

216 Va. 490  
CLERK  
SUPREME COURT OF VIRGINIA  
**RICHMOND**  
MAY 30 1975  
RICHMOND, VIRGINIA

RECORD NUMBER 740818

IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND

KYRAN MURPHY

Appellant

v.

HOLIDAY INNS, INC.

Appellee

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APPENDIX

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James I. Burkhardt, Esquire  
901 North Washington Street  
Alexandria, Virginia 22314  
Counsel for Appellant

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

KYRAN MURPHY

Plaintiff

v.

CIVIL ACTION NO. 1136

HOLIDAY INNS, INC.

A Tennessee Corporation

Serve: Edward R. Parker

5511 Staples Mill Road

Richmond, Virginia 23228

Defendant

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF THE COUNTY OF HENRICO:

COMES NOW the Plaintiff, KYRAN MURPHY, by Counsel and states as follows:

1. That on August 24, 1971, the Defendant owned and operated a motel at 2500 Riverside Drive, Danville, Virginia.

2. That at the place and time aforesaid, Plaintiff was a guest at the motel. That at said time and place Defendant, its agents and employees, so carelessly, recklessly, and negligently maintained the premises of the motel that Plaintiff did slip and fall on an area of a walk where water draining from an air conditioner had been allowed to accumulate. That such water caused Plaintiff to strike the walkway with great force and violence injuring Plaintiff.

3. That as a direct and proximate result of the carelessness, recklessness, and negligence of the Defendant, its agents and employees, Plaintiff received serious and permanent injuries; has been prevented from performing his normal activity; has and will continue to suffer great pain of body and mind; and has sustained permanent disability.

4. That as a direct and proximate result of the injuries sustained by Plaintiff as aforesaid, Plaintiff has incurred, and will continue to incur in the future, expenses for

Page 1

Page - 2 -

doctors, for medical treatment, for nurses, and expenses related thereto in an effort to be cured of said injuries.

WHEREFORE, Plaintiff demands judgment against Defendant in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00) plus costs of this suit and such other relief as the Court deems proper.

KYRAN MURPHY

By James I. Burkhardt  
Counsel

BURKHARDT, ARNAVAS & BARTL  
901 North Washington Street  
Alexandria, Virginia 22314

By James I. Burkhardt  
James I. Burkhardt  
Counsel For Plaintiff

**MONCURE & CABELL**

ATTORNEYS AT LAW

921 ROSS BUILDING

RICHMOND, VA. 23219

M. WALLACE MONCURE, JR.  
R. E. CABELL, JR.  
MICHAEL W. MONCURE III  

---

DREW ST. J. CARNEAL

September 5, 1973

AREA CODE 703  
PHONE 643-8387

Honorable Margaret B. Baker  
Clerk  
Circuit Court of Henrico County  
P. O. Box 27032  
Richmond, Virginia 23261

Dear Mrs. Baker:

Re: Kyran Murphy v.  
Holiday Inns, Inc.

I enclose herewith motion for summary judgment, motion to quash, and grounds of defense on behalf of the defendant which I will thank you to file with the other papers in this suit.

Yours very truly,

**MONCURE & CABELL**

**M. Wallace Moncure, Jr.**

MWMJr/dcr

Enclosure

CC: James I. Burkhardt, Esquire  
Burkhardt, Arnavas & Bartl  
901 North Washington Street  
Alexandria, Virginia 22314

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

KYRAN MURPHY,

Plaintiff,

v.

HOLIDAY INNS, INC.,

Defendant

CIVIL ACTION NO. 1136

MOTION FOR SUMMARY JUDGMENT OF DEFENDANT

1. The defendant, HOLIDAY INNS, INC., moves the Court to enter summary judgment in its favor on the grounds that it has no relationship with regard to the operator of the premises, 2500 Riverside Drive, Danville, Virginia, other than a license agreement permitting the operator of a motel on the same premises to use the name "Holiday Inns" subject to all the terms and conditions of such license agreement as more particularly set forth in a copy of the same attached hereto as Exhibit "A and by this reference made a part hereof.

HOLIDAY INNS, INC.

By

W. Wallace Morrell  
Counsel

MOTION TO QUASH

1. The defendant moves the Court to dismiss this action as to it.

HOLIDAY INNS, INC.

By

W. Wallace Morrell  
Counsel

GROUND'S OF DEFENSE

The defendant files the following as and for its grounds of defense to the plaintiff's motion for judgment and as the grounds therefor sets forth as follows, to-wit:

1. Defendant denies the allegations of paragraph 1. of plaintiff's motion for judgment.
2. Defendant denies that it or any agent or employee of it was guilty of any conduct alleged in paragraph 2. of plaintiff's motion for judgment. Defendant has no knowledge as to the other allegations contained in paragraph 2. of plaintiff's motion for judgment and therefore denies the same.
3. Defendant denies the allegations of paragraphs 3. and 4. of plaintiff's motion for judgment.
4. Defendant denies that it is liable to the plaintiff for any recovery for any relief prayed for in plaintiff's motion for judgment.
5. Defendant reserves the right to amend and add to this its grounds of defense if and as it may be so advised at any time.

