THE TRUMP ORGANIZATION
George A. Sorial
Executive Vice President and Chief Compliance Counsel
725 Fifth Avenue, 26th Floor
New York, NY 10022

FACSIMILE TRANSMITTAL SHEET

DATE: April 6, 2018

TOTAL NO. OF PAGES INCLUDING COVER: 25

PLEASE DELIVER TO: Honorable Robert Menendez

FAX NUMBER: 202-228-2197

MESSAGE:

Please see attachment.

Thank you.

The Trump Organization

725 Fifth Avenue, 26th Floor
New York, New York 10022

April 6, 2018

<u>**Via Facsimile and First Class Mail**</u>
Hon. Robert Menendez
Ranking Member
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510-6225

Senator Robert Menendez:

This letter responds on behalf of The Trump Organization to your letter dated March 1, 2018. Upon receiving your letter, The Trump Organization elected to respond voluntarily, and we have been working to do so as promptly and as fully as reasonably possible. *See* Sen. Comm. Foreign Relations R. 7(a).

In your letter, you ask a number of questions regarding The Trump Organization's recent donation of $151,470 to the United States Department of Treasury. Set forth below is an explanation of that donation and answers to your questions.

The Constitutional Emoluments Clauses

At the outset, however, it is important to emphasize that The Trump Organization respectfully but strongly disagrees with the premise of your letter, *i.e.*, that payments received by The Trump Organization constitute emoluments as that term is used in the United States Constitution. As Sheri Dillon made clear during the press conference at Trump Tower on January 11, 2017, **"[p]aying for a hotel room is not a gift and it has nothing to do with an office. It is not an emolument."** The Trump Organization made this donation to the Treasury Department as a prudential measure promised by the President, and not because any of the business at issue constitutes an "emolument" under the United States Constitution. We first explain the basis for this view and then turn to your questions.

The Foreign Emoluments Clause in Article I, Section 9, Clause 2, states: "No Person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept any present, Emolument, Office, or Title of any kind whatever, from any King, Prince, or foreign State." Although "Emolument" is a relatively obscure term these days, when the Constitution was written it had a widely understood meaning. It referred to financial benefits received in exchange for performing the duties of office or personal services as an employee and **did not encompass profit from private business transactions unrelated to the duties of the office.**[1]

[1] *See, e.g., Barclay's A Complete And Universal English Dictionary On A New Plan* (1774); 1 John Trusler, *The Difference, Between Words, Esteemed Synonymous, In The English Language* 154-55 (1766); *cf.* Oxford English Dictionary, *Emolument*, OED Online (2018) (defining "emolument" as "[p]rofit or gain arising from station, office, or employment; dues; reward, remuneration, salary").

Court decisions defining "emolument" are few, but in 1850, the United States Supreme Court in *Hoyt v. United States*, 51 U.S. 109, 135 (1850), authoritatively interpreted the term emoluments, as used in a federal statute, as "embrac[ing] every species of compensation or pecuniary profit *derived from a discharge of the duties of the office*."[2]

That definition accords with the Constitution's two other uses of the word—both of which expressly tie the term "emolument" to compensation received in exchange for performing the duties of office. *See* U.S. Const. art. I, § 6, cl. 2 (discussing the "Emoluments" of federal office); *id.* art. II, § 1, cl. 7 (describing the presidential salary as an "Emolument").

The historical record confirms that the Constitution's use of "emolument" is inapplicable to ordinary business transactions that do not involve performing the duties of office or employment services. While serving as our Nation's first President, George Washington bought three parcels of land in the District of Columbia from the United States Government. If the definition of "emolument" were as broad as your letter suggests and included any benefit whatsoever, the purchase of that land by President Washington would have violated the Constitution's Compensation Clause, which prohibits the President from receiving "any other Emolument" from the Federal Government beyond his official presidential salary. U.S. Const. art. II, § 1, cl. 7. But in fact President Washington's purchase was approved by three commissioners acting on behalf of the Government. Every one of these individuals had first-hand familiarity with the Constitution's use of the word "emolument": President Washington presided over the Constitutional Convention that wrote the Constitution, one of the commissioners, Daniel Carroll, represented Maryland at the Constitutional Convention, and the remaining two commissioners, Thomas Johnson of Maryland and David Stuart of Virginia, served in their state conventions that ratified the Constitution. None of those four gentlemen raised the "emolument" issue in connection with that purchase.

