

## CATERING AND CONCESSIONAIRE AGREEMENT

THIS CATERING AND CONCESSIONAIRE AGREEMENT (the "Agreement") is entered into this 5<sup>th</sup> day of May, 2009 by and between THE CITY OF MODESTO, a public body, corporate and politic ("CITY") and Modesto Hospitality Lessee, LLC, a Delaware limited liability company. ("DOUBLETREE") based on the following facts.

### RECITALS

- A. The master planned development known as "Modesto Centre Plaza" includes, among other things, a Community/Convention Center ("CENTER"). The CENTER was built by the City of Modesto Redevelopment Agency ("CITY OF MODESTO REDEVELOPMENT AGENCY"). The CENTER is managed by CITY. It is CITY's intent that the CENTER be known and used as a destination conference center. DOUBLETREE owns and manages the hotel (the "Hotel") which is included as part of Modesto Centre Plaza.
- B. CITY desires that DOUBLETREE provide catering and concessionaire services for the CENTER in accordance with the terms of this Agreement.
- C. DOUBLETREE agrees to perform catering and concessionaire services for the CENTER in accordance with the terms of this Agreement.

NOW, THEREFORE, CITY and DOUBLETREE agree as follows:

1. Term. The term of this Agreement will commence upon May 5, 2009. The term of this Agreement shall expire on the tenth (10<sup>th</sup>) anniversary of the Commencement Date. DOUBLETREE and CITY shall have the right to mutually agree to extend the term of this Agreement for a total of three (3) consecutive ten (10) year extension terms on the same terms and conditions as set forth herein. DOUBLETREE and CITY must exercise their right to extend the term of this Agreement for a particular renewal period on or before one hundred and eighty (180) days preceding the expiration of the expiring initial term or any renewal terms (as applicable).
2. Catering Services. As used in this Agreement, the term "Catering Services" shall mean the preparation and serving of food and non-alcoholic beverages at a per-plate, per-person or per-order charge at the CENTER, regardless of the event, including, without limitation, banquets, meetings, conferences, exhibits, trade

shows, concerts and any other uses of the CENTER. DOUBLETREE will have the exclusive right to provide all catering services at the CENTER. For purposes of this Agreement, the term "CENTER" shall refer to only those facilities included in the Modesto Centre Plaza project and managed by City as of December 29, 1988. Any expansions made to the Modesto Centre Plaza after that date and which are managed by City shall not be subject to this agreement.

3. Concessionaire Services.

- a. As used in this Agreement, the term "concessionaire services" shall mean the preparation and sale of food and non-alcoholic beverages, directly to the customer, at a per-item charge and the preparation and sale of all alcoholic beverages (whether sold at a per-item charge or otherwise).
- b. DOUBLETREE shall have the exclusive right to provide all concessionaire services in the CENTER. For purposes of this Agreement, the term "CENTER" shall refer to only those facilities included in the Modesto Centre Plaza project and managed by City as of December 29, 1988. Any expansions made to the Modesto Centre Plaza after that date and which are managed by City shall not be subject to this Agreement.

4. Audiovisual Services. DOUBLETREE agrees to arrange for and bill CENTER users for audiovisual services when the DOUBLETREE signs a use license for the CENTER on behalf of the user.

5. Cleanup, Setup, and Equipment.

- a. DOUBLETREE shall maintain a proper state of cleanliness in the CENTER kitchen and in the program areas promptly following every event in which DOUBLETREE provides Catering and Concessionaire Services.
- b. DOUBLETREE shall clean the program areas including wipe down of all tables and chairs, removal of equipment and supplies to their proper places, and clear and dispose of all paper products and garbage promptly following an event in which DOUBLETREE provides Catering and Concessionaire Services.
- c. DOUBLETREE shall perform and supply program setup and serving equipment for all events in which DOUBLETREE provides Catering and Concessionaire Services, including linens, napkins, and plastic or paper materials when applicable, all flatware, glassware, dishware, and any other serving ware needed to serve a meal.
- d. CITY will provide janitorial and pest control services for the program and common areas on a routine basis, including but not limited to vacuuming

and thorough cleaning of all floor areas. DOUBLETREE shall provide and pay for all necessary trash facilities and pick-up services for the catering and concession operations. If extra pick-up services are required due to trash generated at the CENTER from other than catering and concession operations, which pick-up is outside the normal cycle of pick-up, the cost of said extra pick-up shall be shared equally by the CITY and DOUBLETREE.