I hereby certify that copy of the foregoing motion for summary judgment, motion to quash and grounds of defense of the defendant was mailed to James I. Burkhardt, Esquire, Burkhardt, Arnavas & Bartl, 901 North Washington Street, Alexandria, Virginia 22314, counsel for the plaintiff, this day of September, 1973.

HOLIDAY INNS, INC.

By

W. Wallop Moncure Jr.

Counsel

MONCURE & CABELL  
921 Ross Building  
Richmond, Virginia 23219

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

KYRAN MURPHY,

Plaintiff,

v.

HOLIDAY INNS, Inc.,

Defendant.

CIVIL ACTION NO. 1136

ORDER

This matter came on to be heard on the defendant's motion for summary judgment and motion to dismiss, and the Court having considered the matter on the pleadings, the license agreement between the defendant and its licensee designated in plaintiff's memorandum as "Danville Holiday Inn", which is incorporated by reference and filed as an exhibit with the motion for summary judgment and the memorandum, and cases cited by counsel for each of the parties.

The Court is of the opinion that as a matter of law the defendant corporation cannot be held liable to the plaintiff for the injuries allegedly sustained upon the premises in question, since it does not own the real property designated in the plaintiff's memorandum as the "Danville Holiday Inn" and there exists no principal-agent or master-servant relationship between the defendant corporation and Betsy-Len Motor Hotel Corporation, the licensee under the agreement entered into on December 20, 1958.

The Court doth sustain the defendant's motion for summary judgment  
and doth hereby enter up summary judgment in favor of the defendant in this  
action.

I ask for this order:

W. Wallace Monroe Jr.

Attorney for Defendant

Date: 4/25/74

John Wingo Kuonke  
Judge

James J. Bushnell  
Attorney for Plaintiff

A Copy  
Teste:

MARGARET B. BAKER, CLERK

BY:

Ruth M. Steeman  
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

KYRAN MURPHY	:	
Plaintiff	:	
v.	:	CIVIL ACTION NO. 1136
HOLIDAY INNS	:	
Defendant	:	

NOTICE OF APPEAL  
AND  
ASSIGNMENT OF ERROR

The Clerk of the Circuit Court of Henrico County will please note the appeal of the above styled case on behalf of the Plaintiff KYRAN MURPHY.

No statement of facts, testimony or other incident of the case and no transcript will hereafter be filed by Counsel for Plaintiff.

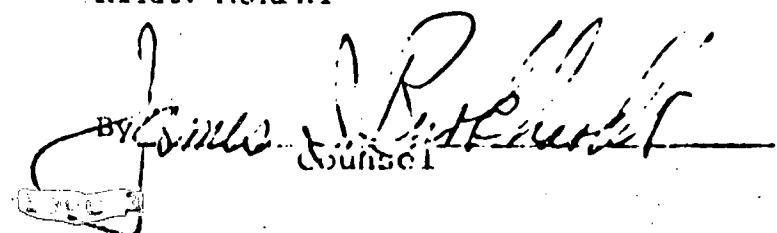
The Plaintiff KYRAN MURPHY in conjunction with his Notice of Appeal states the following to be the basis of an assignment of error in the order entered April 25, 1974 by Judge John Knowles of the Circuit Court of Henrico County:

1. The Court's order granting Defendant's Motion for Summary Judgment states "There exists no principal-agent or master-servant relationship between the Defendant corporation [HOLIDAY INNS, INC.] and Betsy-Len Motor Hotel Corporation [designated licensee under their agreement of December 20, 1958]" and therefore the Defendant cannot be held liable for the alleged tortious conduct of the employees of Betsy-Len Motor Hotel Corporation.

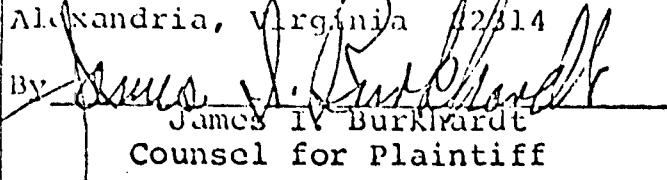
2. Plaintiff admits that the law of the state of Virginia precludes liability against Defendant if no master-servant or principal-agent relationship exists, but challenges the finding

of the trial court and alleges error on the part of the trial court in holding that no principal-agent or master-servant relationship exists.

KYRAN MURPHY

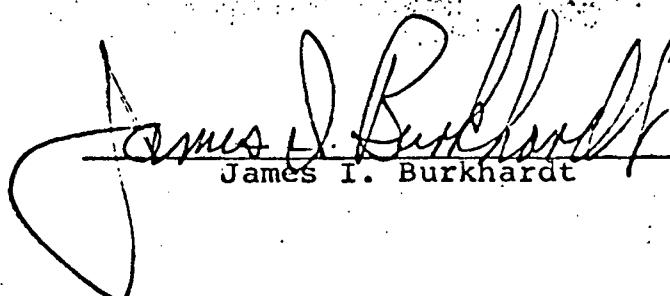
J. R. Murphy  
By John J. Murphy  


BURKHARDT & BARTLE  
901 North Washington Street  
Alexandria, Virginia 22314

By   
James I. Burkhardt  
Counsel for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he did on the 17<sup>th</sup> day  
of May, 1974, mail, postage prepaid, a true copy of the foregoing  
Notice of Appeal and Assignment of Error to M. Wallace Moncure, Jr.,  
Esq., 920 Ross Building, Richmond, Virginia, 23219, Counsel for  
Defendant.