Further, many of the Founding Fathers were among the wealthiest landowners and businessmen in the country at that time. After ratification, over a dozen (by our count) of the wealthiest—including President Washington and President James Madison, who is often called the "Father of the Constitution" because of his crucial role in drafting that document—served by election or appointment to high positions in the Federal Government, while maintaining their business interests. The historical record contains no concern that these continued business interests constituted "emoluments," nor any demand for divestiture. **It is impossible to believe that the Founders would draft, approve, and advocate a Constitution that restricted transactions with domestic and foreign governments, and then themselves immediately and openly violate those very restrictions.**

Nor did Congress raise the Foreign Emoluments Clause as an impediment when President Gerald Ford nominated Nelson Rockefeller to become Vice President, notwithstanding extensive confirmation hearings and a confirmation vote before Congress. Rockefeller continued to hold

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[2] *See also McLean v. United States*, 226 U.S. 374, 382 (1912) ("It is difficult to deal with a distinction between pay and emoluments. Both are rewards or compensation, the one no more than the other, for 'service supposed.' . . Pay and emoluments are but expressions of value used to give complete recompense to a deserving officer."); *United States v. Hartwell*, 73 U.S. 385, 393 (1867) (defining "office" as "embrac[ing] the ideas of tenure, duration, emolument, and duties."); *Smith v. Jackson*, 241 F. 747, 769, 770 (5th Cir. 1917) (defining "Emolument [as] the profit arising from office or employment; that which is received as compensation for services, or which is annexed to the possession of office, as salary, fees, and perquisites"); *Affetto v.TRW, Inc.*, 691 F.2d 357, 358-59 (7th Cir. 1982) (noting that "emolument" is given as a synonym for "wages" in Webster's Third New International Dictionary).

stock in the Standard Oil company, which did business worldwide, including with foreign governments. Even though these holdings would, under your suggested definition of "emolument," implicate the Foreign Emoluments Clause, Congress showed no concern about that issue, and the acting Attorney General's official analysis of possible ethics issues raised by Rockefeller's holdings did not even mention the emoluments issue. Rockefeller was confirmed without divesting his Standard Oil stock holdings or putting them into a "blind trust."

Even more recently, the Senate confirmed Penny Pritzker, President Barack Obama's nominee as Secretary of Commerce, even though she retained considerable holdings in her family's business, Hyatt Hotels. No emoluments controversy arose about her continued holdings, either, even though those hotels, like the Trump properties, host foreign government officials.

So far as we can ascertain, President Trump is the only United States President ever confronted with such a broad definition of "emoluments."

The evidence all establishes that "emolument," as used in the Foreign Emoluments Clause, does not extend to routine impersonal business transactions. The term instead encompasses financial benefits received in exchange for performing the duties of office or employment services. It cannot be more broadly defined, as your letter appears to do, without departing from longstanding Supreme Court precedent, the Constitution's consistent language, and the Nation's historic practices dating all the way back to George Washington.

Accordingly, as Ms. Dillon stated during the January 11, 2017 press conference, "[t]he Constitution does not require President-elect Trump to do anything here." Nevertheless, as she announced, "President-elect Trump has decided . . . that he is going to donate all profits from foreign government payments made to his hotel[s] to the United States Treasury." In compliance with that pledge, on February 22, 2018, The Trump Organization delivered a check in the amount of $151,470 to the United States Treasury. Copies of the cover letter, the check (with the account number redacted), and a receipt received from the Department of Treasury are attached to this letter as Exhibit A.

Calculation of the Donation to the Treasury

You have asked how The Trump Organization calculated the amount of the donation. The donation represents, for the period January 20, 2017 through December 31, 2017, the profits attributable to foreign government patronage at both (a) all wholly-owned Trump hotel, resort, and club properties, and (b) all such properties managed by The Trump Organization where the management fee earned is derived in part from foreign government patronage. The Trump Organization followed the procedures set forth in its internal policy document entitled "Donation of Profits from Foreign Government Patronage." For your convenience, a copy of that policy document is attached as Exhibit B.

In response to your questions, the following paragraphs explain precisely how The Trump Organization calculated the donation. As you know, "profit" is defined generally as revenues minus expenses. To determine the total revenues obtained from foreign governments or individuals representing a foreign government on foreign government business, The Trump Organization included: (i) all revenue from direct billings to foreign governments, (ii) all revenues from contracted group, banquet, and catering business with the property from a foreign government, as indicated by a checkbox included on the sales contracts or other observations, and (iii) all payments received by check or electronic payment from a source reasonably identifiable as a foreign government entity. In addition, The Trump Organization identified foreign government patronage based on the submission by the patron of a "tax exempt status card," used by foreign government officials to show exemption from local, state, and federal taxes. Finally, The Trump Organization also investigated news reports of foreign government patronage that it became aware of and included those revenues to the extent appropriate; it often determined, however, that certain such reports were inaccurate, overstated, or both. (For example, certain reports purporting to value Saudi government patronage at the Trump International Hotel in Washington, D.C., included patronage before the Inauguration). Using these procedures, each Trump property determined whether it had received foreign government patronage revenue, and all amounts ascertained for the period from January 20, 2017 to December 31, 2017 were included in the calculation. In short, The Trump Organization is aware of no foreign government patronage revenue during the relevant period that is excluded from this calculation of foreign government patronage revenue.

