



AAHOA

2008 PROGRESS REPORT  
ON FAIR FRANCHISING

March 27, 2008

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## **Association Profile**

The Asian American Hotel Owners Association (“AAHOA”) is THE owner’s organization and THE voice of owners in the hospitality industry. Founded in 1989, AAHOA is now one of the fastest-growing organizations in the industry, with 8,700 members owning more than 22,000 hotels in this country, and totaling \$60 billion in property value. Of the hotels owned by AAHOA members, approximately 13,500 are franchised while 8,500 are independent.

AAHOA’s mission is to promote and protect the interests of its members by inspiring excellence through programs and initiatives in advocacy, industry leadership, professional development, membership benefits, and community involvement. As the owners association, AAHOA accomplishes this by engaging in advocacy efforts at the federal, state, and local levels, establishing fair franchising standards for the industry, providing year-round programs focusing on education and leadership, securing valuable products and services for its members, and engaging in humanitarian and community efforts. For more information, visit [www.aahoa.com](http://www.aahoa.com).

## **LEGAL DISCLAIMER**

*Please note that this Progress Report contains the opinions of AAHOA, a Georgia non-profit 501(c)(6) corporation and trade association, which is dedicated to promoting and protecting the interests of its members by inspiring excellence through programs and initiatives in advocacy, industry leadership, professional development, member benefits and community involvement.*

*This Progress Report is intended to summarize the progress made to date in working with certain designated franchise companies to revise and improve the language of their respective Uniform Franchise Offering Circulars (“UFOCs”), franchise agreements, and related business policies and procedures in an attempt to comply with AAHOA’s updated 12 Points of Fair Franchising.*

*The Progress Report is largely based on a lengthy, detailed and complex document entitled the “Performance Appraisal Report” (“PAR”), which was prepared by AAHOA to measure the currently-offered franchise program of the subject Franchisor against the AAHOA updated 12 Points of Fair Franchising. Following preparation of a draft version of the PAR, AAHOA provided the Franchisor with a copy of the draft, as well as an opportunity to comment on the draft. The comments received by AAHOA from the Franchisor, if any, were carefully considered and integrated into the text of the PAR. The progress made in working with each Franchisor in connection with the PAR has been summarized below in this Progress Report.*

*The initial PAR and this Progress Report are not intended to, and do not, reflect the thoughts and opinions of each of the members, Board members, employees, representatives, or agents of AAHOA, or of any persons working or acting on behalf of AAHOA. Nor are they intended to provide legal, financial, or business advice, or as a recommendation or other judgment concerning a subject Franchisor’s program. Before entering into a franchise agreement with any Franchisor, AAHOA members are encouraged to assess carefully the Franchisor’s commitments and performance against factors of importance to the member, including the AAHOA updated 12 Points of Fair Franchising used as the benchmark for the PAR and this Progress Report. Moreover, as always, members are encouraged to work in conjunction with legal counsel to arrive at Franchise Agreement terms which are appropriate given their unique circumstances.*

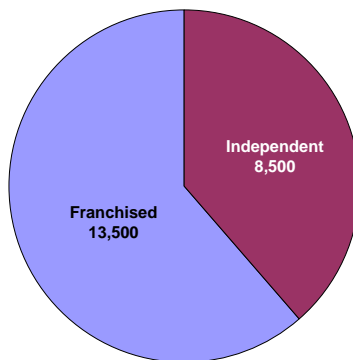
## THE ROAD TO PROGRESS:

### The Process Behind the Progress Report

With our members owning approximately 13,500 franchised hotels and having long-term franchise agreements with their Franchisors, fair franchising is the lifeblood of the association. In 1998, AAHOA unveiled its 12 Points of Fair Franchising, and in 2006 prepared a substantially-updated version of the 12 Points with a summary of each one and commentary on the reasons why they are so important. With the updating of the 12 Points, AAHOA also launched a comprehensive Performance Appraisal Report (“PAR”) project that involved a detailed analysis of the Uniform Franchise Offering Circulars (“UFOCs”), standard franchise agreements, and business practices of several leading franchise companies with which our members have done business, including Accor Franchising North America, LLC (“Accor”); Carlson Hotels Worldwide, Inc. (“Carlson”); Choice Hotels International, Inc. (“Choice”); La Quinta Franchising LLC (“La Quinta”); and Wyndham Hotel Group (“Wyndham”) in order to determine whether they complied with the 12 Points of Fair Franchising.

Following preparation of a draft version of the PAR, AAHOA provided each Franchisor with a copy of the draft, as well as an opportunity to comment on it. The comments received by AAHOA from the Franchisor, if any, were carefully considered and integrated into the text of the PAR. Based on the results of the PAR project, Phase I of the 2008 Progress Report on Fair Franchising (“Progress Report”) was intended to summarize the process that has been made to date in working with the designated franchise companies to revise and improve the language of their respective UFOCs, franchise agreements, and business practices. The Progress Report is intended to be used as an educational tool to equip AAHOA members to better understand the provisions of their franchise agreements, so that they may make informed decisions before embarking on a franchise relationship.

### Hotels Owned by AAHOA Members (As of March 2008)





**2008 PROGRESS REPORT (“PR”)**  
**Prepared By The ASIAN AMERICAN HOTEL OWNERS ASSOCIATION (“AAHOA”)**  
**For**  
**ACCOR FRANCHISING NORTH AMERICA, LLC (“ACCOR”)**