  
James I. Burkhardt

# HOLIDAY INNS OF AMERICA

## License Agreement

EXHIBIT "A"

THIS AGREEMENT entered into at Memphis, Tennessee, this 20 day of December, 1958, by and between HOLIDAY INNS OF AMERICA, INC., a Tennessee corporation, with principal office at Memphis, Tennessee, (hereinafter referred to as "Licensor"), and BETSY-LEN MOTOR HOTEL CORPORATION

whose address is P. O. BOX 1252, City of Myrtle Beach, State of South Carolina (hereinafter referred to as "Licensee"):

WITNESSETH: That,

Licensor has developed and perfected a plan or system (hereinafter referred to as the "System," or as the "Holiday Inns System") for providing to the public, and especially to the motoring public, an inn service, including lodging, food and other accommodations, of distinctive nature, of high quality, and of other distinguishing characteristics, all as initially placed in operation by Licensor and provided under the name "Holiday Inn," in and around Memphis, Tennessee. The distinguishing characteristics of said System, and of the inn service provided pursuant thereto, include (but are not limited to) the following:

- (1) The words "HOLIDAY INN," "Holiday Inn Hotel," "Holiday Inns," "Holiday Inns of America," or other combinations of said words, either alone, or in combination or association with the color scheme or pattern, building design, insignia, slogans, signs, emblems, trade names, trade marks, service marks, or with the inn service, now or hereafter provided or used by Licensor at or near Memphis, Tennessee, or as part of the said System, or in association with the idea of a nationwide service of inns all providing standardized, high quality, distinctive inn service;
- (2) A distinctive and readily recognizable design and construction of the structures comprising such inn and including the restaurant and other supplementary buildings;
- (3) The color scheme, pattern and design, and the color combinations of the exteriors and of the interiors of said structures, and on certain of the furnishings therein;
- (4) Appearance of certain of said structures and the distinctive trade marks, service marks, design, slogans, name and matter now or hereafter displayed thereon, or used as part thereof;
- (5) The trade marks, trade names, service marks, insignia, emblems, signs, designs, color and patterns, and other distinctive features, as now or hereafter in use at Holiday Inns in and around Memphis, or as part of the System, both as identifying the System of inns, and as identifying the type, character, and standard or quality of service which the public may expect to receive at such inns;
- (6) Style, color and character of equipment, furnishings and appliances used in and about the inn and the equipment and supplies bearing the name "Holiday Inn," and/or other distinguishing characteristics;
- (7) Methods of operation, advertising service and publicity, and credit card service when established;

(8) A standardized, uniform (or as nearly so as may be) Inn service, identified with the words "Holiday Inn" and with the other distinguishing features, trade marks, and service marks of the System, for providing lodging, food and other accommodations and conveniences, parking for automobiles, close proximity to filling station facilities, and for providing such inn service in accordance with fair and ethical policies and practices, and in accordance with high standards of efficiency, courtesy, and cleanliness, and of a distinctive nature and of high quality.

The Licensee desires to be licensed to provide the same Inn service of the same distinctive nature and high quality and of the same distinguishing characteristics, as established and provided by Licenser, under and using the same trade marks, service marks, color pattern and scheme, signs, designs, and other distinguishing characteristics of the System, and as established and provided by Licenser. It is the intention of the parties that the inns to be operated by the Licensee under this Agreement, together with Inns now or hereafter operated by Licenser and those operated or to be operated by other licensees under similar agreements, will form a National System of such inns. The success of such National System is dependent upon the continuing good reputation of each and every inn operated within the System and upon the continuing good will of the public toward the name "Holiday Inn," "Holiday Inn Hotel," "Holiday Inns" and "Holiday Inns of America," and towards the System and its distinguishing characteristics. The success of both parties to this Agreement, and of other licensees is directly affected by the business conduct of all licensees using the System. The Licensee, therefore, recognizes that adherence to the terms of this Agreement is a matter of mutual importance and consequence to Licensee, to Licenser, and to all other licensees. Accordingly,

**IT IS MUTUALLY CONVENANTED AND AGREED** as follows:

**FIRST:** Licenser hereby grants to Licensee, subject to the terms and conditions hereof, a non-assignable, exclusive license to use said System in the construction and operation of one or more Holiday Inns within, and only within, the metropolitan area or areas, described as follows (hereinafter referred to as the "Licensed Territory"):

**The "Licensed Territory" shall be the City of Danville, Virginia as determined by the present city limits.**

**It is specifically understood and agreed that the fees paid and provided for herein are for the licensed operation of the first Holiday Inn located in Danville, Virginia. Additional license fees and obligations shall become due and payable as additional Holiday Inns are developed in the "Licensed Territory" by the Licensee.**

**SECOND:** Licenser will not approve a site under any other license and will not itself operate a Holiday Inn, within said territory, nor will it grant any franchise or license without Licensee's approval so long as Licensee shall perform the agreements on its part herein contained.