- e. CITY will provide the setup and breakdown of oblong and round tables and chairs for the space in use in adequate time for DOUBLETREE to set up the room, and the CITY shall provide the setup and breakdown of all program equipment, including but not limited to tables, chairs, staging, trash receptacles and any sound or lighting equipment used in the program event.
  - f. Pursuant to the provisions of paragraph 8, DOUBLETREE shall have the use of the CITY equipment as shown on Exhibit A. The repair, replacement and maintenance responsibility of DOUBLETREE with regard to said equipment is also set forth in paragraph 8.
6. Prices. DOUBLETREE will have the right to determine food and beverage prices for the Concessionaire Services and Catering Services provided by the DOUBLETREE. DOUBLETREE agrees that food and beverage prices charged for events in the CENTER shall be no greater than those prices charged by DOUBLETREE for events at the hotel.
7. Non-Profit Organizations.
- a. Notwithstanding anything contained in this Agreement to the contrary, non-profit organizations, to include 501 (c) (3) and (4) tax status groups, governmental bodies, and public educational institutions, will be allowed to: (1) prepare their own food items in the CENTER's kitchen if the food items are prepared by the non-profit organization's members; and (2) supply their own donated alcoholic beverages for hosted functions provided such non-profit organizations pay any corkage fees established by DOUBLETREE from time to time. On those days and at those times when such non-profit organizations are using the CENTER's kitchen facilities, such non-profit organizations shall have exclusive use of such facilities. Such non-profit organizations will clean the program areas and the CENTER's kitchen after each such use.
  - b. For each non-profit use of the CENTER's kitchen, CITY will pay DOUBLETREE \$100.00 for utilities.

- c. Each non-profit organization that fails to adequately clean the CENTER's kitchen following such use will be assessed a \$400.00 cleaning fee by CITY, which amount CITY will then pay to DOUBLETREE.
- d. The utility and cleaning payments described in b and c above shall be subject to review after June, 2011, and every two (2) years thereafter.

8. Kitchen Facilities.

- a. CITY has constructed a modern kitchen facility in the CENTER for the preparation and delivery of food and beverages. DOUBLETREE shall have the exclusive use of said kitchen facility during the term of this Agreement subject to periodic use of said facilities by non-profit organizations as set forth in paragraph 7. In consideration of being allowed the use of the kitchen facilities and equipment on an exclusive basis (subject to the provisions of paragraph 7), DOUBLETREE agrees to repair, maintain and replace such facilities and equipment and maintain it in first-class condition, normal wear and tear accepted. CITY shall have access to the kitchen at all times for the purpose of inspecting said facilities and equipment. DOUBLETREE shall promptly, within thirty (30) days after receiving written notice to that effect from CITY, maintain, repair or replace those items of equipment that CITY determines require such maintenance, repair or replacement. Any items of equipment that are replaced by DOUBLETREE pursuant to this paragraph shall become the property of CITY.

Annually, on or near the anniversary date of the commencement date of this Agreement, CITY and DOUBLETREE will inspect the kitchen facility and the CITY equipment that is listed in Exhibit A. Based upon this inspection the CITY will issue a list of required repairs and/or replacement items for the kitchen, its equipment, and the equipment in Exhibit A. DOUBLETREE shall promptly, within thirty (30) days after receiving this written notice from CITY, maintain, repair or replace those items of equipment that CITY determines require such maintenance, repair or replacement.

