

# Loyal Locals Card Agreement

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- 1 This Loyal Locals Card Promotion Contract ("CONTRACT") governs the terms and conditions on which an individual ("USER") may participate in the Loyal Locals Card Promotion ("PROMOTION") sponsored by the Santa Ynez Valley Marriott d.b.a. Kang Family L.L.C. (Referred to as "HOTEL"). (Collectively AUSER@ and AHOTEL@ are referred to as APARTY@ or APARTIES@).
  - 1.1 This CONTRACT is binding upon USER at the time USER registers USER'S CARD in accord with this CONTRACT. HOTEL may, from time to time, change this CONTRACT (including any Rewards available under a PROMOTION) by adding, modifying or deleting any term or condition (ACHANGED TERM@). A CHANGED TERM will be effective upon posting to HOTEL'S Website.
  - 1.2 All communications by USER with HOTEL shall be by way of United States Postal Service, Return Receipt Requested Service, addressed to General Manager, Santa Ynez Valley Marriot, 555 McMurray Way, Buellton California, 93427
  - 1.3 USER agrees to receive, all communications from HOTEL by way of HOTEL providing USER with information about the PROMOTION by posting such information on HOTEL'S PROMOTION website at [www.santaynezuss.com/loyaltycard.html](http://www.santaynezuss.com/loyaltycard.html) ("WEBSITE"). USER agrees to visit WEBSITE regularly to view any changes to this CONTRACT or other important information about USER'S participation in the PROMOTION.
- 2 To become a member of and participate in the PROMOTION, USER must be a Santa Barbara County, California, United States resident and over 18 years of age and otherwise be able to enter into a legally binding CONTRACT, complete the HOTEL enrollment process under paragraph 3 of this CONTRACT and agree to the terms of this CONTRACT.
  - 2.1 Only individuals are eligible for the PROMOTION, and each individual may maintain only one account. Corporations, groups and/or associated entities cannot enroll as USERS.

- 2.2 Employees of Marriott International, Inc., and The Ritz-Carlton HOTEL Company, L.L.C., their subsidiaries, and franchisees are ineligible to participate in the PROMOTION.**
- 3 To participate in PROMOTION, USER must register USER'S Loyal Locals Card (ACARD@) with HOTEL by presenting the CARD to a HOTEL employee at the Starbucks coffee bar on the Main Floor of the HOTEL ("COFFEE BAR") or the Starting Gate Restaurant on the Lower Floor of the HOTEL ("STARTING GATE"). Once a CARD has been registered in accord with this paragraph, it becomes a REGISTERED CARD. After USER registers the CARD, a membership number will be assigned to each USER. Upon receiving this number, USER becomes eligible to earn credit toward REWARDS and the applicable discount.**
- 4 USER is eligible to earn rewards ("REWARDS") as provided in this CONTRACT when USER uses presents a REGISTERED CARD simultaneously with USER making certain purchases at the HOTEL ("ELIGIBLE PURCHASES), as well as a 15% discount on ELIGIBLE PURCHASES under the following rules.**
- 4.1 ELIGIBLE PURCHASES are exclusively the purchase of food, and/or non-alcoholic beverages, at the COFFEE BAR, the STARTING GATE, and/or the JOCKEY CLUB (collectively, the RESTAURANTS) at the HOTEL by the USER. All other purchases at the HOTEL, including, but not limited to alcoholic beverages, gift store items, banquets, catered events, accommodations, and/ or services provided at the HOTEL do not qualify as ELIGIBLE PURCHASES.**
- 4.2 Credit towards REWARDS or the applicable discount shall available for or during any catered or banquet event or in any location at the HOTEL, other than the STARTING GATE, COFFEE BAR, OR JOCKEY CLUB.**