<b>AAHOA’S Updated 12 Points Of Fair Franchising</b>	<b>Summary of Accor’s Progress To Date</b>
<b>1. (a) Early Termination and Liquidated Damages</b>	In its 2006 UFOCs and franchise agreements, Accor provided that after the first 12 months, liquidated damages (“LDs”) would equal the average monthly Royalty fees multiplied by 36 or the number of months remaining under the agreement. After reviewing the PAR and meeting with AAHOA executives on several occasions, on November 12, 2007 Accor agreed to reduce the amount of LDs to equal the average monthly Royalty fees multiplied by 24 months, or \$75,000, whichever is greater.
<b>1 (b) Windows Provisions</b>	In its 2007 UFOC and franchise agreement, Accor included provisions which allow a Franchisee to request and obtain windows provisions. Accor also offers its Franchisees the option of exiting the system with substantially-reduced liquidated damages (“LDs”) if they provided appropriate notice, and had experienced low occupancy rates during the preceding 12 months.
<b>1. (c) Underperforming Properties</b>	After a motel has been in operation for 2 years, and is in compliance with the terms of its franchise agreement, Motel 6 offers its Franchisees various options to terminate the franchise agreement early based on average room occupancy rates for the prior 12 consecutive months, as follows: (i) if occupancy rates are less than 50%, by giving 30 days notice, a Franchisee will not have to pay any LDs; (ii) if occupancy rates are greater than 50% but less than 60%, by giving one year’s notice, a Franchisee will not have to pay any LDs; and (iii) if occupancy rates are more than 60% but less than 70%, by giving 30 days notice, a Franchisee will have to pay LDs that are equal to the total Royalty fees paid during the prior 24 months.
<b>2. Impact/Encroachment/ Cross Brand Protection</b>	<p>Although Accor grants a “Protected Territory” to its Franchisees that is not dependent on any achievement of sales volume or market penetration, Accor does not allow its Franchisees to request an impact study if the applicant hotel is outside of the Protected Territory.</p> <p>Following its review of the PAR and meeting with AAHOA leaders, Accor agreed that it will allow its Franchisees to submit impact comments and feedback, will monitor the situation, and, if impact is proven by the existing motel after the new facility has been in operation for a reasonable period of time, Accor will consider concessions to the impacted Franchisee.</p>
<b>3. Minimum Performance &amp; Quality Guarantees.</b>	<p>In Accor’s 2006 and 2007 UFOCs and franchise agreements, there are no provisions that if a hotel fails to receive a minimum number of reservations through Accor’s central reservation system, or if the quality of a hotel brand name declines or changes, Accor will allow the Franchisee to exit the system without penalty. Accor, however, allows its Franchisees to exit the system without penalty pursuant to certain conditions if their occupancy rates are less than 50%.</p> <p>In its written feedback letter to AAHOA dated February 2, 2007, Accor responded as follows: <i>“It is our belief that we don’t need to give occupancy level and res system performance guarantees. Motel 6, in particular, is not a reservation-driven brand. The question a prospective franchisee should ask is “Does the brand deliver?” not “Does the res system deliver?” If the sign goes up and it increases occupancy, then the brand is delivering. We deliver...”</i></p> <p>AAHOA acknowledges Accor’s response, and agrees that it is important to focus on the performance of the Franchisors themselves, and how the Franchisors play a large role in the success or the failure of their individual Franchisees and the franchise systems overall.</p>

<p><b>4. QA Inspections / Guest Surveys</b></p>	<p>Following its review of the PAR and meetings with AAHOA executives, Accor provided information concerning its current practices, revised its franchise agreement, and implemented a new policy. Specifically, Accor explained that its brand standards are comparable for both corporate and franchised locations, and it enforces them. Accor reported that it has mandatory quality programs for corporate locations and mandatory quality training for Franchisees. In the corporate stores, compliance affects compensation and bonuses. The same inspectors conduct the assessments for both the corporate and franchised properties, and they use the same measurement tools. In addition, the focus of Accor's QA measurements is guest-service related. Accor utilizes the QA measurements to provide feedback for management improvement rather than focusing on punitive measures. Accor also agreed to review the language contained in its UFOCs and franchise agreements regarding use of these measures to assure that it accurately reflected the design, purpose and use of these QA measures. Accor subsequently made changes to its franchise agreement related to quality measures (<i>see</i>, revised Section 13.1.1 of the 2007 Franchise Agreement), and agreed to institute the following procedure and post it on the Franchisee extranet:</p> <p><i>“Before we issue a Default and Termination letter to a franchisee solely on the grounds that the franchisee has failed to maintain minimum required quality scores (QSM, GSS, CRN), we will notify the franchisee of our intent to do so. If requested by the franchisee, we will ask the Franchise Advisory Council to review the factors included in the scores and comment on the application of the scores/tools in the particular circumstances.”</i></p>
<p><b>5. Vendor Exclusivity</b></p>	<p>In general, Accor allows its Franchisees to purchase conforming goods from any vendor, not just those mandated by Accor. To the extent Accor believes it is necessary to mandate vendors for the purpose of establishing standards and specifications for the hotel brands, Accor reported that it strives to ensure that the Franchisees are receiving competitive prices. Finally, since Accor receives rebates or payments from the vendors, Accor actually issues rebate checks to its Franchisees from the revenues it receives from vendors.</p>
<p><b>6. Disclosure and Accountability</b></p>	<p>Accor does not provide its Franchise Advisory Councils (“FACs”) with audited financial statements concerning the expenditure of marketing and reservation fees. Accor, however, consults with the FACs on Accor's marketing strategies, and does not use the fees to defray any general operating expenses. Following its review of the PAR and meeting with AAHOA executives, Accor also clarified the language in its 2007 UFOCs and franchise agreements regarding how it accounts for and uses the advertising fees, and committed to providing a report of the receipts and expenditures of these fees annually. (<i>See</i>, Section 10.1.3 of the 2007 franchise agreement and the excerpt from Item 11 of the UFOC.)</p>
<p><b>7. Maintaining Relationships with Franchisees</b></p>	<p>Accor's Franchise Advisory Councils (“FACs”) are comprised of corporate representatives and representatives of the Franchisees who are in “good standing” and are elected by the Franchisees themselves. In response to AAHOA's updated 12 Points of Fair Franchising and the initial PAR, a team of Accor executive personnel met with AAHOA on several occasions to discuss the updated Points and the PAR itself. AAHOA looks forward to developing a closer working relationship with Accor in upcoming years. Finally, to further enhance its relationships with the Franchisees and AAHOA members, Accor agreed to become more familiar with AAHOA's Certified Hotel Owner (“CHO”) program and determine whether it will recommend this program to its Franchisees.</p>
<p><b>8. Dispute Resolution</b></p>	<p>Accor has nearly complied with AAHOA's Point No. 8 with respect to the process of trying to resolve disputes, including a process for resolving disputes internally, and if that is unsuccessful, proceeding to mediation at a location near the subject motel. AAHOA applauds these provisions in the franchise agreements.</p> <p>Accor has also included provisions in its franchise agreements requiring the Franchisees to waive their rights to a jury trial, and to waive their rights to assert claims for punitive damages. As Accor is fully aware, such provisions not only require Franchisees to give up important legal rights, but also preclude Franchisees from obtaining the best legal counsel available to them. Indeed, many franchise attorneys will not accept a case on a contingency fee basis if the Franchisee is unable to assert the right to a jury trial, and is less likely to collect punitive or exemplary damages based on a Franchisor's fraud, malice or oppression.</p>
<p><b>9. Venue and Choice of Law Clauses</b></p>	<p>Accor provides that the venue for any disputes shall be at a location or in the judicial district in which the subject motel is located, but requires that the laws of the state of Texas shall govern the proceedings.</p>
<p><b>10. Franchise Sales Ethics and Practices</b></p>	<p>Following its review of the PAR and meeting with AAHOA executives, Accor reported that its franchise sales practices comply with the spirit of Point 10. Accor explained that the goodwill of the whole system is its primary concern. It does not churn franchises. During the sales process, after a franchise agreement is sent to a Franchisee, Accor surveys the Franchisee about the sales</p>