- b. DOUBLETREE will use the kitchen and CENTER in compliance with all applicable regulations, and shall provide regular janitorial services to the kitchen area at its sole cost and expense.
- c. DOUBLETREE shall have the right, subject to CITY approval, to alter or add to the kitchen equipment and facilities. Hereafter, all such modifications or additions shall be the property of the CITY. The costs of

installation, equipment costs, any building modifications, rewiring, plumbing, moving of doors or walls, or permit, etc., shall be at the sole expense of DOUBLETREE.

- d. On or after May 5, 2011, the CITY and DOUBLETREE will review and discuss the replacement of kitchen facilities that are mutually agreed to be beyond repair. At that time, the parties will consider jointly funding the replacement of kitchen facilities requiring replacement.
  - e. With respect to the Wolf Char Broiler and the Cres-Cor Crown X Double Cook Oven, these items shall be reviewed for replacement in 2011.
  - f. The City agrees to remove the Groen pressure less steamer and the deep fat fryer from Exhibit A to this Agreement.
  - g. CITY agrees to convert the cold table to a prep table only.
9. Licenses. DOUBLETREE, at the expense of DOUBLETREE and in cooperation with CITY, shall obtain and maintain necessary governmental licenses to deliver and sell alcoholic beverages, food and other items to be provided under this Agreement within the CENTER.
10. Utilities and Other Services. DOUBLETREE shall pay for all separately metered gas and electricity charges. CITY shall pay for all other utility charges for the CENTER. However, in the event the CITY at some future time determines to provide water to CENTER on a metered basis, CITY shall install a water meter in the CENTER kitchen. Thereafter, DOUBLETREE shall pay for all such separately metered water supplied to the CENTER kitchen.
11. Hours of Use. DOUBLETREE shall have twenty four (24) hour access to the CENTER for purposes of delivering services under this Agreement. DOUBLETREE shall have access to the CENTER for showing to customers whenever CENTER employees are present. DOUBLETREE shall coordinate customer viewing with CENTER staff to avoid unreasonable interference with existing activities.
12. Insurance. CITY shall insure the CENTER for risks of physical damage provided by it under the terms of an all-risk insurance policy excluding earthquake and flood coverage. DOUBLETREE shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the CITY as may be required by the Risk Manager of the CITY. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the

policy, notices of same shall be given to the Risk Manager of the CITY by certified mail, return receipt requested, for all of the following stated insurance policies. From time to time during the term of this Agreement or any extensions to it, CITY's Risk Manager may at CITY's sole discretion reasonably require that DOUBLETREE provide additional limits of insurance or coverages which are then customary for vendors providing services similar to DOUBLETREE's services under this Agreement in California.

- a. Workers' Compensation, in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.
- b. General Liability insurance with a minimum limit of liability per occurrence of \$5,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury and property damage. DOUBLETREE may fulfill this obligation by maintaining a so-called "blanket" policy of insurance provided the coverage afforded the CITY will not be reduced or diminished and the requirement set forth herein shall otherwise be satisfied by such blanket policy or policies. This insurance shall indicate the limit applying to the premises and operations; contractual liability coverage; and products and complete operations as applicable.
- c. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. This insurance shall cover any automobile for bodily injury and property damage.

If at any time any of said policies shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, DOUBLETREE shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of DOUBLETREE to furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of the CITY, may be forthwith declared suspended or terminated. Failure of DOUBLETREE to obtain and/or maintain any required insurance shall not relieve DOUBLETREE from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of DOUBLETREE concerning indemnification. The CITY, its agents, officers, employees, and volunteers shall be named as an additional insureds on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the CITY, its agents,

officers and employees likewise for losses arising from work performed by DOUBLETREE for the CITY and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the CITY's Risk Manager. DOUBLETREE must deliver certificates evidencing existence of the insurance listed above to the CITY prior to the time the contract is signed.

DOUBLETREE shall provide CITY with separate endorsements evidencing proof of the CITY's additional insured status as to the general liability insurance policy. In addition, DOUBLETREE shall provide CITY with a Workers' Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to this Agreement, DOUBLETREE's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees or volunteers shall be excess of DOUBLETREE's insurance and shall not contribute with it.