**SECOND:** Licensee does acknowledge and recognize the Licenser's interest in, and exclusive right to, said System and to its distinguishing characteristics now, or from time to time hereafter, used as a part of, or in connection with or applicable to, said System, and in all service marks, trade marks, copyrights, service mark or trade mark registration, trade names, and patents now or hereafter applied for or granted in connection therewith, and also the exclusive right of Licenser to use and/or grant the right

to other to use the name "Holiday Inn" in connection with the said System; and Licensee further recognizes and acknowledges the exclusive right of Licensor to grant licenses to others to use said System in the conduct of "Holiday Inns" under the said System; Licensee agrees neither to infringe upon, use or imitate the said System, or any of its distinguishing characteristics as above set forth, except under written license from the Licensor; and Licensee does hereby accept this license, and does covenant and agree to conduct the operation of inns in the licensed territory under the System, and in accordance with the terms and provisions of this license and of the Rules of operation of said System; Licensee does further covenant and agree as follows:

(a) To maintain a high moral and ethical standard and atmosphere at Licensee's "Holiday Inns"; to comply with all local, State, and Federal laws, ordinances, rules and regulations pertaining thereto; to maintain its premises and accommodations in a clean, safe and orderly manner; and to provide efficient, courteous and high quality Holiday Inn System service to the public, and to furnish inn accommodations, services and conveniences of the same quality, type and distinguishing characteristics, as provided at the "Holiday Inns" in and around Memphis, to the end that the Inns operated by Licensee under this agreement shall each help to create good will among the public for "Holiday Inn" System Inns as a whole, and that Licensor, Licensee, and each member of said System shall be benefited, and the public assured uniform efficient, courteous, high quality service on a standardized national basis;

(b) To pay to Licensor forthwith as a part of the consideration for the execution of this agreement by Licensor and in addition to all other sums required to be paid by Licensee, the sum of **FIVE THOUSAND (\$5,000.00)** - Dollars

(c) To build at least one Holiday Inn within the licensed territory, and such additional Holiday Inns as may be deemed by it necessary and desirable (but if the licensed territory shall consist of or include a metropolitan area of 250,000 population or more, according to the 1950 census, then to build at least one Holiday Inn to serve each United States Highway within each such metropolitan area except that in no event shall Licensee be deemed to have agreed to build more than one room for each 2,000 population within its territory according to the 1950 census); provided, however, that the Licensee shall not be required to build upon any particular United States Highway, or to build any particular number of Inns hereunder, if at the time Licensee presents a Market Analysis of a nationally recognized Market Analyst satisfactory to Licensor, showing that such construction is not justified by market conditions! In the event of dispute between Licensee and Licensor as to any matter arising from such survey or the absence thereof, or if Licensor disagrees with such survey, then Licensor and Licensee agree to accept the recommendations of the Executive Committee of Holiday Inns National Association with respect thereto. Each inn shall provide a minimum of fifty rooms, each shall be designed and built substantially in accordance with the plans and specifications used by Holiday Inns at Memphis and such modifications thereof as Licensor may recommend (subject only to necessary variations required by local building and other applicable laws and regulations and by local conditions) and each shall exhibit the distinctive characteristics of said System in such manner as to be readily recognizable by the public as a part of said System; the location, plot plan, and the detailed plans and specifications, for each such inn shall be submitted to and approved by Licensor prior to the commencement of work; Licensee agrees that Licensee will not, directly or indirectly, own any interest in, operate, or be in any manner connected with or associated with, any inn, hotel or motel, within the licensed territory, during the period of this license, except Holiday Inns licensed under this License;

(d) To commence the construction of the first of such Inns on or before **June 20, 1959**;

and to complete such construction and commence operation under the System on or before

**December 20, 1959**;

and thereafter to commence construction of at least one additional inn within each yearly period following the date first mentioned in this Part "Second" "d" and to complete the same within six months after commencement of construction, until the entire number of Inns which Licensee agrees to build under Part "Second" "(c)", or such lesser number, if any, as may be justified in the market analysis shall have been completed (except as any of such dates or times may be extended by mutual agreement and except for delays occasioned by war, acts of God, and matters beyond Licensee's control); if the Licensee does not commence construction within the Licensed Territory by the dates required hereunder, or having so commenced does not prosecute same with reasonable diligence and complete the same by the date required hereunder, this license and all rights hereunder, may at Licensor's option be cancelled as to such territory, by ~~any~~ <sup>any</sup> ~~such~~ <sup>such</sup> ~~territory~~ <sup>territory</sup> ~~Licensee~~ <sup>Licensee</sup>. And the consideration paid for this license shall be forfeited to Licensor, time being of the essence. In the event of such cancellation Licensor shall have the right to issue an additional license or licenses for said territory covering the Inns Licensee has agreed to build but has not built hereunder; but no such additional licenses shall be granted for the construction of any inn to serve a highway served by any inn constructed by Licensee under this agreement. Licensee's right and license to operate any "Holiday Inn" then built and in operation by it shall not be affected, provided Licensee shall not be in violation of any other provision of this Agreement.

