement.

I. Intentionally Omitted.

J. Buyer's Delivery of Certain Information. In the event the transaction contemplated hereby shall fail to close for any reason other than a default by Seller hereunder, Buyer shall, at its expense, promptly deliver to Seller (1) all existing originals and copies of the written information and materials supplied to Buyer by Seller or their respective agents, including without limitation the Property Documents; and (2) true, accurate and complete copies of any written information concerning the Property prepared by or on behalf of Buyer in connection with its investigations hereunder (including any reports, audits and appraisals prepared by any third parties). Seller shall not hold Buyer responsible for the accuracy of any information prepared by third parties and delivered to Seller in connection with this Paragraph.

K. Post-Closing Access. For a period of six (6) months subsequent to the Closing Date, Seller and its employees, agents and representatives will be entitled to access during business hours to all documents, books and records given to Buyer by Seller at the Closing for tax and audit purposes, regulatory compliance, and cooperation with governmental investigations upon reasonable prior notice to Buyer, and will have the right to make copies of such documents, books and records at Seller's expense.

L. Indemnification Obligations. If the Closing occurs, then the parties will have the following respective indemnification obligations:

(1) The party seeking indemnification ("Indemnitee") will notify the other party ("Indemnitor") of any Claim against Indemnitee within forty-five (45) days after it has notice of such Claim, but failure to notify Indemnitor will in no case prejudice the rights of Indemnitee under this Agreement unless Indemnitor will be prejudiced by such failure and then only to the extent of such prejudice. Should Indemnitor fail to discharge or undertake to defend Indemnitee against such liability (with counsel approved by Indemnitee), within thirty (30) days after Indemnitee gives Indemnitor written notice of the same, then Indemnitee may settle such Claim, and Indemnitor's liability to Indemnitee will be conclusively established by such settlement, the amount of such liability to include both the settlement consideration and the reasonable costs and expenses, including attorneys' fees, incurred by Indemnitee in effecting such settlement. Indemnitee will have the right to employ its own counsel in any such case, but the fees and expenses of such counsel will be at the expense of Indemnitee unless: (a) the employment of such counsel will have been authorized in writing by Indemnitor in connection with the defense of such action, (b) Indemnitor will not have employed counsel reasonably satisfactory to Indemnitee to direct the defense of such action, or (c) Indemnitee will have reasonably concluded that there may be defenses available to it which are different from or additional to those available to Indemnitor (in which case Indemnitor will not have the right to direct the defense of such action or of Indemnitee), in any of which events such fees and expenses will be borne by Indemnitor.

(2) The indemnification obligations under this Agreement will cover the costs and expenses of Indemnitee, including reasonable attorneys' fees, related to any actions, suits or judgments incident to any of the matters covered by such indemnities.

(3) The indemnification obligations under this Agreement will also extend to any present or future advisor, trustee, director, officer, partner, member, manager, employee, beneficiary, shareholder, fiduciary, participant or agent of or in Indemnitee or any entity now or hereafter having a direct or indirect ownership interest in Indemnitee.

M. DISPUTE RESOLUTION. DISPUTES SHALL BE HEARD AND DETERMINED BY A COURT OF LAW PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS IN EFFECT AS OF THE DATE HEREOF. THE VENUE OF ANY PROCEEDING HEREUNDER SHALL BE IN LAKE COUNTY, ILLINOIS (UNLESS CHANGED BY A LAWFUL COURT ORDER).

O. No Recordation. In no event will this Agreement or any document or other memorandum related to the subject matter of this Agreement be recorded without the consent of Seller.

P. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to constitute an original, but all of which, when taken together, will constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.

Q. Property of Guests and Lessees. All baggage, parcels, or property checked or left in the care of Seller by guests or lessees now or formerly in the Hotel will be sealed and listed in any inventory prepared jointly by Seller and Buyer as of the Closing Date and initialed by Seller and Buyer. Buyer will be responsible from and after the Closing for all items listed in such inventory and, where the seals have been broken after the Closing, for the contents thereof.

THE SUBMISSION OF THIS AGREEMENT FOR EXAMINATION IS NOT INTENDED TO NOR WILL CONSTITUTE AN OFFER TO SELL, OR A RESERVATION OF, OR OPTION OR PROPOSAL OF ANY KIND FOR THE PURCHASE OF THE PROPERTY. IN NO EVENT WILL ANY DRAFT OF THIS AGREEMENT CREATE ANY OBLIGATION OR LIABILITY, IT BEING UNDERSTOOD THAT THIS AGREEMENT WILL BE EFFECTIVE AND BINDING

ONLY WHEN A COUNTERPART HEREOF HAS BEEN EXECUTED AND DELIVERED BY EACH PARTY HERETO AND THE DEPOSIT IS DELIVERED TO SELLER.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

CHICAGO SUITES, L.L.C.,
a Delaware limited liability company

By: Chicago Suites Holdings, L.L.C., its sole managing member

By: Oaktree Capital Management, L.P.,
its Manager

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

BUYER:

By: Chiko Enterprise, Inc.

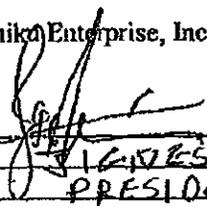
By: 
Name: JIGNESH JAGARIA
Title: PRESIDENT

Exhibit C