13. Requirements for Concession Services.

- a. Knowledge, Experience, and Professional Association. The DOUBLETREE will have on staff at all times at least one individual who is a member of the National Association of Concessionaires, has completed their Concession Manager Certification Program, and attends this organization's annual conference. This individual will make visits to other convention, conference, or exhibition centers to observe their concession operations. It will be the responsibility of this individual to be up to date on contemporary concession food items and equipment. The DOUBLETREE may hire an individual and provide this training if they do not already possess it.
- b. Unlimited Access to Products. DOUBLETREE realizes that some quality and service level standards for catering service are not necessarily the same for concessions service. They will design service and quality standards that are specific to concessions services. This will be done with the goals of increasing both concession sales and customer satisfaction. Towards this end it is understood that the DOUBLETREE, from time to time, may have to purchase food, beverages, and food service products that are not provided by approved DOUBLETREE vendors.

- c. Sales Records. To be able to better serve CENTER customers and maximize revenue, the DOUBLETREE will keep records for every concessions operation. These records will include the pricing, income, and amount sold for every item offered and per capita calculations based upon the estimated attendance as established by the CENTER.
- d. Equipment. The DOUBLETREE realizes that specialized concessions equipment is needed to maximize revenue and customer satisfaction. Towards this end they will acquire, at their cost, all equipment needed to deliver the service.
- e. Signage. The DOUBLETREE, at their cost, will acquire, display, and maintain professional signage to be used with every concession service. The purpose of this signage will be to display product prices and attract guests to the service area.
- f. Opening on Time. The DOUBLETREE will cause all concessions operations to be ready for full service at the time set for said service. The CENTER and DOUBLETREE will mutually agree on appropriate times of operation.
- g. Guarantees. The event sponsor will only be asked to guarantee concessions income on first-time events or when the sponsor requests service levels that in the opinion of the CENTER and DOUBLETREE are excessive to the point of not turning a profit.

14. Fees.

- a. Catering Fees. For the right to provide Catering Services, DOUBLETREE shall pay CITY a catering fee (the "Catering Fee") equal to the following percentages of Gross Revenue from the Catering Services provided by DOUBLETREE, calculated on a monthly basis.

Gross Revenue	\$0 - \$9,999.99	13%
between		
	\$10,000 - \$19,999.99	14%
	\$20,000 or greater	15%

For example, a monthly gross of \$5,000 would yield a catering fee of \$650 (\$5,000 x .13). A monthly gross of \$15,000 would yield a catering fee of \$2,100 (\$15,000 x .14). A monthly gross of \$25,000 would yield a catering fee of \$3,750 (\$25,000 x .15).

For purposes of this Agreement, "Gross Revenue" shall mean the entire revenue actually received by DOUBLETREE (excluding revenue for goods returned by a customer for a refund), less state and city taxes and gratuities paid to DOUBLETREE employees for Catering Services or Concessionaire Services.

- b. Concessionaire Fee. For the right to provide Concessionaire Services, DOUBLETREE shall pay CITY a concessionaire fee (the "Concessionaire Fee") equal to the following percentages of Gross Revenue from Concessionaire Services, calculated on a monthly basis.

Gross Revenue	\$0 - \$9,999.99	20%
between	\$10,000 or greater	23%

Monthly Concessionaire Fees will be calculated and paid based upon these percentages using the method described above in 14.a.

- c. Audiovisual (AV) Commissions. When the DOUBLETREE signs a license for use of CENTER space on behalf of an event sponsor and arranges for AV services for that event, DOUBLETREE will pay the CITY 70% of any and all commissions that DOUBLETREE receives from the provider of said service on the first \$70,000 of audiovisual receipts, and 50% of receipts in excess of \$70,000, after July 1, 2009. DOUBLETREE will not receive any commissions on AV or other services provided by the CENTER. Further, DOUBLETREE is not entitled to any other commissions from other service providers, such as decorators or electrical contractors, even on those events for which they have licensed the CENTER for use. DOUBLETREE shall report all audiovisual commissions based on the CITY's fiscal calendar year.
- d. Payment of Fees. On or before the twentieth (20<sup>th</sup>) day of each month, DOUBLETREE shall provide CITY with a report describing the Gross Revenue for the previous month, and DOUBLETREE shall pay CITY the Concessionaire Fees, Catering Fees, and Audiovisual Commissions earned by the CITY for the previous month. Any fees payable under this Agreement which remain unpaid for twenty (20) days or more after payment is due, shall bear interest at ten (10) percent per annum from the date the payment was due.
- e. Uncollectible Fees. In the event that the DOUBLETREE provides Concessionaire Services, and/or Catering Services, to a user of the CENTER and they are unable to collect payment for said services, after