It is worth emphasizing that, since the President has no involvement in managing The Trump Organization, no undue influence on the President or his Administration can result from any of these transactions. Moreover, **if The Trump Organization has been unable, after considerable effort, to identify other foreign government patronage revenue, that revenue could not possibly serve to curry favor with or otherwise influence the President or the Administration.**

Next, The Trump Organization calculated the profit from the foreign government patronage. For properties *wholly-owned* by The Trump Organization, The Trump Organization used the definition of "Gross Operating Profit" as that term is defined in the Uniform System of Accounts for the Lodging Industry, Eleventh Revised Edition ("USALI"). Because it would not be feasible to derive any remotely accurate profit percentage for an individual hotel stay or a single meal or banquet, The Trump Organization applied the annual Gross Operating Profit percentage for each wholly-owned property to the total foreign government patronage revenue at that property.

Under the USALI, Gross Operating Profit for the property equals Total Operating Revenue minus "Departmental Expenses" and "Undistributed Operating Expenses." Under the USALI, "Departmental Expenses" includes Cost of Sales, Cost of Other Revenue, Labor Costs and Related Expenses, and Other Expenses. "Undistributed Operating Expenses" includes five categories: Administrative and General, Information and Telecommunications Systems, Sales and Marketing, Property Operation and Maintenance, and Utilities. (Relevant excerpts from the USALI are attached to this letter as Exhibit C.) The Gross Operating Profit percentage was obtained by dividing the dollar amount of Gross Operating Profit for the property by the Total Operating Revenue for the property. The Gross Operating Profit percentage for the property was then multiplied by the foreign government patronage revenue at the property, resulting in the foreign government patronage gross operating profit for the property. The calculated foreign government patronage gross operating profit was the amount donated from that property to the Treasury Department.

Please note that the Organization utilized "Gross Operating Profit," from the USALI and not "Net Income." Although a true and complete measure of profit would also deduct such costs as rent expense, property taxes, interest expense, and insurance, those expenses were not deducted from the foreign government patronage revenue. Thus, the amount of calculated profit from wholly-owned properties *overstates* the actual profits from the foreign government patronage revenues.

For properties *managed but not owned* by The Trump Organization, the foreign government patronage revenue for each managed property was derived as explained above. The amount of foreign government patronage revenue was then divided by the total revenue of the property to determine the percentage of foreign government patronage revenue to total revenue. The resulting percentage was multiplied by the management fee paid to The Trump Organization during the relevant time period to obtain the amount of profit derived from managing the property. No expenses attributable to managing the property were deducted from this calculation to arrive at the amount payable to the Department of Treasury from the property. Again, without deduction of management expenses, the amount paid to the Treasury Department *overstates* the calculated profits earned.

The profits derived by this method for each wholly-owned or managed property were then transferred to the Trump Corporation, and the total amount of foreign government patronage profits was submitted in a single check (Exhibit A) from the Trump Corporation to the Department of Treasury. The Trump Organization is treating the $151,470 donation as a non-deductible expense for tax purposes and it will not claim the donation as a charitable deduction.

We trust this letter answers your questions about the process. Because it is a private entity operating in a highly competitive market, The Trump Organization does not make its proprietary financial records public. The Trump Organization's voluntary response to your inquiry should not be read as a willingness to respond to future inquiries.

Respectfully,

George A. Sorial
Executive Vice President and
Chief Compliance Counsel

Enclosures

cc: Senator Bob Corker, Chairman
Committee on Foreign Relations

Exhibit A

EXHIBIT A

Morgan Lewis

Sheri Dillon
Partner
1-202-373-5749
Sheri.Dillon@MorganLewis.com

February 22, 2018

Gifts to the United States
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Re: Gift to the United States

To Whom It May Concern:

On behalf of The Trump Organization, please find enclosed a check for $151,470 made payable to the United States Treasury. The Trump Organization is pleased to make this voluntary donation to the U.S. government and requests that it be deposited into the "Gifts to the United States" account for the unconditioned and general use of the federal government.