	<p>process, to find out whether he or she received good service and whether he or she has any suggestions for improvement. Further, Accor stated that although it does not believe it is necessary to include a “good faith and fair dealing” clause in its franchise agreements, Accor operates according to the Accor values and core beliefs, including trust, performance, respect, transparency, responsibility, and professionalism. These values and core beliefs govern all Accor employees and functions worldwide, and they form part of the Owner Orientation and Manager Training program Accor provides to its Franchisees. Finally, in order to avoid any misunderstandings concerning the terms of the “deal,” Accor agreed to change its business practices to require all potential Franchisees to sign a document containing the agreed-upon “deal points.” Specifically, prior to meeting with AAHOA, Accor required its Franchise Developers to execute and submit a document containing the agreed-upon “deal points” that had been reached with a potential Franchisee, which Accor then reviewed and revised, as necessary. The Accor legal department would subsequently prepare the subject franchise agreement based on the final approved version of the deal points document.</p>
<p><b>11. Transferability</b></p>	<p>Following its review of the PAR and meetings with AAHOA executives, Accor made several changes to its 2007 franchise agreement, including, among other things, (a) reducing the transfer fee from \$10,000 to \$7,500, which allowed a Franchisee to receive an incentive credit of \$5,000 if the Franchisee satisfied certain conditions, (b) adding language that would allow a Franchisee to make a convenience transfer, or would allow a majority owner to acquire or purchase the interest of one or more minority owners, without paying a transfer fee, and (c) clarifying the procedures for death-time transfers.</p>
<p><b>12. Sale of the Franchise</b></p>	<p>Following its review of the PAR and meetings with AAHOA executives, Accor explained that because Accor or its affiliates own and operate the vast majority of the motels of each brand they franchise, working with a new owner for the benefit of the Franchisees would be a business practice that would be in Accor’s best interests, as well as those of its Franchisees. Accor asserted that it is in its interests to maximize value in the entire brand, whether on an ongoing operational basis, or at the time of any sale. Accor also reported that it intends to review its language on assignment to determine whether it is appropriate to add language related to working with any assignee to assure a smooth transition. Unfortunately, Accor has not yet agreed to add such language to its franchise agreements.</p>



**2008 PROGRESS REPORT (“PR”)**  
**Prepared By The ASIAN AMERICAN HOTEL OWNERS ASSOCIATION (“AAHOA”)**  
**For**  
**CARLSON HOTELS WORLDWIDE, INC. (“CARLSON”)**

<b>AAHOA’S Updated 12 Points Of Fair Franchising</b>	<b>Summary of Carlson’s Progress To Date</b>
<b>1. (a) Early Termination and Liquidated Damages</b>	<p>For the Country Inn &amp; Suites (“Country Inn”) brand hotels, LDs equal three (3) times the Royalty and marketing fees paid for the 12 months preceding the date of termination.</p> <p>In explanation of this policy, Carlson cited its need to protect the company against Licensees who are not acting in good faith. However, Carlson expressed recognition that there are circumstances in which it might be unfair to collect the full amount of LDs under the license agreement. This recognition has yet to be expressed as a written term of Carlson’s UFOCs.</p>
<b>1 (b) Windows Provisions.</b>	<p>Specifically, there are no “windows” provisions in the Carlson license agreements that allow the Licensees to exit on the 5<sup>th</sup>, 10<sup>th</sup>, or 15<sup>th</sup> anniversary dates of the opening of the Facility. One of the reasons for this lack of windows provisions appears to be because Carlson only offers a 15-year license term for Country Inn Licensees, with no right to terminate early, or to renew or extend the 15-year term. (See, 2006 license agreement for Country Inn, Article 2, p. 2.)</p>
<b>1. (c) Underperforming Properties.</b>	<p>In its license agreements, Carlson does not include any provisions for the waiver or reduction of liquidated damages (“LDs”) in situations in which a licensee has experienced low occupancy rates of less than 50% for an extended period of time, or for any other “undue hardship” cases.</p>
<b>2. Impact/Encroachment/ Cross Brand Protection.</b>	<p>According to its 2006 and 2007 UFOCs and license agreements, Carlson generally does offer an exclusive Area of Protection (“AOP”) to its Licensees, but does not offer any right to request an impact study.</p>
<b>3. Minimum Performance &amp; Quality Guarantees.</b>	<p>Carlson places the responsibility of maintaining the system standards on its Licensees, and does not provide that a Licensee could terminate the agreement if the quality of the hotel brands began to decline. Carlson also did not offer its Licensees an opportunity to exit the system without penalty if both their occupancy rates were low and their reservation system contributions were minimal.</p> <p>After reviewing the PAR and meeting with AAHOA, Carlson acknowledged that a Licensee should have some form of protection if it purchased a hotel and the overall hotel brand deteriorated in subsequent years, or the franchise company made changes that lowered or diminished the quality of the hotel franchise system. Carlson opined, however, that it can be difficult to measure the quality of a hotel brand to determine if it has deteriorated. With respect to the concept of allowing a Licensee to exit the system if a hotel is underperforming and the franchise company is unable to contribute even a minimum level of reservations, Carlson responded that it had implemented such a policy for a select number of hotels in an attempt to grow the brand in a designated geographic region. Specifically, Carlson reported that it was trying to grow the brand and wanted to create flexibility for the Licensees. Carlson emphasized that this was a unique situation with very low thresholds because of the problems Carlson encountered with tracking the reservation system contributions.</p>
<b>4. QA Inspections / Guest Surveys.</b>	<p>Carlson has assigned Brand Business Directors (“BBDs”) to assist the hotels with operational, marketing and sales issues, and to oversee the implementation of its system standards. Carlson also uses Medallia to assist with guest survey scores as part of its QA analysis. If a Licensee falls below a designated score, Carlson sends them a notice of default, and gives the Licensee 90 days to make the necessary improvements. Carlson will generally give a Licensee at least six (6) months to comply with system standards and finish all of its required improvements before the Licensee is terminated, because Carlson’s goal is to rehabilitate each defaulting hotel. Indeed, Carlson reported that in the past five (5) years, it has terminated only one (1) Licensee for QA failures.</p> <p>Finally, while Carlson does not have an appeals process per se for disputed QA issues or scores, it</p>