reasonable efforts to do so; DOUBLETREE will not pay the CITY the Concessionaire Fees, and/or Catering Fees associated with these uncollectible bills.

- f. Uncollectible Cancellation Fees. In the event that the DOUBLETREE signs a CENTER use license on behalf of a CENTER user and that user cancels the date before it occurs and the DOUBLETREE is unable to collect the cancellation damages from said user after reasonable efforts to do so, DOUBLETREE will not pay said cancellation fees to the CENTER. In no case, though, will the DOUBLETREE collect some or all of the cancellation fee from the user and not pay that amount to the CENTER.

15. Catering Discount. When DOUBLETREE provides a catering service in the CENTER, 10% of the gross receipts from the meal or banquet package, exclusive of taxes and gratuities, will be deducted from the CENTER rent for the room in which the catering service is delivered. The discount will never amount to more than the total rent for the room itself. The discount will not apply to services other than rent that are associated with the catered event.

16. Adjustment of Bills. If the DOUBLETREE signs a license for the use of the CENTER on behalf of the user and that client requests a reduction on the bill of CENTER charges due to poor service or other reasonable requests, the CITY at its discretion will evaluate the situation and decide upon the appropriateness of any bill reduction.

17. Additional Charges. When the DOUBLETREE signs a license for the use of the CENTER on behalf of the user, the CITY will inform the DOUBLETREE of any additional charges for services arranged by the CITY:

- a. Upon the conclusion of the event for any customer with a cash payment status.
- b. Within three (3) business days for all customers who have direct billing status.

DOUBLETREE will accept cost estimates from CITY for additional charges when a third-party vendor is involved and an accurate bill is not available on the above basis.

18. Books and Records. DOUBLETREE shall maintain books and records necessary to verify Gross Revenue under the terms of this Agreement, which books and records shall be available for inspection by CITY upon reasonable notice and during regular business hours. CITY may cause such books and records to be

audited by an accounting firm familiar with the Uniform System of Hotel Accounts and which works with such accounting system on a regular basis. The cost of such an audit will be borne by the CITY, unless the audit reveals that the Gross Revenue for the period audited differed from the Gross Revenue reported by the DOUBLETREE for such period by more than three and one-half (3.5) percent, then DOUBLETREE shall pay the cost of the audit. DOUBLETREE shall immediately pay CITY the amount of any deficiency in the Catering Fee and/or the Concessionaire Fee and/or the Audiovisual Fee for the period covered by the audit plus interest at ten (10) percent per annum from the date any such deficiency was originally due.

19. Taxes and Assessments. DOUBLETREE will promptly pay as the same becomes due all sales taxes and similar governmental charges for the goods and services it delivers to third parties under the terms of this Agreement. Provided DOUBLETREE promptly pays all such sales taxes and similar governmental charges, DOUBLETREE shall have the right to contest payment of any such taxes or governmental charges at its own expense.
20. Independent Contractor. In performing its duties under this Agreement, DOUBLETREE shall be an independent contractor with the CITY, and employees of DOUBLETREE shall have no benefits as employees of the CITY, and similarly, employees of the CITY shall have no rights as employees of DOUBLETREE. Each party shall maintain workers' compensation insurance or comparable coverage for its employees and hold harmless the other party from any claim which would otherwise be covered by workers' compensation insurance.
21. Assignment. DOUBLETREE may assign, transfer or otherwise alienate its rights and obligations pursuant to this Agreement provided such assignee assumes all such rights and obligations under this Agreement, and such assignee has the approval of the CITY and financial ability, creditworthiness, managerial skill and expertise to successfully manage and operate the facilities in accordance with said agreements. CITY may assign this Agreement to any subsequent owner of the CENTER (including the CITY), provided such owner assumes all responsibilities hereunder.
22. Entire Agreement. This Agreement incorporates all of the agreements, covenants and understandings between the parties relating to the matters covered hereby and supersedes any prior agreements. This Agreement shall not be altered,