Sincerely,

Sheri A. Dillon

EXHIBIT A

THIS CHECK IS PRINTED ON CHEMICAL REACTIVE PAPER WHICH CONTAINS A WATERMARK AND HAS MICRO PRINTING IN THE SIGNATURE LINE

THE TRUMP CORPORATION
725 5TH AVENUE
NEW YORK, NY 10022

CAPITAL ONE, N.A.
57 WEST 57TH STREET
NEW YORK, NY 10019

50-791/214

NO. 015820

CHECK DATE 02/21/18

CHECK AMOUNT ****$151,470.00**

PAY **ONE HUNDRED FIFTY ONE THOUSAND FOUR HUNDRED SEVENTY DOLLARS AND NO CENTS******

TO THE ORDER OF UNITED STATES TREASURY

TWO SIGNATURES NEEDED ON AMTS OVER $10,000.

MP

EXHIBIT A

GIFT RECEIPT

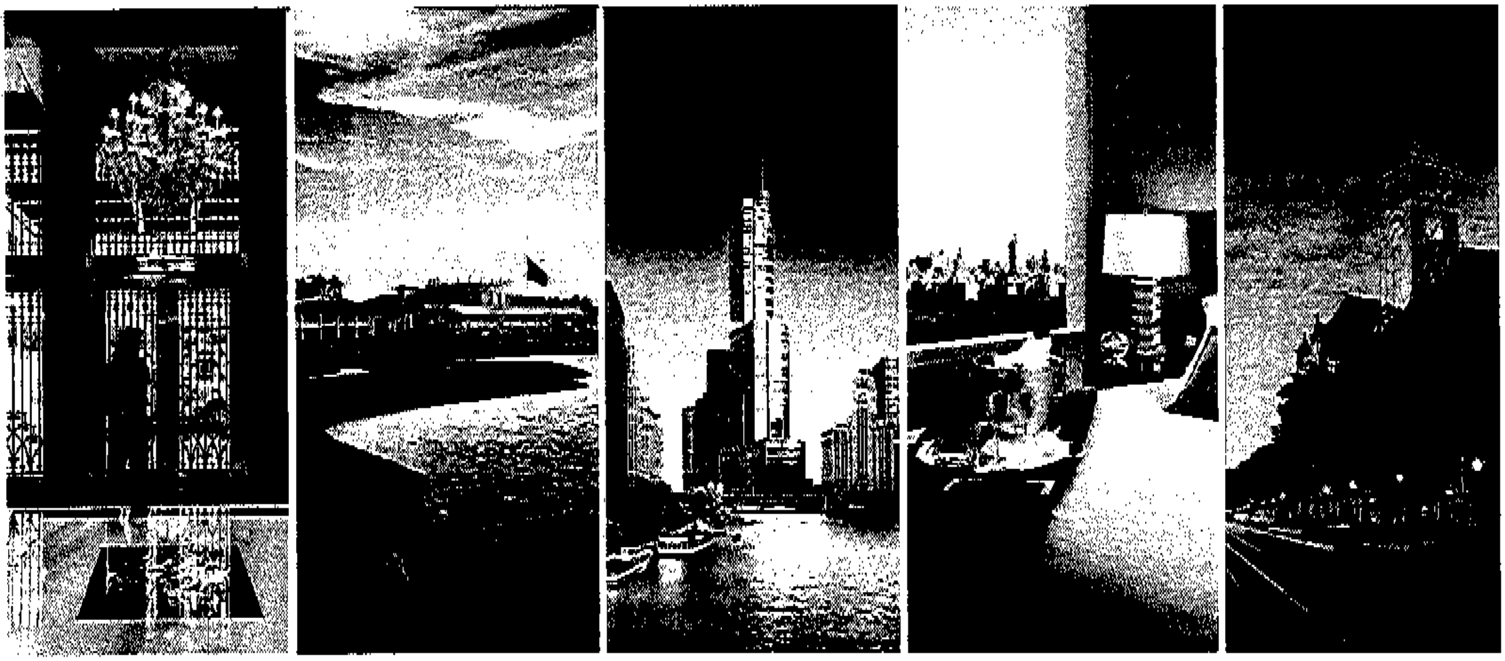
On this day, February 22, 2018, I, Martha M Chacon Ospina, confirm receipt of a check dated February 21, 2018, for $151,470 made payable to the United States Treasury from The Trump Corporation.

Martha M Chacon

Signature of Recipient

Exhibit B

EXHIBIT B



TRUMP

Donation of Profits
from Foreign
Government Patronage

EXHIBIT B

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EXHIBIT B

OVERVIEW

The purpose of this policy is to define the procedure and application of The Trump Organization's (the "**Company**") voluntary directive to donate all profits from foreign governments' patronage at our hotels and similar businesses during President Trump's presidential term to the U.S. Treasury.

We acknowledge that it is not customary in the hospitality industry to identify and calculate profits from a particular customer group. Therefore, this policy has been designed for our hotels and similar businesses to rely on known and identifiable source data and documentation to quantify amounts and profit calculations.