	has an independent inspection service that will visit the site and prepare a very detailed report for the benefit of both Carlson and the Licensee, so that they can work together to address any problems or concerns.
<b>5. Vendor Exclusivity.</b>	To the extent a Licensee's vendor of choice is not on the Carlson list of approved vendors, Carlson permits a Licensee to request a waiver so that it can purchase the designated products and services from such vendor. For this waiver option, Carlson charges a fee for the time it spends reviewing the vendor's designated products and services to determine if they satisfy Carlson's specifications. This fee can range from \$100 to \$2,500, depending on the circumstances.
<b>6. Disclosure and Accountability.</b>	Carlson does not provide its Franchise Advisory Councils ("FACs") with audited financial statements concerning Carlson's expenditure of marketing and reservation fees, and Carlson appears to use the fees to defray general operating expenses.  Following its review of the PAR, Carlson explained that audited financial statements are prepared for Carlson Hotels Worldwide, but not for the individual hotel brands such as Country Inn.
<b>7. Maintaining Relationships with Franchisees.</b>	The members of the FACs are appointed by Carlson. The FACs address a wide variety of issues that are important to the franchise system, including amenity creep, and plans for marketing and advertising the hotel brands. While Carlson seeks feedback on such issues from its FACs, it does not always follow the recommendations given by the FACs or the Licensees themselves.  Carlson further stated that is very interested in learning more about the AAHOA University, and the Certified Hotel Owners ("CHO") programs. Carlson said it currently provides the Licensees with an opportunity to participate in the CHA program offered by American Hotel & Lodging Association ("AH&LA").
<b>8. Dispute Resolution.</b>	Carlson spends a lot of time meeting with its Licensees on an informal basis to resolve disputes, and discussing ways to handle problems and concerns. Carlson further said that it will agree to participate in a non-binding mediation proceeding, before a mediator who is neutral and mutually acceptable to the parties, including a mediator associated with the National Franchise Mediation Program.  Unfortunately, aside from these concessions, Carlson has cautioned that it will not agree to proceed to mediation if a Licensee owes it money, or uses mediation as a delay tactic. Carlson also firmly stated that it will continue to insist on a Licensee's waiver of its right to a jury trial, and a shortened time period of one (1) year or less for Licensees to file a lawsuit. These provisions not only require Licensees to give up important legal rights, but also preclude Licensees from obtaining the best legal counsel available to them. Indeed, many franchise attorneys will not accept a case on a contingency fee basis if the Licensee is unable to assert its right to a jury trial.
<b>9. Venue and Choice of Law Clauses.</b>	In its license agreements, Carlson provides that, except for injunctive relief claims filed and sought by Carlson, all other claims arising out of or related to a franchise agreement must be commenced, filed and litigated before a court of competent jurisdiction located in Hennepin County, Minnesota (i.e., the County and State in which Carlson's corporate headquarters is located). This provision effectively allows Carlson to file suit against any Licensee in the state of Minnesota, and requires all Licensees to file suit against Carlson in Minnesota, regardless of the location of the subject hotel.
<b>10. Franchise Sales Ethics and Practices.</b>	Following its review of the PAR, Carlson reported that it provides multiple training sessions for its sales force on an annual basis to ensure that they are complying with the applicable laws, and are using fair and ethical sales practices. Specifically, Carlson engages a team of outside lawyers, including former litigators and franchise attorneys, who discuss the specific laws concerning sales of franchises with the Carlson sales associates and personnel, and who emphasize the need for fair and ethical conduct in such business dealings.
<b>11. Transferability.</b>	Carlson frequently provides special consideration for transfers to family members and business partners. Specifically, for transfers to family members, Carlson offers reduced transfer fees so long as the new family members do not assume control of the hotel. Carlson also charges an administrative fee of only \$1,000 for inheritance transfers.
<b>12. Sale of the Franchise System Hotel Brand(s).</b>	Carlson provides that it has the right to transfer the license agreements without a Licensee's consent, and it does not offer any assurances that it will attempt to work with the new Licensor owner to ensure that the transition is as smooth as possible, or to protect the rights of its Licensees.



**2008 PROGRESS REPORT (“PR”)**  
 Prepared By The ASIAN AMERICAN HOTEL OWNERS ASSOCIATION (“AAHOA”)  
 For  
**CHOICE HOTELS INTERNATIONAL (“CHOICE”)**

<b>AAHOA’S Updated 12 Points Of Fair Franchising</b>	<b>Summary of Choice’s Progress To Date</b>
<b>1. (a) Early Termination and Liquidated Damages</b>	Although Choice admits that it <i>“routinely negotiates additional discounts to liquidated damages with Franchisees seeking an early termination under certain circumstances,”</i> it does not provide for such consideration as a written term of its UFOCs.
<b>1 (b) Windows Provisions.</b>	Choice allows its Franchisees to exit on the 5 <sup>th</sup> , 10 <sup>th</sup> and 15 <sup>th</sup> anniversary dates, and has not adopted any of the unfair “gotcha” clauses referred to in AAHOA’s Point 1. (b) that preclude a Franchisee from exercising its rights to the windows provisions under certain circumstances.
<b>1. (c) Underperforming Properties.</b>	Choice does not include any provisions in its franchise agreements that allow underperforming properties to exit without penalty.  Although Choice identifies a facility’s historical performance as a factor that might be considered in determining the amount of LDs which will be due, Choice’s UFOCs do not contain any written assurances that an underperforming property will be allowed to exit without penalty.
<b>2. Impact/Encroachment/ Cross Brand Protection.</b>	Choice generally does not grant an exclusive area of protection (“AOP”) to its Franchisees, but has reported to AAHOA that it does offer exclusive territories under certain circumstances for all brands, and as part of its standard agreements for the newer brands, Cambria Suites and Suburban Extended Stay Hotels.
<b>3. Minimum Performance &amp; Quality Guarantees.</b>	Choice does not offer any commitments concerning the performance or quality levels of its brand name hotels, or the number of reservations that will be delivered through its system.
<b>4. QA Inspections / Guest Surveys.</b>	Choice has adopted a policy that provides for fair and impartial quality assurance (“QA”) inspections, and an appeals process if there is a dispute.
<b>5. Vendor Exclusivity.</b>	In its UFOCs, Choice offers an explanation concerning its endorsed vendor program, and the manner in which it handles the revenues it receives from such vendors.  Further, in response to the PAR, Choice stated that it <i>“does not generally mandate that Franchisees source products or services from a particular vendor. Instead, certain standards and specifications are mandated for the purpose of maintaining brand consistency and quality. Generally, Choice solicits feedback from the elected members of our franchisee associations before implementing new brand standards or vendor requirements. In addition, Choice typically attempts to identify 3 or more vendors who are capable of meeting most brand standards.”</i>
<b>6. Disclosure and Accountability.</b>	Choice provides its Franchise Advisory Councils (“FACs”) with audited financial statements concerning the expenditure of marketing and reservation fees, consults with the FACs on the marketing campaigns, and spends a relatively small amount of the fees on <i>“general and administrative costs.”</i>
<b>7. Maintaining Relationships with Franchisees.</b>	Choice’s Franchise Advisory Councils (“FACs”) are independent and elected by the Franchisees themselves. In addition, over the past several years, Choice has been very responsive to AAHOA’s concerns, and has worked with AAHOA to address disputes and issues involving its members.
<b>8. Dispute Resolution.</b>	Choice mandates that all disputes be resolved through final and binding arbitration. AAHOA urges Choice to eliminate its mandatory arbitration provisions, and offer Franchisees fair and reasonable methods of resolving disputes.