changed or amended except by instrument in writing executed by both parties hereto.

23. Termination. In the event either party is in material default of its obligations pursuant to this Agreement, and such party fails to cure such material default within sixty (60) days of receipt of written notice from the other party, then such other party may terminate this Agreement upon an additional five (5) days notice to the defaulting party.
24. Deliveries. Deliveries of all food items, supplies and goods, wares, and equipment shall be made at the service entrance of the building.
25. Public Use of CENTER. The CENTER is primarily for the use of the community for the purpose of attending trade shows, meetings, concerts, exhibits, banquets, conventions, and similar activities held in such a building. DOUBLETREE covenant by and for itself, its executors, administrators and assigns and all persons claiming under or through DOUBLETREE, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the catering, use, occupancy, tenure or enjoyment of the CENTER by DOUBLETREE, nor shall DOUBLETREE, or any person claiming under or through DOUBLETREE, establish or permit any such practice or practice of discrimination or segregation with respect to the catering, use, occupancy, tenure or enjoyment of the CENTER.
26. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.
27. Sales of Concessions by Exhibitors. In the case of an event or portion of an event that CITY and DOUBLETREE mutually agree (which consent shall not be unreasonable withheld or delayed) is impractical or impossible to produce utilizing the exclusive caterer/concessionaire, the CITY and DOUBLETREE may approve the giveaway or sale of foods and beverage items by others.
28. Booking Policy.
  - a. CITY shall have exclusive authority to book events in the CENTER which are booked to commence not later than thirteen (13) months after the date of booking. Both CITY and DOUBLETREE shall have equal access and authority to book events in the CENTER which are booked to commence

more than thirteen (13) months after the date of booking. At DOUBLETREE's expense, DOUBLETREE may install a terminal(s) in the DOUBLETREE for direct access to the CENTER's booking system. Except as hereafter provided in subparagraphs (b) and (c), events which are scheduled to commence more than thirteen (13) months after that date of booking will not be booked unless they utilize one hundred (100) or more overnight rooms in the City of Modesto. The 100 overnight room commitment must be guaranteed and confirmed in writing prior to the execution of the license.

- b. DOUBLETREE acknowledges and agrees that CITY shall have the right to book up to six (6) Large Public Events per year up to five (5) years prior to the first day of the event provided such events utilize the entire Harvest Hall for at least two (2) days. However, no more than one (1) such event shall be booked within the same month without the approval of DOUBLETREE, which approval shall not be unreasonably withheld. Further, CITY and DOUBLETREE acknowledge and understand that request(s) for Large Public Events, in addition to the six (6) Large Public Events provided herein, may be received. In that event, CITY and DOUBLETREE agree to mutually accommodate, and note such in writing, said request(s) to the extent reasonably possible. For purposes of this paragraph, the term "Large Public Events" shall be defined as a consumer show or special interest show conducted or produced for the purpose of attracting a primary audience or general attendance from the local community, generally the greater Modesto area, for which an admission is generally charged and which last for a maximum of five (5) consecutive days. The CITY may hereafter unilaterally establish a criteria for the acceptance of requests for bookings of Large Public Events. Such events will not be subject to the usual one hundred (100) overnight room requirement.
- c. When CITY books each of the six (6) Large Public Events described in subparagraph 28 b. above, CITY shall book each of said six (6) Large Public Events with two (2) alternative event dates. Prior to twenty-four (24) months from the date of the earlier of the two (2) alternative dates, CITY and DOUBLETREE shall confer and shall select and guarantee one of the two (2) Large Public Event dates.