Regarding the calculation of profit, consistent with the hospitality industry, our hotels follow the accounting and financial reporting guidance provided for in the Uniform System of Accounts for the Lodging Industry, Eleventh Revised Edition ("**USALI**"). The USALI provides a format of operating statement which calculates and defines net income ("**Profit**") as operating revenue less all expenses in connection with the business.

EXHIBIT B

POLICY SCOPE

Our portfolio of hotels and similar businesses (the **"Properties"**) consists of both (1) wholly-owned hotels, resorts and clubs, and (2) managed hotels and condominium-hotels. The scope of this policy is applicable to:

(1) Profit generated from foreign governments' patronage from wholly-owned Properties and;
(2) Profit generated from management fees earned from managed hotels and condominium-hotels attributed to foreign governments' patronage.

The policy is <u>not</u> applicable to profits earned by and attributed to the owners of condominium-hotel units located in the Company's managed condominium-hotel properties, as those profits belong to the individual condominium-units owners.

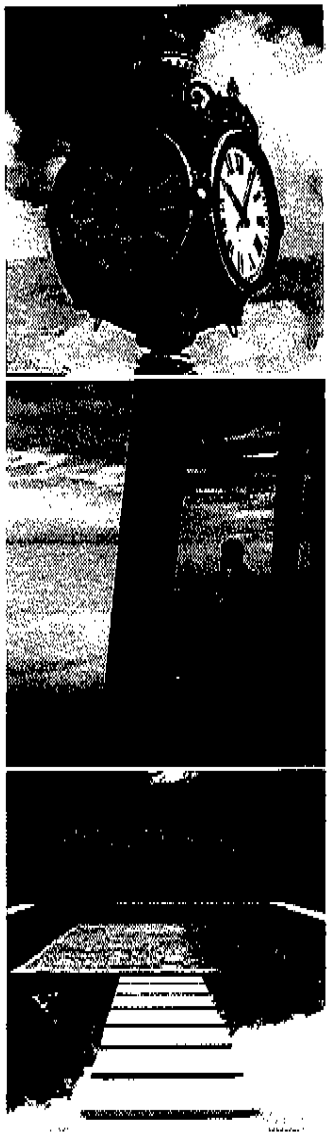

EXHIBIT B

IDENTIFICATION OF FOREIGN GOVERNMENT PATRONAGE

In the normal course of operating hotels, revenue is generated from the sale of overnight guestroom stays, food and beverage, conference and banquet services, spa services, retail sales, recreation activities and other ancillary services. Consistent with the hotel industry, we may accept patronage from not only registered guests and contracted groups staying at our Properties, but also transient, walk-in customers (for example, restaurant patrons).

To fully and completely identify all patronage at our Properties by customer type is impractical in the service industry and putting forth a policy that requires all guests to identify themselves would impede upon personal privacy and diminish the guest experience of our brand. It is not the intention nor design of this policy for our Properties to attempt to identify individual travelers who have not specifically identified themselves as being a representative of a foreign government entity on foreign government business.

EXHIBIT B

It is the intention of this policy for our Properties to make commercially reasonable efforts using the three sources noted below to determine when a Property has received revenue from an entity that represents a foreign government on foreign government business (**"Foreign Government Revenues"**).

To practically track and identify Foreign Government Revenues received from customers representing a foreign government, our Properties shall utilize the following sources:

1. **All direct billings from the Property to a foreign government;**
2. **All contracted group, banquet and catering business with the Property from a foreign government; and**
3. **All payments received by the Property via check or electronic payment (i.e., bank wire transfer) from a reasonably identifiable foreign government entity.**

This policy defines **"foreign government entity"** to mean a (i) department or agency of a foreign government, (ii) a foreign embassy, (iii) a foreign political party, (iv) members of a royal family, or (v) a sovereign wealth fund. We recognize that foreign governments can be organized in very different ways. Some may operate through state-owned and state-controlled entities in industries such as aerospace and defense, banking, finance, healthcare, energy and others, which may not be reasonably identifiable as foreign government entities, and therefore may not be included in our calculation of profit to be donated.

Our Properties shall identify and provide a separate accounting for all revenues received from foreign governments' patronage on a regular basis. The accumulated total amount of revenues identified shall be aggregated on an annual basis and used for the calculation of profit attributed from that patronage, as defined below.