<p><b>9. Venue and Choice of Law Clauses.</b></p>	<p>Choice mandates that the parties submit to binding arbitration, and provides that the arbitrator will apply the substantive laws of Maryland.</p>
<p><b>10. Franchise Sales Ethics and Practices.</b></p>	<p>Although Choice states that all of its associates are subject to a corporate ethics policy that mandates “good faith and fair dealing” in all corporate transactions, Choice does not include a “good faith and fair dealing” provision in its franchise agreements concerning its franchise sales ethics and practices.</p>
<p><b>11. Transferability.</b></p>	<p>AAHOA is informed and believes that Choice has been in the process of working with its franchisee advisory councils (“FACs”) to revise its Fair Franchising Policy. In the most-recent draft of the Fair Franchising Policy, dated January 2008, Choice added a new provision entitled “<i>Family Transfers</i>,” in which it stated that if Choice does approve a transfer to a close family member, Choice will waive its standard transfer fee.”</p>
<p><b>12. Sale of the Franchise System Hotel Brand(s).</b></p>	<p>Choice provides in its UFOCs and franchise agreements that it can sell the subject franchise system to any person or legal entity, and it does not offer any assurances that it will attempt to work with the new Franchisor owner to ensure that the transition is as smooth as possible, or to protect the rights of its Franchisees.</p>



**2008 PROGRESS REPORT (“PR”)**  
 Prepared By The **ASIAN AMERICAN HOTEL OWNERS ASSOCIATION (“AAHOA”)**  
 For  
**LA QUINTA FRANCHISING LLC (“LA QUINTA”)**

<b>AAHOA’S Updated 12 Points Of Fair Franchising</b>	<b>Summary of La Quinta’s Progress To Date</b>
<b>1. (a) Early Termination and Liquidated Damages</b>	<p>In its 2006 and 2007 UFOCs and franchise agreements, La Quinta provides that after the first 12 months, if a franchise is terminated early, the liquidated damages (“LDs”) will equal three (3) times the average annual total Royalty fees.</p> <p>After meeting with AAHOA, La Quinta agreed to include various important terms in its franchise agreements that protect its Franchisees. Specifically, a Franchisee can voluntarily terminate its franchise agreement without penalty, or with reduced LDs, if it has experienced average occupancy rates below 50-70% for the past 12 months.</p>
<b>1 (b) Windows Provisions.</b>	<p>In its 2006 and 2007 standard franchise agreements, La Quinta offers a “reciprocal right to terminate without cause” on the 10<sup>th</sup> and 15<sup>th</sup> anniversary dates of the opening of the Facility. Facilities that have been converted to a La Quinta Lodging Facility are also given a right to terminate without cause on the 5<sup>th</sup> anniversary date.</p> <p>The conditions for exercising this right are that the Franchisee must (a) be in full compliance with the franchise agreement, (b) execute a general release of La Quinta, and (c) give at least 12 months prior written notice. (<i>See, e.g.</i>, 2006 franchise agreement, section 15.01, p. 28.)</p>
<b>1. (c) Underperforming Properties.</b>	<p>As set forth in its UFOC and standard franchise agreement, La Quinta offers its Franchisees various options to terminate early with the payment of little or no liquidated damages (“LDs”) based on average room occupancy rates for the prior twelve (12) consecutive months, as follows:</p> <ul style="list-style-type: none"> <li>(i) If occupancy rates are less than 50%, by giving 90 days notice, the Franchisee may exit without paying any LDs;</li> <li>(ii) If occupancy rates are greater than 50% but less than 60%, by giving 120 days notice, the Franchisee may exit by paying LDs equal to the total Royalty fees paid during the prior 12 months; and</li> <li>(iii) If occupancy rates are more than 60% but less than 70%, by giving 180 days notice, the Franchisee may exit by paying LDs equal to the total Royalty fees paid during the prior 30 months.</li> </ul>
<b>2. Impact/Encroachment/ Cross Brand Protection.</b>	<p>In its 2006 UFOC and franchise agreement, La Quinta did not offer an exclusive area or protected territory to its Franchisees, and did not offer any right to request an impact study.</p> <p>Following its review of the PAR, La Quinta made changes to its 2007 UFOC and its corresponding business practices, to reflect the fact that (a) it now provides an exclusive Area of Protection (AOP) to its Franchisees, and (b) when La Quinta receives an application for a new hotel, it provides notice to all existing Franchisees within a 15-mile radius of the proposed facility.</p> <p>In addition, during a conference call between AAHOA and La Quinta executives on May 25, 2007, La Quinta agreed that it will allow a Franchisee to request an impact study if the Franchisee reasonably believes that an applicant hotel will have an impact on its existing facility.</p>
<b>3. Minimum Performance &amp; Quality Guarantees.</b>	<p>According to La Quinta, it would not be prudent for a franchise company to develop meaningful, system-wide performance and quality levels or guarantees.</p>
<b>4. QA Inspections / Guest Surveys.</b>	<p>La Quinta’s 2006 UFOC and franchise agreement provided that the Franchisees shall be responsible for maintaining the condition of their hotels, and failed to offer any assurances that La Quinta would conduct its quality assurance (“QA”) inspections in a fair and unbiased manner.</p>

	<p>Following its review of the PAR, however, La Quinta provided AAHOA with important information about its compliance with this Point No. 4, as follows:</p> <p>(1) La Quinta reported that since the inception of its QA program, it has issued only two default notifications to its Franchisees for service or quality failures. Of these two defaults, one of the defaults was cured, and the other default resulted in a termination of the property from La Quinta's franchise system.</p> <p>(2) La Quinta explained that it provides its Franchisees with no less than three quarters of a year to address a service or quality issue. In the first quarter, La Quinta issues a warning to the Franchisee; in the second quarter, if the service or quality failure is not corrected, La Quinta issues a default notice; in the third quarter, if the default still is not cured, La Quinta issues another default notice. At the end of the third quarter, if the problem has not been corrected, a company representative will typically meet with the Franchisee and, if necessary, allow the Franchisee until the end of the year to correct or cure any outstanding issues.</p> <p>(3) La Quinta relies on an outside independent company, known as Medallia, to determine a hotel's compliance with service and quality standards through guest survey scores. These overall guest survey scores for the facilities do not account for any guest complaints.</p> <p>(4) La Quinta reported that once in compliance, a prior failure of a hotel is not counted against the Franchisee in the future.</p> <p>(5) Finally, all information regarding a problem facility comes directly from La Quinta's regional Service Directors. Therefore, as explained by La Quinta, legal notification of a service or quality failure is only initiated by regional Service Directors who have hands-on experience with the property, understand why a hotel might be failing, and are aware of the actions that have been taken to remedy such a failing.</p>
<p><b>5. Vendor Exclusivity.</b></p>	<p>After reviewing the PAR, La Quinta provided AAHOA with valuable feedback concerning this Point No. 5. Specifically, La Quinta reported that, as a matter of practice, it provides the Franchisees with a list of at least three (3) preferred vendors for most of its products and services. In addition, if a vendor is not on La Quinta's preferred list, a Franchisee can seek approval from La Quinta to purchase products or services from the proposed vendor. La Quinta does not charge a fee for reviewing the proposed vendor, and simply asks the vendor to provide the specifications for its products or services so that La Quinta can ensure that they are in compliance with the necessary standards and uphold brand consistency.</p> <p>La Quinta mandates certain vendors only for computer hardware and software. According to La Quinta, it supplies the equipment and maintenance for the computer hardware and software to the Franchisees, and then only charges the Franchisees what it pays to the mandated vendors.</p> <p>With regard to commissions earned from any vendor or supplier arrangements, La Quinta reported that all commissions and rebates received from vendors and suppliers are used to defray expenses associated with La Quinta's Annual Conference. La Quinta stated that this benefits the Franchisees because it minimizes the amount of the registration fees, and makes it possible for La Quinta to provide the Franchisees and their key employees with educational seminars on improving bottom line performance and property operations.</p>
<p><b>6. Disclosure and Accountability.</b></p>	<p>La Quinta (a) does not provide its Franchise Advisory Council ("FAC") with audited financial statements concerning its National Advertising Fund ("NAF"), (b) did not consult with its FAC on its marketing strategies, and (c) spent approximately 24% of its NAF for the "<u>management of sales and marketing programs</u>" in 2005.</p> <p>Following its review of the PAR, La Quinta agreed to provide audited financial statements concerning the NAF to any Franchisee who requested a copy. La Quinta reported that it had previously offered to provide the NAF financial statements to its FAC, but that the FAC members requested that, instead of providing them with a line-by-line analysis of the expenditures of the monies in the NAF, La Quinta merely summarize the information and make the NAF financial statements available should by request.</p> <p>With regard to marketing strategies, La Quinta asserted that it presents such information to its FAC, and routinely asks for their opinions and feedback. Finally, La Quinta indicated that it had discussed the 2007 marketing strategy with the FAC at its Annual Conference, where it was well received.</p>
<p><b>7. Maintaining Relationships with Franchisees.</b></p>	<p>In its 2006 UFOC and franchise agreement, La Quinta failed to make any commitments whatsoever to build on its relationships with the Franchisees, including establishing an independent Franchise Advisory Council ("FAC"), or working with a FAC in any capacity.</p> <p>Following its review of the PAR, La Quinta provided AAHOA with valuable feedback information concerning its relationship with its Franchisees, including the fact that it not only</p>

