

## MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made and entered into by and between Silversand Properties (hereinafter the "Employer"), and UNITE HERE! Local 11 (the "Union").

1. This Agreement shall cover all employees employed in classifications listed in Exhibit A, or in classifications called by different names when performing similar duties, (referred to hereinafter as "Employees") at a hotel to be located at or near 2010 East Ocean Boulevard, Long Beach, CA (hereinafter referred to as the "Hotel") which during the term of this Agreement is owned by, operated by or substantially under the control of the Employer. The term "Employer" shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of: (a) the Employer covered by this Agreement; (b) one or more principal(s) of the Employer covered by this Agreement; (c) a subsidiary of the Employer covered by this Agreement; or (d) any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Employer covered by this Agreement.

2. The parties hereby establish the following procedure for the purpose of ensuring an orderly environment for the exercise by the Employees of their rights under Section 7 of the National Labor Relations Act and to avoid picketing and/or other economic action directed at the Employer in the event the Union decides to conduct an organizing campaign among Employees.

3. The parties mutually recognize that national labor law guarantees employees the right to form or select any labor organization to act as their exclusive representative for the purpose of collective bargaining with their employer, or to refrain from such activity.

4. The Employer will take a positive approach to unionization of Employees. The Employer will not do any action nor make any statement that will directly or indirectly state or imply any opposition by the Employer to the selection by such Employees of a collective bargaining agent, or preference for or opposition to any particular union as a bargaining agent.

5. The Union and its representatives will not coerce or threaten any Employee in an effort to obtain authorization cards.

6. Whenever the Employer finds it necessary to hire new Employees for vacancies in job classifications covered by this Agreement at the Hotel, the Employer shall notify the Union to request applicants for such vacancies. When requesting applicants, the Employer shall state the qualifications applicants are expected to possess. The Union may furnish applicants for the job vacancies specified by the Employer. The Union's selection of applicants for referral shall be on a non-discriminatory basis and shall not be based upon or in any way affected by membership in the Union or the Union's bylaws, rules, regulations, constitutional provisions, or any other aspects or obligation of Union membership policies or requirements, or upon personal characteristics of an applicant where discrimination based upon such characteristics is prohibited by law. The Employer agrees that any interest demonstrated by an applicant in joining the Union shall not constitute grounds for discriminatory or disparate treatment nor adversely impact the applicant's ability to be hired by the Employer. The Employer shall be the sole judge of an applicant's suitability, competence and qualifications to perform the work of any job to be filled.

7. If the Union provides written notice to the Employer of its intent to organize Employees covered by this Agreement, the Employer shall provide access to its premises and to such Employees by the Union. The Union may engage in organizing efforts in non-public areas of the Hotel during Employees' non-working times (before work, after work, and during meals and breaks) and/or during such other periods as the parties may mutually agree upon. "Organizing" includes communicating with Employees before and after recognition of the Union as provided in Paragraph 9.

8. Within ten (10) days following receipt of written notice of intent to organize Employees, the Employer will furnish the Union with a complete list of Employees, including both full and part-time Employees, showing their job classifications, departments and addresses. Thereafter, the Employer will provide updated complete lists monthly.

9. The Union is not presently recognized as the exclusive collective bargaining representative of the Employees. The Union may request recognition as the exclusive collective bargaining agent for such Employees. The Arbitrator identified in Paragraph 14, or another person mutually agreed to by Employer and Union, will conduct a review of Employees' authorization cards and membership information submitted by the Union in support of its claim to represent a majority of such Employees. If that review establishes that a majority of such Employees has designated the Union as their exclusive collective bargaining representative or joined the Union, the Employer will recognize the Union as such representative of such Employees. The Employer will not file a petition with the National Labor Relations Board for any election in connection with any demands for recognition provided for in this agreement or file a notice of voluntary recognition with the NLRB, so that the decision of when and whether to provide such notice is within the sole discretion of the Union. If the Union notifies the NLRB of recognition pursuant to this Agreement, the Employer shall post the NLRB notice of recognition in accordance with the instructions from the NLRB immediately upon receipt of the notice. The Union and the Employer agree that if any other person or entity petitions the National Labor Relations Board for any election as a result of or despite recognition of the Union pursuant to this Paragraph, (a) if the NLRB notice has been posted for 45 days before the petition is filed (a condition that applies only to this subparagraph (a)), the Employer and the Union will each request that the NLRB dismiss the petition on grounds of recognition bar or, if they have agreed to a collective bargaining agreement covering Employees at the time the petition is filed, on grounds of contract bar, (b) if the petition is not dismissed, the Employer and the Union shall agree to a full consent election agreement under Section 102.62(c) of the NLRB's Rules and Regulations, and (c) the Employer and the Union shall at all times abide by the provisions of this Agreement except that the Union may file unfair labor practice charges.. Except as provided above, the Union and the Employer will not file any charges with the National Labor Relations Board in connection with any act or omission occurring within the context of this agreement; arbitration under Paragraph 14 shall be the exclusive remedy.