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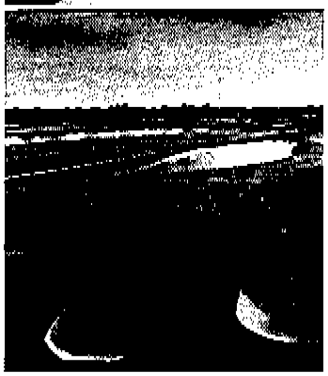


EXHIBIT B

CALCULATION OF PROFIT

WHOLLY-OWNED PROPERTIES

In summary, the USALI calculation of Profit is defined as total operating revenue ("Revenue") less (1) total departmental expenses, (2) total undistributed expenses and (3) total non-operating expenses.

As our Properties generate various revenue streams from sales of product offerings with different revenue pricing and cost structures, our most relevant measure of Profit is the Revenue received by the Property less the costs required to provide such Revenue. To attempt to individually track and distinctly attribute certain business-related costs as specifically identifiable to a particular customer group is not practical, nor would it even be possible without an inordinate amount of time, resources and specialists, which would still be subject to some measure of estimation and cost allocation methodology.

EXHIBIT B

As such, the most reasonable and effective way to measure Profit from a particular customer base is to apply an overall Property Profit calculation on a pro-rata basis to the revenue generated from that customer base. It is our policy therefore to calculate Profit from foreign governments' patronage in this manner. An example of this methodology is summarized below for illustrative purposes only:

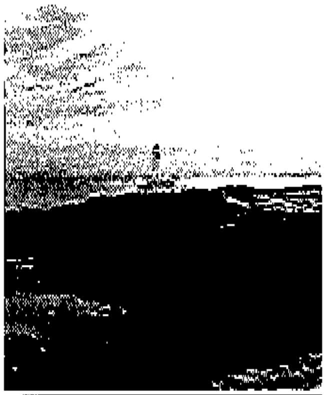
Example: A wholly-owned hotel generated on an annual basis $10,000,000 in Revenue, of which $500,000 (5%) was identified as Foreign Government Revenue. The hotel's total annual department expenses are $7,500,000 and annual non-operating expenses are $1,000,000. Annual net Income (Profit) for this hotel is $1,500,000.

1. In this example, the hotel's gross operating profit as defined by USALI is $2,500,000, or 25% of Revenue. The hotel applies the same 25% gross operating percentage margin to the $500,000 of Foreign Government Revenue to determine its gross operating profit on the Foreign Government Revenue to be $125,000 ($500,000 x 25%).
2. The hotel then applies a 5% (based on the % of Foreign Government Revenue) allocation to the non-operating business expenses, which calculation is $50,000 ($1,000,000 x 5%).
3. The hotel profit therefore attributed to being from foreign government patronage (**"Foreign Government Profit"**) is $75,000 in this example. This is calculated as gross operating profit amount of $125,000, less the $50,000 amount of non-operating expenses for a net Foreign Government Profit of $75,000.

Foreign Government Profit shall be tabulated for each wholly-owned Property on an Annual basis.

MANAGED HOTELS

For our managed Hotels, the Company, through its management agreements, may earn management and similar fees which may be based on a percentage of Property revenue or a fixed fee amount. For such fees where the fee is based on percentage of revenue or operating performance, the Company will attribute a percentage of the management fee based on a percentage of Foreign Government Percentage amount over total revenues. This percentage of the management fee, less the Company's associated corporate overhead expenses to administer the management services, shall be deemed as Profit from management fees attributed to foreign governments' patronage.



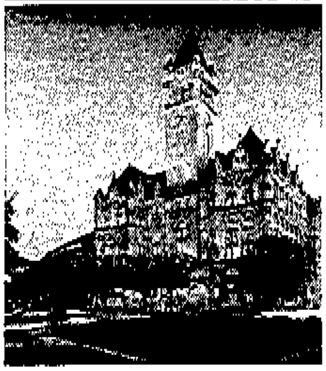


EXHIBIT B

DONATIONS TO U.S. TREASURY

On an annual basis, and after the completion of our fiscal year, the Company's wholly-owned Properties shall send their Foreign Government Profit to a master Company bank account for aggregation. Also on an annual basis, and after the completion of the Company's fiscal year, the Company shall send to the same master Company bank account its accumulation of Profit from management fees that is deemed attributed from foreign governments' patronage. The Company shall then make its annual donation of Profit from foreign governments' patronage to the U.S. Treasury in one lump sum payment from this master account representing its voluntary donation in accordance with this policy.