	<p>has a Franchise Advisory Council (“FAC”), but La Quinta is also actively involved in various hotel industry associations.</p> <p>Specifically, La Quinta has had a FAC for four (4) years. It consists of seven (7) Franchisee members, with each member representing a separate region of the country, and three (3) corporate representatives. For the past four years, La Quinta appointed the Franchisee members to the FAC. Starting in 2008, however, all Franchisee members will be elected by the Franchisees themselves. La Quinta asserted that it regularly consults the FAC members on all aspects of its program, and greatly values their input in analyzing material decisions that are made by La Quinta.</p> <p>In addition, La Quinta is involved in associations that analyze industry issues and seek important feedback. For example, La Quinta executives are members of the AH&amp;LA Inns &amp; Suites Council, and La Quinta has been founding member of AAHOA since the inception of La Quinta’s franchise program.</p>
<p><b>8. <i>Dispute Resolution.</i></b></p>	<p>For the resolution of any disputes concerning the terms of a franchise agreement itself, or the relationship between a Franchisee and LaQuinta. LaQuinta does not mandate that the parties go to final and binding arbitration. Rather, LaQuinta recognizes the importance of mediation as a means of resolving disputes, and allows its Franchisees to file their claims in court if they cannot be resolved informally. With that said, however, La Quinta has still included certain provisions in its franchise agreement which deprive its Franchisees of important legal rights.</p> <p>Specifically, in its franchise agreement, La Quinta included provisions that require all Franchisees to waive their claims for punitive damages, waive their right to a jury trial, waive their right to file a class action lawsuit, and that impose shortened time limits on when a lawsuit may be filed.</p>
<p><b>9. <i>Venue and Choice of Law Clauses.</i></b></p>	<p>In its UFOC and standard franchise agreement, La Quinta provides that for any disputes, the venue and exclusive jurisdiction shall be in the U.S. District Court for the Northern District of Texas, or the District Court for Dallas County, Texas. La Quinta also provides that its franchise agreements shall be construed under the laws of the State of Texas, provided that this does not constitute a waiver of any rights under the applicable franchise laws of another state.</p> <p>After reviewing the PAR, La Quinta admitted noncompliance on this Point No. 9. During a conference call on May 25, 2007, however, La Quinta indicated that it is willing to consider the possibility of providing for <u>non-exclusive</u> jurisdiction in the U.S. District Court for the Northern District of Texas, or the District Court for Dallas County, Texas. This would mean that if a Franchisee initiated a lawsuit against La Quinta, it could do so in an appropriate venue and forum, which might include the county and state in which the subject Facility was located. However, if La Quinta was the first to file the lawsuit, La Quinta could do so in the U.S. District Court for the Northern District of Texas, or the District Court for Dallas County, Texas.</p>
<p><b>10. <i>Franchise Sales Ethics and Practices.</i></b></p>	<p>La Quinta’s 2006 UFOC and franchise agreements did not include any written commitments that La Quinta would insist on fair and honest selling practices for its sales force, and did not adopt a “good faith and fair dealing” provision concerning La Quinta’s franchise sales ethics and practices.</p> <p>Following its review of the PAR, La Quinta provided valuable feedback concerning its franchise sales ethics and practices, including the fact that La Quinta has very strict policies regarding the types of information that its salespersons may represent to prospective Franchisees. Specifically, the only representations that can be made by salespersons regarding the brand and its performance are limited to what is disclosed in the UFOC, which may be supplemented by market specific earnings claims.</p> <p>With regard to the negotiations between a potential Franchisee and a La Quinta sales associate concerning the terms of the deal, La Quinta reported that any concessions made or additional terms negotiated at the time of sale are included on the first two pages of the Franchise Agreement under the section entitled “Basic Terms.” A sample of the “Basic Terms” is attached as Exhibit “A” to the La Quinta UFOC. Prior to execution of the franchise agreement, prospective Franchisees are told to review the Basic Terms section to ensure that all agreed-upon terms have been included. La Quinta has emphasized that it is committed to giving Franchisees everything that they have been promised by the salespersons and agents.</p>
<p><b>11. <i>Transferability.</i></b></p>	<p>Following review of La Quinta’s 2006 UFOC and franchise agreement, AAHOA concluded that La Quinta’s transfer fees were too high. Following its review of the PAR, La Quinta explained that its current transfer fee is \$2,500 for all transfers of entity ownership over 50%, or upon sale of the property to a third-party purchaser. As a practice, La Quinta reported that it</p>

	<p>has never charged \$2,500 for transfers to family members or business partners, regardless of the percentage of ownership being transferred. With regard to the \$4,500 property improvement plan fee, La Quinta also stated that it has never charged this fee to any Franchisee or transferee.</p>
<p><b>12. Sale of the Franchise System Hotel Brand(s).</b></p>	<p>In its UFOC and franchise agreement, La Quinta provides that it can sell the franchise system to any person or legal entity, and that it does not offer any assurances that it will attempt to work with the new Franchisor owner to ensure the transition is as smooth as possible, or to protect the rights of its Franchisees.</p> <p>Following its review of the PAR, La Quinta admitted that it did not comply with this Point No. 12. La Quinta asserted, however, that its practices with regard to the sale of the Baymont brand demonstrated that it had used its best efforts to ensure a smooth transition during and after the transfer. Specifically, upon the sale of the Baymont brand to affiliates of The Cendant Corporation (“Cendant”), there were several logistical issues that arose related to the Franchisees’ property management system. La Quinta reported that it continued to support all of these properties on its systems long after the deal had been finalized, and until it could be assured that these properties were able to transition to Cendant’s systems seamlessly.</p>



