

**HOTEL LAW TEXT**  
**SAMPLE INCENTIVE MANAGEMENT FEE PROVISIONS**

## Hotel Law Text

### Sample Incentive Management Fee Provisions

[See the Glossary for Defined Terms]

#### Sample #1

During each Fiscal Year during the Operating Term, the Owner shall pay to the Operator as partial consideration for services rendered pursuant to this Agreement: (i) a fee (the "Basic Fee") equal to \_\_\_\_\_ percent (\_\_\_%) of the Total Revenues of the Hotel for such Fiscal Period, and (ii) an additional fee (the "Incentive Fee") equal to (\_\_\_%) percent of GOP for such Fiscal Year. Except as provided in Section \_\_, payment of the Basic Fee and the Incentive Fee shall be monthly and is not subject to subordination or deferral to payment of Operating Expenses, items excluded from Operating Expenses described in Section \_\_, and items constituting Owner's expenses.

#### Sample #2

In addition to the Base Management Fee and in consideration of the services to be performed during the Term of this Agreement, Management Company shall be paid for each Fiscal Year (or partial Fiscal Year), an incentive fee ("Incentive Fee") equal to \_\_ percent (\_\_\_%) of the amount by which Operating Profit for such Fiscal Year (or partial Fiscal Year), after taking account of any payment of any current Fiscal Year Subordinated Base Management Fee as an Operating Expense, exceeds Owner's Priority (prorated for any partial Fiscal Year). Notwithstanding the foregoing to the contrary, Management Company shall not be entitled to receive any Incentive Fee in any Fiscal Year with respect to which the distributions to Owner have not equaled or exceeded Owner's Priority.

#### Sample #3

Monthly, as preliminary instalments of its Incentive Fee, an amount equal to the following percentages of the cumulative Adjusted Profit during the current Fiscal Year (determined on an accrual basis from the beginning of the applicable Fiscal Year), after deducting from such instalment of Incentive Fee all Incentive Fees previously accrued on account of such Fiscal Year:

- a. an amount equal to \_\_\_\_\_ percent (\_\_\_%) of the annual Adjusted Profit of the Hotel from the Opening of the Hotel or, if applicable, from the commencement of partial operations of the Hotel prior to the Opening, until the end of the third (3rd) full Fiscal Year; and
- b. an amount equal to \_\_\_\_\_ percent (\_\_\_%) of the annual Adjusted Profit of the Hotel during the fourth (4th) full Fiscal Year of operations of the Hotel, and each Fiscal Year thereafter through the remainder of the Operating Term.

In consideration of Manager's services during the Term of this Agreement, Owner shall pay to Manager a management fee (the "Management Fee") equal to the sum of (i) \_\_\_\_\_ percent (\_\_\_%) of the Gross Revenues (determined as hereinafter provided) from the operation of

the Hotel for each Operating Year (the "Fixed Management Fee"), and (ii) \_\_\_\_\_ percent (\_\_\_%) of an amount equal to "Operating Cash Flow" (determined as hereinafter provided) from the operation of the Hotel for each Operating Year (the "Incentive Management Fee").

B. For the purpose of determining the Fixed Management Fee, the term "Gross Revenues" shall mean "Net Revenues of Total Operated Departments" of the Hotel for each Operating Year, as such term is referred to and determined in accordance with the Uniform System of Accounts, on an accrual basis in accordance with generally accepted accounting principles consistently applied, excluding interest income.

C. For the purpose of determining the Incentive Management Fee, the term "Operating Cash Flow" shall mean the "Income Before Income Taxes" of the Hotel for each Operating Year as such term is referred to and determined in accordance with the Uniform System of Accounts on an accrual basis in accordance with generally accepted accounting principles consistently applied, excluding interest income and expense, depreciation and amortization, but after deducting the sum of the following items:

(a) the amount equal to the percentage of the Gross Revenues of the Hotel for each Operating Year to be deposited for the Operating Year in the Capital Renewals Reserve Account; and

(b) an amount equal to \_\_\_\_\_ percent (\_\_\_%) of Owner's Total Investment, as a stipulated return on Owner's Total Investment, not subject to change. Owner's Total Investment as used hereunder shall mean Owner's original total investment in the Project, including loan financing proceeds, all as submitted by Owner to Manager and approved by Manager. Owner shall, prior to the Opening Date, or as soon thereafter as such information is available, notify Manager in writing of the total cost of fully developing, constructing, completing, furnishing and equipping the Hotel with a breakdown of the separate items of costs. Manager shall have the right, within ninety (90) days after such notice, to audit the relevant books, records and invoices of Owner for the purpose of verifying the total Project cost as submitted by Owner. The approval of Manager shall be deemed conclusively given if Manager fails within such ninety (90) day period to notify Owner of its approval or disapproval of the verified total Project cost so submitted by Owner.