Exhibit C

EXHIBIT C

Summary Operating Statement [For Operators][1]

	Period Of											
	Current Period						Year-To-Date					
	Actual		Forecast/ Budget		Prior Year		Actual		Forecast/ Budget		Prior Year	
Rooms Available:												
Rooms Sold:												
Occupancy:												
ADR:												
Rooms RevPAR:												
Total RevPAR:												

	Period Of											
	Current Period						Year-To-Date					
	Actual		Forecast/ Budget		Prior Year		Actual		Forecast/ Budget		Prior Year	
	$	%[2]	$	%[2]	$	%[2]	$	%[2]	$	%[2]	$	%[2]
Operating Revenue												
Rooms												
Food and Beverage												
Other Operated Departments												
Miscellaneous Income												
Total Operating Revenue												
Departmental Expenses												
Rooms												
Food and Beverage												
Other Operated Departments												
Total Departmental Expenses												
Total Departmental Profit												
Undistributed Operating Expenses												
Administrative and General												
Information and Telecommunications Systems												
Sales and Marketing												
Property Operation and Maintenance												
Utilities												
Total Undistributed Expenses												
Gross Operating Profit												
Management Fees												
Income Before Non-Operating Income and Expenses												
Non-Operating Income and Expenses												
Income												
Rent												
Property and Other Taxes												
Insurance												
Other												
Total Non-Operating Income and Expenses												
Earnings Before Interest, Taxes, Depreciation, and Amortization												
Replacement Reserve												
EBITDA Less Replacement Reserve												

[1] For a complete Statement of Income, refer to Part II.
[2] All revenues and expenses should be shown as a percentage of total operating revenue, except departmental expenses, which should be shown as a percentage of their respective departmental revenue.

EXHIBIT C

Summary Operating Statement [For Owners]1

	Period Of					
	Current Period			Year-To-Date		
	Actual	Forecast/ Budget	Prior Year	Actual	Forecast/ Budget	Prior Year
Rooms Available:						
Rooms Sold:						
Occupancy:						
ADR:						
Rooms RevPAR:						
Total RevPAR:						

	Period Of											
	Current Period						Year-To-Date					
	Actual		Forecast/ Budget		Prior Year		Actual		Forecast/ Budget		Prior Year	
	$	%2	$	%2	$	%2	$	%2	$	%2	$	%2
Operating Revenue												
Rooms												
Food and Beverage												
Other Operated Departments												
Miscellaneous Income												
Total Operating Revenue												
Departmental Expenses												
Rooms												
Food and Beverage												
Other Operated Departments												
Total Departmental Expenses												
Total Departmental Profit												
Undistributed Operating Expenses												
Administrative and General												
Information and Telecommunications Systems												
Sales and Marketing												
Property Operation and Maintenance												
Utilities												
Total Undistributed Expenses												
Gross Operating Profit												
Management Fees												
Income Before Non-Operating Income and Expenses												
Non-Operating Income and Expenses												
Income												
Rent												
Property and Other Taxes												
Insurance												
Other												
Total Non-Operating Income and Expenses												
Earnings Before Interest, Taxes, Depreciation, and Amortization												
Interest, Depreciation, and Amortization												
Interest												
Depreciation												
Amortization												
Total Interest, Depreciation, and Amortization												
Income Before Income Taxes												
Income Taxes												
Net Income												

1 For a complete Statement of Income, refer to Part II.
2 All revenues and expenses should be shown as a percentage of total operating revenue, except departmental expenses, which should be shown as a percentage of their respective departmental revenue.

EXHIBIT C

The Summary Operating Statements are divided into sections: Operating Revenue, Departmental Expenses, Undistributed Operating Expenses, Management Fees, Non-Operating Income and Expenses, and either Replacement Reserve or Interest, Depreciation, and Amortization and Income Taxes. The following paragraphs describe the content of each of these sections.

Operating Revenue

The *Uniform System* includes only four revenue categories. The first two categories, Rooms and Food and Beverage, report the results of those departments. Operating revenue from any other department included in property operations—for example, a golf course, spa, or parking—is included in Other Operated Departments. The fourth revenue category is Miscellaneous Income, which includes such items as space rental, commissions, and interest income.

Total Operating Revenue is the sum of the amounts for all four categories of revenue. The Total Operating Revenue line is considered to be 100 percent, and the percentage for each revenue category is determined by dividing the dollar amount for that revenue category by Total Operating Revenue.

Departmental Expenses

There are three categories of departmental expenses, each of which relates to an operated department revenue category. In the schedules that accompany the Summary Operating Statements, departmental expenses are separated into as many as four groups: Cost of Sales, Cost of Other Revenue, Labor Costs and Related Expenses, and Other Expenses. The total of these groups of expenses for each category of revenue is the amount reported on the respective line of the Summary Operating Statements.

The percentage for each departmental expense is calculated by dividing the dollar amount of the expense by the corresponding revenue dollar amount.

Total Departmental Expenses is the sum of the amounts for all categories of departmental expenses. The percentage for Total Departmental Expenses is calculated by dividing Total Departmental Expenses by Total Operating Revenue.