**2008 PROGRESS REPORT (“PR”)**  
 Prepared By The **ASIAN AMERICAN HOTEL OWNERS ASSOCIATION (“AAHOA”)**  
 For  
**WYNDHAM HOTEL GROUP (“WYNDHAM”)**  
**f.k.a. Cendant Hotel Group**

<b>AAHOA’S Updated 12 Points Of Fair Franchising</b>	<b>Summary of Wyndham’s Progress To Date</b>
<b>1. (a) Early Termination and Liquidated Damages</b>	<p>In its franchise agreements for eight (8) out of the nine (9) hotel brands, Wyndham includes different provisions concerning the amount of LDs that must be paid in the event of an early termination, which generally amount to \$2,000 per guest room, or 24 months of fees. In response to the PAR, Wyndham informed AAHOA that it negotiates the LDs on a case-by-case basis, and sometimes reduces the amount of LDs owed by a Franchisee if circumstances warrant.</p> <p>In response to the PAR, Wyndham asserted that if the LDs operated as a penalty, they would not be upheld in court. Based on Wyndham’s experiences, courts frequently uphold the LDs provision because the amount of liquidated damages covers Wyndham’s legitimate cost of doing business because, among other things, there is a substantial cost to Wyndham to replace a hotel property in the event of an early termination. With respect to negotiating the terms of their franchise agreements, members should be aware that in recent months, several Franchisees have reported to AAHOA that Wyndham agreed to revise the standard franchise agreement language and reduce the LDs to the lesser of 12 months of average monthly fees and/or \$1,000 per room.</p>
<b>1. (b) Windows Provisions</b>	<p>Wyndham announced that for its 2008 UFOC, Wyndham will be adding mutual windows provisions to all of its franchise agreements. These mutual provisions will allow either Wyndham or its respective Franchisees to exit on the 5<sup>th</sup>, 10<sup>th</sup> or 15<sup>th</sup> anniversary dates of the subject Facility’s opening date, without penalty.</p>
<b>1. (c) Underperforming Properties</b>	<p>Wyndham has a Franchise Relations Policy (“FRP”) that allows Franchisees to exit if they have less than 50% occupancy rates, but applies stringent conditions to the exercise of this provision. Following its review of the detailed comments contained in the initial draft of the PAR, Wyndham agreed to evaluate several of these conditions, and possibly revise or eliminate them in the interest of fair franchising.</p>
<b>2. Impact/Encroachment/ Cross Brand Protection</b>	<p>Wyndham grants a “protected territory” to its Franchisees for certain hotel brands, but does not allow them to request an impact study if the applicant hotel is outside of the protected territory, and does not grant cross-brand protection.</p> <p>In response to the initial draft of the PAR, Wyndham reported that it had very few issues or complaints from Franchisees concerning their protected territories, or that Wyndham was encroaching on their territorial rights. In fact, the opposite was often true, with applicants seeking an opportunity to build a Wyndham brand name hotel, and then complaining when they could not do so because of the territorial protection offered by Wyndham to an existing Franchisee.</p> <p>Wyndham further commented that it had conducted impact studies in the past, but they were very subjective and did not provide much, if any, protection. Finally, Wyndham stated that by offering exclusive protective territories to its Franchisees, and now affording them an opportunity to exit the system without penalty under the new 5-, 10- and 15-year windows provisions that will be implemented into all Wyndham franchise agreements in 2008, Wyndham is offering reasonable terms to its Franchisees, and allowing them to terminate early if they are unhappy.</p>
<b>3. Minimum Performance &amp; Quality Guarantees</b>	<p>In response to the initial draft of the PAR, Wyndham stated that it has no control over how a hotel is operated, or whether it is receiving adequate reservation system contributions. Wyndham further commented that, as indicated above, it publicly discloses its reservation system contributions for the various hotel brands in the UFOCs.</p> <p>However, Wyndham allows its Franchisees to exit the system without penalty pursuant to certain conditions if their occupancy rates are less than 50%.</p>

<p><b>4. QA Inspections / Guest Surveys</b></p>	<p>Wyndham uses an independent company, Medallia, to conduct its QA inspections, and the most important aspect of the QA score is the guest surveys. Further, for any re-inspection of a hotel following a poor QA score, Wyndham only issues a score for items which were identified in the prior inspection. Wyndham also promotes the use of self-evaluation forms that Franchisees can use to conduct their own QA inspections for training and educational purposes. Finally, Wyndham has an electronically-activated appeal process, which allows the Franchisees to request “grade reconsiderations” based on the overall brand standards for the hotel, and “time extensions” if they need additional time to complete the punch list of items on the QA report.</p> <p>Further, as explained in a letter dated January 7, 2008 from John Valletta, President of Super 8, to all Super 8 owners and operators, the guest complaint resolution policy for Super 8 owners is very generous. On another positive note, Wyndham offers various options if a facility is terminated for failing its QA inspections. For example, in its UFOCs for the Days Inn and Travelodge brand hotels, Wyndham includes a footnote 5 under the section entitled “Renewal, Termination, Transfer and Dispute Resolution,” which states: “<i>If termination is due to your failure to maintain adequate quality assurance scores, we may, in our sole discretion, offer to reduce or eliminate your liquidated damages and fees if you convert the Facility to operate under a license from one of the lodging Affiliates.</i>” (See, e.g., 2006 UFOC for Days Inn, p. 69, fn. 5, and for Travelodge, p. 61, fn. 4.)</p>
<p><b>5. Vendor Exclusivity</b></p>	<p>For those mandatory items that the Franchisees can only purchase from Wyndham, Wyndham does not make a profit and only charges an administration fee. Wyndham also allows its Franchisees to seek approval for a supplier that is not on the preferred list, and does not charge a fee for such services.</p> <p>However, Wyndham reports that this option is seldom used by its Franchisees because they receive discounted prices from Wyndham’s suppliers. Wyndham further indicated that it has very few products and services that must be purchased from mandated vendors, and it usually provides a list of several vendors from which to choose. For example, for the mandatory signs, computer systems, and software, Wyndham provides a list of three vendors from which Franchisees can purchase the products. Finally, in its UFOCs, Wyndham states that it contributes a portion of the commissions from the mandated vendors to the marketing funds.</p>
<p><b>6. Disclosure and Accountability</b></p>	<p>Although, in its UFOCs, Wyndham discloses that it uses a large percentage of its marketing funds for “other expenses” and “administration,” Wyndham does not provide its Franchise Advisory Councils (“FACs”) with audited financial statements concerning the expenditure of marketing and reservation fees. Following its review of the PAR, Wyndham stated that the concept of advertising and marketing has changed in recent years, and there is now an enormous amount of alternative entertainment, known as “advertainment,” that is used to reach target audiences. Consequently, the traditional expenditure of money on television and print advertisements has now expanded to include activities and personnel that are not generally associated with marketing campaigns.</p>
<p><b>7. Maintaining Relationships with Franchisees</b></p>	<p>Wyndham believes this Point No. 7 concerning maintaining relationships with its Franchisees to be one of its strengths. Specifically, Wyndham reported that it is one of the first companies to appoint Directors of Business Development (“DBDs”), who are responsible for working with the individual hotels to improve their business opportunities and address any issues or concerns they might have. Wyndham is also in the process of hiring a new Senior Vice President of Owner Relations, who will be dedicated to working with the Franchisees and will be part of the Senior Leadership Team. Further, Wyndham reported that almost all of its FACs have elected members. Some of the FACs (i.e., Howard Johnsons) have 100% of their members elected by the Franchisees. Five (5) of the FACs have members that are both elected and appointed. Three (3) of the FACs have only appointed members. Wyndham indicated that all of its FAC members are independent and outspoken, and that Wyndham seeks their counsel and advice on many issues.</p> <p>On a related point, AAHOA is pleased to report that in 2007 and early 2008, Wyndham has been much more responsive to the individual concerns of AAHOA’s members. Among other things, Wyndham has been very good about returning phone calls in a timely manner, has negotiated the resolution of a variety of member disputes, and has participated in meetings with AAHOA leaders to address issues involving various hotel brands and complaints from AAHOA member franchisees.</p>
<p><b>8. Dispute Resolution</b></p>	<p>Following Wyndham’s review of the PAR, it announced that it would work closely with AAHOA to improve its handling of Franchisee disputes, and was in the process of hiring a Senior Vice President of Owner Relations. In the latter half of 2007, AAHOA noticed a marked improvement in how quickly Wyndham responded to Franchisee issues, and its willingness to engage in informal discussions and meetings with the individual Franchisees. On another positive note, AAHOA is very pleased to report that on several occasions in 2006-08, when there were major issues involving the Baymont, AmeriHost and Super 8 Franchisees, respectively, the top executives of Wyndham, including Chairman and CEO Steve Rudnitsky, COO Tony Berger, Group President for Wyndham Hotel Group and President of Baymont Inn &amp; Suites Keith Pierce,</p>