(e) To pay to Licensor at Memphis, Tennessee, within fifteen (15) days after the end of each month, commencing with the month in which Licensee opens his Holiday Inn and continuing for the life of this agreement, as a royalty or further consideration for this license, an amount equal to five cents (\$ .05) per night times the total number of nights in all Holiday Inns or Inns within the Licensed Territory;

(f) To pay to Licensor at the same time an additional sum in the same manner as set forth in paragraph (e) for the purchase of rights to use the name "Holiday Inn" by the members of the National Association of Holiday Inns, and continuing for the life of this agreement, as a payment upon recommendation of the Advertising Committee of Holiday Inns National Association, approved in writing by a majority of the members of such association, or by a majority of those members present at a duly called meeting of the Association, as a payment upon national advertising expenses, all of which sums payable under this sub-paragraph (f) shall be deposited by Licensor in a separate account under its control but designated "Holiday Inn National Advertising Account" to be used by Licensor solely for the publication and distribution of directories, pamphlets and other printed advertising matter, for radio, T-V, magazine, newspaper and other forms of advertising media, and for technical and professional advice in connection therewith; for advertising agency commissions; and for any other advertising, promotional or related purposes or materials, which are approved by a majority of the Advertising Committee of Holiday Inns National Association as desirable to advertise and promote "Holiday Inns" nationally; each Licensee is responsible for Licensee's own local advertising;

(g) To feature in the operation of all of Licensee's inns covered by this license, and in all advertising matter, the words "Holiday Inn," together with the distinguishing characteristics of the System, in substantially the same combination, arrangement, and manner as displayed and used in the "Holiday Inns" in and around Memphis, so that Licensee's inns will be readily recognizable by the public as part of the same appearance as the "Holiday Inns" constructed in and around Memphis, Tennessee, and readily recognizable by the public as part of the national System of "Holiday Inns"; to erect a large sign, using neon lighting if allowed by local law, of the same design, color scheme and pattern and appearance as used by "Holiday Inns" in and around Memphis, Tennessee (subject only to such modifications, if any, as may be required by local law) and using the words "Holiday Inn," the same star, and the same other distinctive, distinguishing features and characteristics on said sign; to construct on the exterior of Licensee's inns using the distinctive color scheme and pattern of the System, the words "Holiday Inn" and the service marks, trade marks, slogans, insignia, and other identifying distinctive features as now or hereafter used upon "Holiday Inns" at Memphis as aforesaid; to employ such service marks, trade marks, distinctive color scheme and pattern in all exterior and interior decorating, and on all stationery, linens, towels, furniture, furnishings, advertising matter, signs or other articles, in substantially the same combination, arrangement and manner as used in said "Holiday Inns" in and around Memphis; if in Licensee's territory, there be a claim of prior use of the word "Holiday" in the name of any hotel, motel or inn, then Licensee shall so use Licensee's own name, and such combinations and modification of "Holiday Inn" service marks, trade marks, trade names and slogans, as to clearly avoid any possible confusion between the Licensee's "Holiday Inn" and any such claimant; and Licensor shall defend the name "Holiday Inn" and the System against imitations or infringements, except that Licensee shall defend against any claim of prior use within the Licensed territory, and both other parties shall make every effort to protect, maintain and to advance the name "Holiday Inn," and the distinguishing characteristics in connection therewith, and the service marks, trade marks, trade names and slogans, as standing for, and as having a secondary meaning of, inns operated under the said System only;

(h) That Licensee, in the use of the name "Holiday Inn," the service marks, trade marks, color scheme and pattern, signs and the System, and in Licensor's own advertising, shall identify Licensor as being the owner and operator of Licensee's particular "Holiday Inn" or "Holiday Inns" under license from Licensor; that the parties hereto are completely separate entities, are not partners, joint adventurers, or agents of the other in any sense, and neither has power to obligate or bind the other; that Licensee shall not use the words "Holiday Inn," or any combination of such words, in its corporate name or partnership name, if a corporation or partnership, nor allow the use thereof by others; that Licensee will sell or provide no products or services under the said service marks or trade marks, except inn service of lodging, foods, and other accommodations and conveniences for the public, of the same nature, type, quality and distinguishing characteristics as are sold or provided, or may hereafter be sold or provided at the "Holiday Inns" in and around Memphis Tennessee;

(i) To use every reasonable means within the Licensed Territory to encourage the use of "Holiday Inns" on a national basis by the traveling public;

(j) To promote and endeavor diligently to secure desirable applications for Holiday Inn National System Credit cards, in a conscientious effort to create new and reliable patrons of "Holiday Inn";