Total Departmental Profit

Total Departmental Profit is calculated by subtracting Total Departmental Expenses from Total Operating Revenue. The Total Departmental Profit percentage is calculated by dividing the dollar amount of Total Departmental Profit by Total Operating Revenue.

Undistributed Operating Expenses

The Undistributed Operating Expenses section reports expenses that are considered applicable to the entire property. In order to achieve uniformity, it is not appropriate to allocate these types of expenses to specific departments. The Undistributed Operating Expenses are separated into five categories: Administrative and General, Information and Telecommunications Systems, Sales and Marketing, Property Operation and Maintenance, and Utilities.

The percentage for each Undistributed Operating Expense is calculated by dividing the dollar amount of the expense by Total Operating Revenue.

Total Undistributed Expenses is the sum of the amounts for all five categories of Undistributed Operating Expenses. The percentage for Total Undistributed Expenses is calculated by dividing Total Undistributed Expenses by Total Operating Revenue.

Gross Operating Profit

Gross Operating Profit is calculated by subtracting Total Undistributed Expenses from Total Departmental Profit. The Gross Operating Profit percentage is calculated by dividing the dollar amount of Gross Operating Profit by Total Operating Revenue.

EXHIBIT C

Management Fees

Management Fees represents the cost for management services performed by a management company to operate the property as a whole. If a management fee is paid to another entity for the oversight of a department other than Rooms within the property, such as Food and Beverage, that fee is charged to the specific department for which the fee is incurred. The percentage for Management Fees is determined by dividing the dollar amount of Management Fees by Total Operating Revenue.

Income Before Non-Operating Income and Expenses

Income Before Non-Operating Income and Expenses is calculated by subtracting Management Fees from Gross Operating Profit. The percentage for Income Before Non-Operating Income and Expenses is calculated by dividing the dollar amount of Income Before Non-Operating Income and Expenses by Total Operating Revenue.

Non-Operating Income and Expenses

The items included under Non-Operating Income and Expenses include non-operating income, Rent, Property and Other Taxes, Insurance, and Other non-operating expenses. The percentage for each of these expenses is calculated by dividing the dollar amount of the expense by Total Operating Revenue.

Total Non-Operating Income and Expenses is the sum of the amounts shown for Rent, Property and Other Taxes, Insurance, and Other non-operating expenses offset by the non-operating income amount. The Total Non-Operating Income and Expenses percentage is calculated by dividing the dollar amount for Total Non-Operating Income and Expenses by Total Operating Revenue.

Earnings Before Interest, Taxes, Depreciation, and Amortization

Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) is determined by subtracting the Total Non-Operating Income and Expenses from Income Before Non-Operating Income and Expenses. The EBITDA percentage is calculated by dividing the dollar amount for EBITDA by Total Operating Revenue.

For Operators

Replacement Reserve

Many management contracts, loan agreements, and owners/operators specify the establishment of a reserve to accumulate the funds required for future replacements of furniture, fixtures, and equipment. These funds may also provide for certain capital improvements and the replacement of existing assets such as the major building systems. Replacement Reserve indicates the amount set aside for the period covered by the Summary Operating Statement, whether or not the reserve is actually funded. The percentage for Replacement Reserve is calculated by dividing the dollar amount of the reserve by Total Operating Revenue.

EBITDA Less Replacement Reserve

EBITDA Less Replacement Reserve is determined by subtracting Replacement Reserve from EBITDA. The EBITDA Less Replacement Reserve percentage is calculated by dividing the dollar amount for EBITDA Less Replacement Reserve by Total Operating Revenue.

EXHIBIT C

For Owners

Net Income

To reconcile the Net Income presented on the Summary Operating Statement to the Net Income presented on the Statement of Income (see Part II), expenses typically paid by the owner are deducted from EBITDA. These expenses include Interest, Depreciation, Amortization, and Income Taxes. Total Interest, Depreciation and Amortization is deducted from EBITDA to calculate Income Before Income Taxes. Income Taxes are then deducted from Income Before Income Taxes to calculate Net Income. The Net Income percentage is calculated by dividing the dollar amount for Net Income by Total Operating Revenue.

Rooms—Schedule 1 reflects the proper format for a Rooms department and designates the revenue and expense accounts that are approved as line items in the *Uniform System*. Individual properties may delete irrelevant line items, but the *Uniform System* does not provide for the addition or substitution of other revenue or expense line items. Rather, properties may choose to develop a sub-account/sub-schedule to provide more detail related to a particular revenue or expense item. This sub-account/sub-schedule is then to be rolled into the appropriate line item. Additionally, properties may choose to delete some of the columns or to show them in a different order and remain "in conformity with the *Uniform System*."