	<p>President of Super 8 John Valletta, and Hotel Group General Counsel Sarah Woodfin Wynn personally attended meetings with AAHOA in an attempt to resolve disputes and maintain a good working relationship.</p> <p>With respect to the resolution of Franchisee disputes, Wyndham for allows its Franchisees to proceed to litigation, and does not mandate that they go to arbitration. However, Wyndham does require its Franchisees to waive their rights to a jury trial in any action involving their franchise agreements, or the relationship between the Franchisees and Wyndham itself. (<i>See, e.g.</i> 2006 Days Inn franchise agreement, Section 17.6.4, p. 20.) While jury waivers are more likely to be enforced when combined with provisions authorizing mediation of disputes, an increasing number of courts have held that jury waiver provisions are unenforceable. For example, state courts in California, Georgia, Virginia and Tennessee have issued opinions that have either found such provisions to be unenforceable under state laws, or have questioned their enforceability.</p>
<b>9. Venue and Choice of Law Clauses</b>	<p>Wyndham states that any claim or controversy will be subject to “non-exclusive” personal jurisdiction in Morris County, New Jersey, and that New Jersey law will apply. This means that if there is a dispute, and Wyndham is the first party to go to court and file a lawsuit against a Franchisee, Wyndham can file the suit in New Jersey, near its corporate headquarters, and the Franchisee cannot object to jurisdiction in this location. If a Franchisee is the first to file a lawsuit against Wyndham, however, the Franchisee has the right to file the claims in an appropriate county and state, which might include the county and state in which the hotel is located, and the Franchisee is not limited to filing only in Morris County, New Jersey.</p>
<b>10. Franchise Sales Ethics and Practices</b>	<p>Following review of the PAR, Wyndham stated the following:</p> <p>(1) Since Wyndham is a publicly-traded company that is subject to the Sarbanes-Oxley Act (“SOX”), each quarter Wyndham senior management is required to certify for SOX purposes that they are not aware of any fraud, including sales fraud, in the organization.</p> <p>(2) Wyndham’s legal department conducts training sessions for the sales force twice a year on the legal requirements of selling franchises, to ensure that they conduct themselves in a legal and ethical manner.</p> <p>(3) Wyndham’s corporate compliance and ethics officer trains the sales force on the Wyndham “Business Principles,” which is Wyndham’s code of conduct for employees representing its core business philosophy of acting with integrity and respect for others. The Business Principles state, in pertinent part: “<i>Employees should deal properly and legally with Wyndham Worldwide customers, suppliers, competitors and employees. You should not engage in manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice.</i>” Each employee is required to sign a form acknowledging that they have read and agree to uphold these principles.</p> <p>(4) Wyndham requires all Franchisees to review and initial a special Section 18 in their respective franchise agreements entitled “<i>Special Stipulations</i>,” describing all the stipulations or agreements reached by the parties as the result of their arms’ length negotiations, which may include provisions regarding special signage credits, reduced liquidated damages, additional termination rights or windows provisions, and/or reduced re-licensing fees.</p> <p>(5) Finally, on August 7, 2007, Steven A. Rudnitsky, President &amp; Chief Executive Officer of Wyndham, stated as follows: “<i>As the leader of this organization I am here to tell you that the [above] noted principals and processes that this organization lives by is non-negotiable.</i>”</p>
<b>11. Transferability</b>	<p>Although Wyndham’s transfer fees are excessive, special consideration is given for transfers to family members or business partners. Specifically, the transferee must complete and submit an application, qualify as a Franchisee, provide the same supporting documents as a new license application, pay the application and relicense fees then in effect, sign the conversion transaction franchise agreement form, agree to renovate the Facility as if it were an existing Facility converting to the System, and satisfy other conditions identified by Wyndham. (<i>See, e.g.</i>, 2006 franchise agreement for Days Inn brands, para. 9.3, p. 12.) On a positive note, Wyndham authorizes “<i>Permitted Transferee Transactions</i>” of an equity interest to, among others, (a) an entity or person upon the death of the owner if no consideration is paid, or (b) a spouse or adult issue of the transferor if no consideration or payment is made. For such transactions, the Franchisee may transfer the Facility without obtaining Wyndham’s consent, renovating the facility, or paying a relicense or application fee, but certain other restrictions apply. (<i>See, id.</i>, at para. 9.4, pp. 12-13.)</p>
<b>12. Sale of the Franchise</b>	<p>In its UFOCs and license agreements, Wyndham provides that it can sell the franchise system to any person or legal entity, and it does not offer any assurances that it will attempt to work with the new Franchisor owner to ensure that the transition is as smooth as possible, or to protect the rights of its Franchisees.</p>

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