The CITY will inform each Large Public Event client at the time of booking a Large Public Event that the CITY will cooperate with the operator of the hotel to change the date or dates of the Large Public Event to

accommodate a hotel convention provided the Large Public Event client first agrees to any change in the date.

- d. DOUBLETREE further acknowledges and agrees that CITY shall have the right to continue to book large date-specific events for dates up to five (5) years prior to a selected event date without regard to overnight room usage at the sole discretion of CITY. The large date-specific events are the Police Department's annual Halloween party for children, the annual free Thanksgiving Day dinner, and such other date-specific events as are mutually agreed upon in writing by CITY and DOUBLETREE.
  - e. In order to implement the booking policy set forth in subparagraphs a, b, c, and d, CITY may hereafter unilaterally establish and thereafter from time to time change upon meeting and conferring with DOUBLETREE a booking procedure which covers such subjects as the holding of a tentative event date, license deposits, event spacing, event cancellation, default, causes to deny CENTER use, and other similar matters not specifically set forth in said subparagraphs a, b, c, and d.
  - f. When either party has a potential booking that is in accordance with this Agreement, and the other party has a tentative booking that is already on the computerized booking calendar, the party with the tentative booking will be given three (3) full working days to receive a signed license and firm up the tentative booking. If a signed license is not received within three (3) full working days, the party with the potential booking will be required to sign a license within three (3) working days.
29. Possessory Interest. DOUBLETREE shall recognize and understand that this Agreement may create a possessory interest subject to property taxation and that DOUBLETREE shall be solely responsible to make any payments of any and all property taxes levied on such interest to which it may be subject.
30. Alcoholic Beverages. DOUBLETREE shall obtain necessary licenses from the State of California Department of Alcoholic Beverage Control to serve alcoholic beverages on CENTER premises and abide by and comply with all laws, regulations, orders or directives of said Department.

DOUBLETREE shall be solely responsible for limiting its service of alcoholic beverages to persons twenty-one (21) years of age or older and shall be solely liable for any damages or injury caused by it having served said beverages to persons less than twenty-one (21) years of age. DOUBLETREE shall indemnify, defend and hold harmless the CITY, the REDEVELOPMENT AGENCY OF THE

CITY OF MODESTO and their officers, officials, employees and agents from any claims or lawsuits for injuries or damages arising out of or alleged to be approximately caused by service of alcoholic beverages by DOUBLETREE to any person, including those who are underage.

31. Alterations to CENTER. CITY retains the right from time to time during the term of this Agreement, or any extension thereof, to make alterations in or change the use of areas presently used or designated for concession or catering functions or hereafter so used or designated. If such relations, alterations, improvements or adjustments are required, the parties shall cooperate to the end that such changes shall not unnecessarily interrupt the quality and quantity of services rendered by the DOUBLETREE, damage the business of DOUBLETREE, or reduce the amount payable to CITY under this Agreement.
32. Expiration. At the expiration of the term hereof, or the expiration of any extension of the term, DOUBLETREE shall deliver all keys that it may have to the CENTER and surrender the premises, subject to the provisions of Section 12 of this Agreement, in good condition, reasonable wear and tear and damage by the elements of fire, without fault of DOUBLETREE, its employees, agents and/or subcontractors, or by anyone directly or indirectly employed by any of them or by anyone whose acts or omissions any of them may be liable, excepted, and DOUBLETREE shall commit no waste of any kind.
33. Interruption of Events or Utilities. CITY shall not be liable for a cancellation of any event scheduled for the CENTER. CITY shall not be liable in damages or otherwise should the furnishing of utilities or the holding of events be interrupted by fire, strike, riot, Act of God, or the making of necessary improvements or repairs, or any other causes beyond the control of CITY.
34. Right of Entry. CITY reserves the right to enter any concession premises or catering service area and to view and observe DOUBLETREE's operations at any and all reasonable times throughout the term of this Agreement; provided, however, that it shall not interfere unduly with DOUBLETREE's operations. The right of view and inspection reserved to CITY hereunder shall impose no obligation upon CITY to make such view and observation or to ascertain the condition of the premises or areas and shall impose no liability upon CITY for failure to make such view and observation.