(K) To permit regular inspection of all accommodations, facilities, and procedures by accredited Holiday Inns' Inspectors, for compliance with this agreement, and to file such lodging to any such inspector when on official duty for such time as may be reasonably necessary;

(L) To observe strictly the Rules of Operation, as now established by Licensor, or as revised or amended by Licensor from time to time hereafter, the right of revision and practicality of rules for the operation of the System being reserved by Licensor; Licensor recognizes that the wisdom and it, therefore, agrees to appoint as set forth in Part Twelfth hereafter, a Committee on Rules of Operation, and agrees not to revise or add to the Rules of Operation except by action of Licensor's Board of Directors, following recommendation of a majority of such Committee on Rules of Operation;

(M) That this license is not exclusive, except in the Licensed Territory and under the conditions imposed herein, is personal to the Licensee, and is non-transferable without the written consent of Licensor; that in the event Licensor shall consent, in writing, to the transfer hereof, the transferee shall be bound by each and all covenants and conditions herein contained and shall have no right to further transfer of this license, except with the written consent of Licensor; if this License shall be signed by Licensee as an individual, Licensee hereby agrees that, upon request of Licensor, it will approve assignment to a corporation of which Licensee shall be an officer, director, and a substantial stockholder.

(N) To file with Licensor not later than thirty (30) days following the close of each calendar quarter of each year during the life of this Agreement a statement of operations, showing the results of operations of Licensee's Holiday Inns during the calendar quarter preceding each such required filing date, and such other reports as Licensor may from time to time require, on forms to be prescribed by Licensor.

THIRD: Licensor covenants and agrees:

- (A) To make available to Licensee the privilege of consulting with Licensor's officials and staff upon problems relating to design, construction and operation of "Holiday Inn" hotels, so that Licensee will have available to it the experience of Licensor, and of other licensees relating to such problems;
- (B) To supply as a guide to Licensee a copy of a set of plans and specifications for the erection of a "Holiday Inn"; to approve or disapprove each particular site, when proposed by Licensee;
- (C) To supply sample plot plans and typical layouts;
- (D) To examine, and to make recommendations in connection with approving the same, Licensee's detailed plans, specifications, and proposed plot plans;
- (E) To make available to Licensee, upon request, all such information as Licensor may have from time to time with respect to prices of equipment, furniture, furnishings and supplies;
- (F) To provide 30 days training in "Holiday Inn" methods to a manager, a housekeeper and a restaurant manager selected by Licensee. All such training shall be provided at or near Memphis (or such more convenient place as Licensor may designate), and Licensee shall be responsible for trainees' wages, room, board and traveling expenses during the training period;
- (G) To make available to Licensee such information as Licensor may have as to financing (but Licensor does not in any way guarantee to obtain or provide mortgage financing for Licensee);
- (H) To use every reasonable means of assisting Licensee to install methods of inn operation as conducted at "Holiday Inns" at or near Memphis, and under the System;

(J) To encourage the use of "Holiday Inns" on a national basis by members of the public;

(K) To issue, from time to time, for distribution among travelers and "Holiday Inn" customers, a directory containing the names and addresses of all Licensees in good standing;

(L) To maintain supervision over Licensees, to assure compliance with "Holiday Inn" standards as established in the System from time to time, and in the Rules of Operation, and for that purpose to have traveling inspectors visit each Licensee a minimum of twice a year;

(M) To provide Holiday Inns National Association, with necessary and appropriate office space, at Memphis, rent free for a national office for the Association;

(N) To make available to Licensee, through sales or otherwise; at prices to be determined at the time, "Holiday Inn" System signs, decalcomania, forms, stationery, bulletins and procedures which at the time are being supplied by Licenser for use in the conduct of "Holiday Inns"; and to furnish recommendations for standardizing signs, letterheads, registration cards, statements, rate bidders, and other similar material;

(O) To expend the sums received from Licensee pursuant to Part "Second" (f), of this agreement for the publication of a directory, and for national advertising and promotion, and as provided or authorized in the said Part "Second" (f).

**FOURTH:** Licensor expressly reserves the right to revise, amend and to change, from time to time, the said "System" or any part thereof, but agrees not to revise or amend the Rules of Operation except by action of its Board of Directors, following recommendation of a majority of the Committee on Rules of Operation appointed as set forth in Part Twelfth. Such "System" as so changed, revised or amended, from time to time, shall for all purposes be deemed to be the "System" referred to in this Agreement, and all improvements in said System developed by Licensee, Licenser, or other licensees, shall be and become the sole and absolute property of Licenser, and Licenser may incorporate the same in said System and shall have the sole and exclusive right to copyright, register and/or patent such improvements in Licenser's own name, and Licensee shall have no right to copyright, register and/or patent such improvements in Licensee's name; and Licensee shall have no right to use such improvements, except as set forth herein, provided, however, that in the event of the termination of this License, Licensee may continue to use any improvement which Licensee has himself developed, provided Licensee does not represent or indicate thereby that he is a Licensee or user of the System, or operator of a "Holiday Inn";