10. If the Union is recognized as the exclusive collective bargaining representative as provided in paragraph 9, negotiations for a collective bargaining agreement shall be commenced immediately and conducted diligently and in good faith to the end of reaching agreement expeditiously. If the parties are unable to reach agreement on a collective bargaining agreement within 90 days after recognition pursuant to Paragraph 9, all unresolved issues shall be submitted for resolution to final and binding arbitration pursuant to Paragraph 14. The arbitrator identified

in paragraph 14 below shall be the arbitrator, unless another arbitrator is mutually agreed to by the parties. The arbitrator shall be guided by the following considerations: a) Employer's financial ability; b) size and type of the Employer's operations; c) cost of living as it affects the Employer's employees; d) ability of the employees, through the combination of wages, hours and benefits, to earn a living wage to sustain themselves and their families; and e) employees' productivity.

11. During the term of this Agreement, the Union will not engage in picketing or other economic activity at the Hotel, and the Employer will not engage in a lockout of the Employees. Notwithstanding the termination provision above, if the Employer recognizes any union besides Union as the exclusive collective bargaining representative of Employees, or any of them, this paragraph shall terminate immediately and without notice.

12. In the event that the Employer sells, transfers, or assigns all or any part of its right, title, or interest in the Hotel or substantially all of the assets used in the operation of the Hotel, or in the event there is a change in the form of ownership of the Employer, the Employer shall give the Union reasonable advance notice thereof in writing, and the Employer further agrees that as a condition to any such sale, assignment, or transfer, the Employer will obtain from its successor or successors in interest a written assumption of this Agreement and furnish a copy thereof to the Union, in which event the assignor shall be relieved of its obligations hereunder to the extent that the assignor has fully transferred its right, title, or interest.

13. The Employer shall incorporate the entirety of paragraphs 4, 6, 7, 8, 9, and 10 of this Agreement in any contract, subcontract, lease, sublease, operating agreement, franchise agreement or any other agreement or instrument giving a right to any person to operate any enterprise in the Hotel employing employees in classifications listed in Exhibit A, or in classifications called by different names when performing similar duties, and shall obligate any person taking such interest, and any and all successors and assigns of such person, to in turn incorporate said paragraphs in any further agreement or instrument giving a right as described above. The Employer shall enforce such provisions, or at its option, assign its rights to do so to the Union. The Employer shall give the Union written notice of the execution of such agreement or instrument and identify the other party (ies) to the transaction within 15 days after the agreement or instrument is signed. The terms "Employer" and "Hotel" shall be modified in such agreement or instrument to conform to the terminology in such agreement or instrument but retain the same meaning as in this Agreement, and the terms "Employer" and "Employees" as used herein shall be modified to refer, respectively, to the person or persons receiving a right to operate an enterprise in the Hotel and the employees of such person or persons.

14. The parties agree that any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration, with Fred Horowitz serving as the arbitrator. If he is unavailable to serve within thirty (30) calendar days of notification then John Kagel, or another mutually acceptable person, shall be the arbitrator. The arbitrator shall have the authority to determine the arbitration procedures to be followed. The arbitrator shall also have the authority to order the non-compliant party to comply with this Agreement. The parties hereto agree to comply with any order of the arbitrator, which shall be final and binding. The United States District Court for the Central District of California shall have exclusive jurisdiction in any action concerning arbitration under this Agreement. The

parties consent to the entry of any order of the arbitrator as the order or judgment of the Court, without entry of findings of fact and conclusions of law.

15. This Agreement shall be in full force and effect from the date it is fully executed on behalf of the Employer and the Union until four years from the full public opening of the hotel, or if sooner upon execution of a collective bargaining agreement or issuance of an interest arbitration award which concludes the collective bargaining agreement negotiations, either of which explicitly supersedes this document.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands.

FOR THE EMPLOYER:

FOR THE UNION:

Silversand Properties

UNITE HERE! Local 11

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

All regular full-time and regular part-time hotel service, housekeeping, food and beverage, and laundry employees (including room cleaners, housepersons, bell persons, telephone operators, kitchen employees, servers, bussers, bartenders, cashiers, hosts, concierges, and laundry workers, and front desk, recreational, and parking employees) employed by the Employer at the Hotel, but excluding all secretarial, office clerical, sales, and maintenance employees and all managers, supervisors, and guards as defined in the National Labor Relations Act.