



UNILATERAL AGREEMENT TO WAIVE REFUND OF ASSESSMENTS

THIS AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into on the dated noted below by (INSERT HOTEL NAME) _____ ("Hotel") for the benefit of the City of San Diego (the "City") and the San Diego Tourism Marketing District Corporation (TMD Corp.) which are deemed to accept it by taking the actions described below. The City, TMD Corp., and Hotel are collectively referred to herein as the "Parties" or individually as "Party." Hotel executes this Agreement based on the understandings set forth in the following recitals, each of which it affirms to be true and correct.

WHEREAS, on or about November 27, 2012, the City Council of City adopted Resolution No. R-307843, which renewed the San Diego Tourism Marketing District (the "District"), levied assessments upon the assessed businesses for a period of thirty-nine and one-half years (the "Assessment"), and prescribed a method for collection of assessments;

WHEREAS, on or about November 27, 2012 and March 26, 2013 the City Council of City approved a contract with the TMD Corp. to administer the District by expending the proceeds of the assessment to provide collective marketing services to Hotel and other lodging businesses in the City of San Diego ("the 2012 Operating Agreement");

WHEREAS, on or about December 19, 2012, petitioners Melvin Shapiro and San Diegans for Open Government initiated separate lawsuits in San Diego Superior Court challenging Resolution No. R-307843 and its renewal of the District and Assessment, styled *Shapiro v. City of San Diego et al.*, Case No. 37-2012-00087765-CU-MC-CTL, and *San Diegans for Open Government v. City of San Diego et al.*, Case No. 37-2012-00088065-CU-MC-CTL and on February 25, 2013 Brigitte Browning, Sergio Gonzales and UNITE HERE Local 30 filed an apparently untimely lawsuit styled *Browning et al. v. San Diego City Council*, Case No. 37-2013-00036413-CU-WM-CTL and other, apparently untimely, litigation on that issue may follow (collectively, the "District Litigation");

WHEREAS, the District Litigation is currently pending and seeks invalidation of the District and of the Assessment; and

WHEREAS, notwithstanding the District Litigation, the Hotel wishes the City to collect the renewed Assessment under Resolution No. R-307843 and the TMD Corp. to expend Assessment proceeds for Hotel's benefit pursuant to 2012 Management Plan (on

file in the Office of the City Clerk as document number RR-307843) (“2012 Management Plan”);

NOW, THEREFORE, in consideration of the mutual promises set forth below, Hotel agrees as follows:

1. To induce the City to collect the Assessment from Hotel and to pay its proceeds to the TMD Corp. and to induce the TMD Corp. to expend those proceeds for Hotel’s benefit and the benefit of the San Diego lodging industry under the terms of the District Management Plan, Hotel; on behalf of itself and its successors, assignees, agents, insurers, employees, directors, officers, owners, partners, shareholders, members, attorneys, and other representatives; hereby waives any and all demands, causes of action, obligations, damages, losses, costs, expenses and / or liabilities of any kind or nature whatsoever, which Hotel may hereafter have or claim to have against the City for a refund of Assessment proceeds paid by Hotel that the City levied and collected or the TMD Corp. spent should a court invalidate Resolution No R-307843 or order a refund to assessed businesses within the District of such Assessment proceeds, whether due to a final judgment or settlement in the District Litigation or otherwise. City’s levy and collection of the Assessment and payment of some or all of its proceeds to TMD Corp. constitutes its acceptance of this Agreement. TMD Corp.’s acceptance of those proceeds and its expenditure of them consistently with the District Management Plan constitute its acceptance of this Agreement.

2. This Agreement is not intended as, and shall not constitute, an admission or acknowledgement by any Party that the District and Assessment are invalid or otherwise contrary to law.

3. This Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by an executed written agreement signed by all Parties. No Party will make a claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

4. If for any reason any provision of this Agreement is determined to be invalid, unenforceable or contrary to any existing or future law to any extent, such provision shall be enforced to the extent permissible under the law and such invalidity, unenforceability or illegality shall not impair the operation of or otherwise affect those portions of this Agreement which are valid, enforceable, and legal.

5. Hotel acknowledges it had opportunity to consult counsel of its choice and enters into this Agreement knowingly and voluntarily to induce the City and TMD Corp. to fund marketing services to benefit Hotel. Accordingly, any rule of construction

to the effect that any ambiguity is to be construed against the drafting party shall not apply to this Agreement.

6. Each person executing this Agreement represents and warrants for the benefit of the Parties that he or she is actually authorized to enter into this Agreement and to bind Hotel to this Agreement.

7. This Agreement is to be construed, interpreted, and enforced in accordance with California law. Any action to enforce the terms of this Agreement shall be brought in the state courts located in San Diego County, California.

8. Hotel agrees to cooperate with each other Party and to execute such additional documents, papers, and pleadings as may be necessary to give effect to this Agreement.

9. This Agreement may be transmitted by facsimile or other electronic means and the reproduction of signatures by facsimile or other electronic means will be treated as binding as if originals.

HOTEL NAME: _____

HOTEL ADDRESS: _____

City-Hotel Certificate # _____

By: _____

Name: _____

Title: _____

Date: _____