**FIFTH:** This agreement and license shall be in effect for a term commencing this date and continuing until terminated under Part Second "(d)" for failure to commence or proceed with construction or by one of the following acts or events:

(A) Licensee shall have the right to terminate this Agreement at any time upon giving six months prior written notice to Licenser; but, if such notice shall be given to take effect other than on a date four exact years, or any multiple of four exact years, after the date named in Part "Second", "(d)" as the date on or before which construction of all "Holiday Inns" licensed by this Agreement is to be completed (which said four-year or multiple of four-year dates are hereafter referred to in this Part "Fifth" as "no termination dates"), then the Licensee shall pay with such notice an amount equal to one-half of the aggregate of such agreements as would have become due under Part "Second", "(e)" and "(f)" of this Agreement between such effective date of termination and the next occurring "free termination date"; it is agreed, that the above specified times are of the essence of this agreement;

(B) After twenty years either party may terminate this agreement on any anniversary date hereof by giving nine months prior written notice; provided that Licensee shall have the option to renew this license on a year to year basis thereafter but any such renewal shall be upon all of the terms and provisions of license agreements then being used by Licenser;

(C) In the event Licensee shall violate substantially and materially any term, provision, or agreement herein contained, and such violation continues for thirty days after written notice from Licenser or Trustee thereof, or in the event of the Insolvency, Incapacity, or dissolution of Licensee or the appointment of a Receiver or Trustee for the business of Licensee, or if Licenser be adjudged a bankrupt, then the Licenser, in any such event, and without further demand or notice, may, at Licenser's option, immediately declare this agreement and license and all rights and privileges hereunder, cancelled and terminated, and Licensee shall be liable in damages to Licenser for all amounts due on the effective date of such termination, as well as for an amount equal to one-half of the aggregate of such payments as would have become due under Part "Second" "(c)" and "(f)" of this Agreement between the effective date of such termination and the next occurring "free termination date";

(D) If at any time more than four years after the date of this Agreement the average scheduled room rental rates of all Holiday Inns shall have risen more than fifty (50%) per cent above, or decreased more than fifty (50%) per cent below, the average scheduled room rental rates of Holiday Inns in operation on January 1, 1955, then in that event the payments required under Part "Second" "(c)" hereof shall be increased or decreased (as the case may be) in the same ratio as such increase or decrease in average room rental rates. If, upon demand, Licensee shall fail to pay any such increase, Licenser may, at its option terminate this License by giving six (6) months prior written notice.

SIXTH: In the event of termination of this agreement under Part Fifth all rights of Licensee hereunder shall thereupon terminate, and Licensee shall immediately thereafter cease to use, by advertising or otherwise, directly or indirectly, the said System, or any parts thereof; and without limiting the generality of the foregoing, the Licensee shall cease to use, and shall withdraw from use, the words "Holiday Inn" or any combination of words similar thereto or suggestive thereof, the trade names, trade marks, service marks, color schemes and patterns, slogans, designs, signs, emblems, of the System or in any wise similar thereto or suggestive thereof; and the Licensee shall withdraw from use, and cease to use, all signs, furniture, furnishings, advertising matter, stationery, forms, or any other articles which display the words "Holiday Inn", the trade names, trade marks, service marks, color schemes or patterns, slogans, designs, signs, or emblem, of the System, or identified with the System, or similar thereto, or suggestive thereof; and Licensee agrees, upon any such termination, to cease and refrain from holding Licensee out to the public in any way as a member of the System, or as a Licensee or operator of a "Holiday Inn" and to distinguish Licensee's inns thereafter so clearly from those of the Licenser, and from those within the System, as to avoid all possibility of any confusion by the public. Licensee agrees that the Licenser shall be entitled to injunctive and equitable relief for any violation of this Part Sixth of this agreement, and Licensee agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by Licenser in enforcing this Part Sixth of this agreement, or any other part of this agreement, as a result of Licensee's violation of, or default in performing, this Part Sixth, or any other part, of this agreement.

SEVENTH: Whenever under the terms of this Agreement, notice is required, the same shall be given in writing and signed by or on behalf of the party giving the same, and shall be given personally or by depositing the same in the Registered Mail, enclosed in a sealed wrapper, postage prepaid, and addressed to the party for whom intended. If said notice be intended for Licensee, the same shall be addressed to Licensee at the address hereinabove set out. If said notice be intended for Licenser, it shall be addressed to Licenser at 4985 Summer Avenue, Memphis, Tennessee, or at such other address as may be designated in writing by Licenser. Any notice so mailed shall for all purposes be deemed to have been given to and received by the party for whom intended on the date said notice was so mailed.

EIGHTH: No delay, waiver, omission or forbearance on the part of the Licenser to exercise any right, option, duty or power arising out of any breach or default by Licensee, or by any other licensee, of any of the terms, provisions or covenants hereof, shall constitute a waiver by Licenser to enforce any such right, option or power as against Licensee, or as to subsequent breach or default by Licensee.