35. No Fault Termination of Agreement. In the event the facility shall be destroyed by fire or so much damaged as to render it untenable without the fault of DOUBLETREE, or its employees, agents, and/or subcontractors, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts or omissions any of them may be liable, either DOUBLETREE or CITY may, within thirty (30) days thereafter, elect to terminate the Agreement and the term hereby granted by giving the other written notice of the same by registered or certified mail, such notice to CITY to be directed to CITY and to DOUBLETREE at its business address.
36. Indemnity. DOUBLETREE shall hold the CITY and the CITY OF MODESTO REDEVELOPMENT AGENCY, their agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of DOUBLETREE, whether or not the act or omission arises from the sole negligence or other liability of DOUBLETREE, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.
37. Attorney Fees. In the event that either party shall file suit to enforce the terms of this Agreement, the prevailing party shall be awarded reasonable attorney's fees and costs.
38. Notices. All notices hereunder may be delivered or mailed. If mailed, they shall be sent by registered or certified mail to the respective addresses or to such addresses as the parties may hereafter require in writing. Notices sent by mail shall be deemed to have been given when dispatched by registered or certified mail, postage prepaid return receipt requested and addressed as follows (or to such other address as from time to time may be designated by a party by written notice to the other party):

**CITY:**  
City of Modesto  
P.O. Box 642  
Modesto, CA 95353  
ATTN: City Manager

**DOUBLETREE:**  
DoubleTree Hotel, Inc  
1150 9<sup>th</sup> Street  
Modesto, CA 95354  
ATTN: General Manager

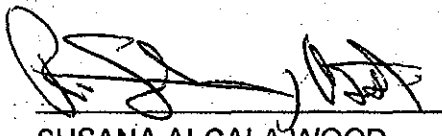
39. Waiver. Failure of CITY to enforce at any time any of the provisions of this Agreement, or to require at any time performance by DOUBLETREE of any of the provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Agreement or any part thereof, or the right of CITY to thereafter enforce each and every such provision.
40. Severability Provision. Should any part, term, or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the state, the validity of the remaining portions or provisions shall not be affected thereby.
41. Provisions to be Binding. CITY and DOUBLETREE agree to be bound by any and all provisions, requirements, duties, and/or responsibilities as set out in this document.

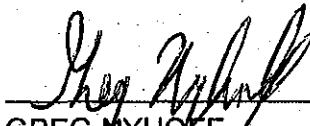
IN WITNESS WHEREOF, the CITY OF MODESTO, a charter city and municipal corporation, has authorized the execution of this Amendment in duplicate by its City Manager and attestation by its Clerk under the authority of Resolution No. 2009-197

adopted by the City Council of the City of Modesto on the 5th day of May, 2009, and the DOUBLETREE has caused this Agreement to be executed in duplicate.

APPROVED AS TO FORM:

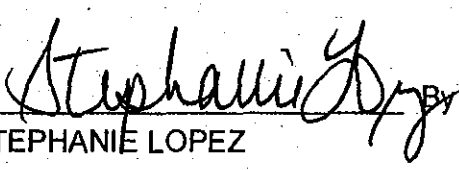
CITY OF MODESTO, a charter city and municipal corporation

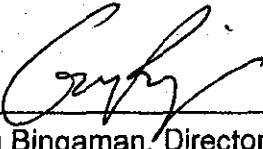
By   
SUSANA ALCALA WOOD  
City Attorney

By   
GREG MYHOFF  
City Manager

ATTEST:

Modesto Hospitality Lessee, LLC,  
a Delaware limited liability company

By   
STEPHANIE LOPEZ  
City Clerk

By   
Greg Bingaman, Director  
Asset Management

**APPROVED AS TO RISK  
MANAGEMENT FORM**

BY  DATE 4/15/09