NINTH: Any provision of this agreement prohibited by law, or by court decree, in any locality or state, shall be ineffective to the extent of such prohibition without in any way invalidating or affecting the remaining provisions of this Agreement, or without invalidating or affecting the provisions of this Agreement within states and localities where not prohibited by law or court decree. Notwithstanding the above, this Agreement and all rights hereunder may be assigned and transferred by Licenser, and shall ensue for the benefit of the assignee.

ELEVENTH: It is stipulated that this Agreement has been negotiated in, and finally executed within, the State of Tennessee, and shall be construed according to the laws of that State.

TWELFTH: Licensee and other licensees, present or future, and the Lessor shall be eligible for membership in Holiday Inns National Association, the primary purposes of which shall be to consider and discuss common problems relating to the operation of "Holiday Inns" and to make recommendations to the Lessor with respect to Rules of Operation, advertising expenditures, and other appropriate matters.

The Association may meet annually, may adopt such by-laws as are deemed appropriate and not in conflict with this or other license agreements, and may elect officers, and nominate for appointment by Lessor, such committees as it finds advisable, including an Advertising Committee, and a Committee on Rules. All Committee recommendations shall be transmitted to Lessor and accepted by it as expressing the consensus of opinion of members of the Association on matters within the scope of the particular Committee. In the event the Association is inactive, or fails to meet annually, or fails to appoint the Committees as aforesaid, or in the event any Committee having been appointed fails to function, then Lessor may without prior nomination by the Association appoint such Committee, which Committee may make the recommendations referred to in this Agreement, and shall have the right to function in all respects unless and until the Association Committee shall actively function.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement at Memphis, Tennessee, on the day and year first above written.

(Licensee)

**TESTE** John C. Clegg **CORPORATION** **HOLIDAY INNS OF AMERICA, INC.**  
By John C. Clegg (SEAL) President

ATTEST:

Edmund M. Stille **WITNESS**  
By Edmund M. Stille Secretary

(Lessor)

**TESTE** W. E. Oberholzer **HOLIDAY INNS OF AMERICA, INC.**  
By W. E. Oberholzer (SEAL) Chairman of the Board or President  
**ATTEST:** John C. Clegg **WITNESS**  
By John C. Clegg Assistant Secretary

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**GUARANTY OF LICENSEE'S UNDERTAKINGS**

In consideration of, and as an inducement to, the execution of the above Agreement and License by Holiday Inns of America, Inc., the undersigned does guarantee unto Holiday Inns of America, Inc., that the above named Licensee will perform during the four years next following the date of the above Agreement, each and every covenant, payment, agreement and undertaking on the part of Licensee contained and set forth in said Agreement.

IN WITNESS WHEREOF, the Undersigned has hereunto affixed the signature and seal of the Undersigned the same day and year as the above Agreement.

(SEAL)

(SEAL)  
GUARANTOR

HOLIDAY PRESS, MRS.

Danville, Virginia

ADDENDUM TO LICENSE AGREEMENT

For and in consideration of the mutual benefits to each party and other considerations hereinlater set out, the parties do agree that the additional provisions shall become a part of this License Agreement, and in the event of any conflict with the Standard License Agreement form the provisions of this Addendum shall prevail.

13. Licensee shall not lease to or hire or retain in any manner for the management of any Holiday Inn within the Licensed Territory any person or firm who is in a similar or competitive type business or organization.

14. The owner or lessee of any Holiday Inn built or operated under this License Agreement shall not be an associate or associate member or affiliated in any manner with any organization, company or group, the primary purpose of which, either express or implied, is to set a standard for motels or hotels and/or to request or require its members to refer business to other members of that organization, company or group.

15. Licensor shall have the right to terminate this License Agreement if at any time the controlling interest in the corporation to which this License Agreement is issued shall be sold or disposed of by the controlling stockholders of Licensee at this time and acquired by any other person, persons or corporations or associations not controlled by the holders of the controlling interest of Licensee at the date of this License Agreement.

16. Licensee agrees that if at any time it shall attempt to raise or secure funds by sale of stock or securities convertible into stock that said plans must be approved by Licensor prior to any offering or sale.

17. Licensee agrees that it will not begin construction of its Holiday Inn until complete plans and specifications have been examined and approved by Licensor.

18. Licensee agrees that whether it operates the restaurant or whether it is leased or sublet to others, Licensee agrees to be responsible for the restaurant in the proposed Holiday Inn, to maintain accommodations at an early hour for departure at breakfast and also to remain open a reasonably late hour for late arrivals in the evening. Licensee further agrees to be responsible for the restaurant to furnish room service to all rooms of the Holiday Inn, to display Holiday Inn advertising material exclusively, such as the Directories, placemats, napkins, etc., and to conduct the entire operation of the restaurant compatible with and to the best interest of the Holiday Inn System.

ATTEST:

BETSY-LEN MOTOR HOTEL CORPORATION

By \_\_\_\_\_

C. C. Clark

President

Secretary

ATTEST:

HOLIDAY INNS OF AMERICA, INC.

By \_\_\_\_\_

John G. Johnson

President

Assistant Secretary