**4.3 USER must tender money by way of cash, check or credit card payment (“TENDER OF MONEY”) to make payment for the ELIGIBLE PURCHASE directly in the RESTAURANTS. USER is not entitled to any credit (towards REWARDS) or the 15% discount for any ELIGIBLE PURCHASE that does not involve the TENDER OF MONEY at the RESTAURANTS, including but not limited to charging an ELIGIBLE PURCHASE to a USER’S room. In other words, if REWARDS, other coupons, other promotions or meals included with HOTEL ROOMS are used to pay, in whole or in part for ELIGIBLE PURCHASE, then neither the 15% discount nor the accrual of credit towards REWARDS shall result from anything other than the TENDER OF MONEY at the RESTAURANTS. Moreover should any other coupons, other promotions or meals included with HOTEL ROOMS be presented in conjunction with an ELIGIBLE PURCHASE, USER will not receive the applicable discount; but will receive credit toward REWARDS.**

- 4.4 USER understands and agrees that USER'S failure to present the REGISTERED CARD at the time of purchase of ELIGIBLE PURCHASES will result in USER not receiving any benefits of this PROMOTION, including, but not limited to the 15% discount and/or the accrual of credit toward any REWARDS. In other words, if the REGISTERED CARD is not presented at time of purchase of an ELIGIBLE PURCHASE, there will be no credit toward REWARDS nor will there be any 15% discount on any ELIGIBLE PURCHASE.
- 4.5 REWARDS may consist of complementary beverage, food items, and accommodations, provided by HOTEL to USER depending upon a variety of factors, including, but not limited to USER'S qualitative and quantitative use of the PROMOTION applied on an algebraic, direct, and exponential variational basis relative to, *inter-alia*, the amount of money USER spends in a particular time period on ELIGIBLE PURCHASES.
- 4.6 The REWARDS structure is subject to modification, cancellation, or limitation at Marriott's discretion, with or without notice. The number of points or miles required to redeem any reward may be substantially increased, any reward may be withdrawn, and restrictions on any reward or its redemption may be imposed at any time.
- 4.7 USER understands and acknowledges that USER is responsible for all taxes, tariffs, cancelation fees, services charges and other incidental expenses for all REWARDS.

- 4.8 No other person except the USER may earn credit towards the PROMOTION. Credit for a meal shared by two or more USERS will only be awarded to one USER.
- 4.9 USER must be a holder of a REGISTERED CARD in good standing to receive credit towards REWARDS and the applicable discount.
- 4.10 USER must present USER'S REGISTERED CARD at time of PURCHASE. HOTEL will not give any credit to USER, toward rewards for an ELIGIBLE PURCHASE made by USER before USER registers USER'S CARD or for ELGIBLE PURCHASES made by USER when USER fails to present USER'S REGISTERED CARD while making an ELIGLIBLE PURCHASE.
- 4.11 USER is responsible for reviewing USER'S credit toward REWARDS and the information on the WEBSITE that may affect USER'S ability to obtain credit toward REWARDS before USER makes any purchase at the HOTEL, as what constitutes an ELIGIBLE PURCHASE may change from time to time and may affect the Rewards USER receives. For example, ELIGIBLE PURCHASES may be credited only up to a specified dollar amount, or only if made during certain time periods on specified days. USER understands and agrees that neither REWARDS nor credit towards REWARDS have any cash value or any value beyond what is specifically enumerated herein.
- 4.12 To the extent that any discrepancy exists between the amount USER claims USER spent at the HOTEL on eligible purchases, USER agrees to provide original copies of all receipts from the HOTEL to verify said claim. USER further acknowledges that it is USER'S duty to obtain and retain all receipts from the HOTEL for ELIGIBLE PURCHASES and understands that if USER does not have the receipt for an ELIGIBLE PURCHASE, then USER may not make a claim for that ELIGIBLE PURCHASE. All account inquiries or disputes related to Rewards must be received by HOTEL within 7 days of the qualified transaction.

- 4.13 REWARDS will be issued to USER upon accrual of credit entitling USER to award by way of a receipt demonstrating the entitlement of USER to reward under a specified reward number (“REWARD”). Should USER not have the receipt, showing the REWARD, at the time USER wishes to redeem the REWARD, HOTEL will NOT issue a replacement receipt of the REWARD nor does the HOTEL have any obligation whatsoever provide the REWARD or any other compensation. As the receipt simply states the REWARD, the redemption of the particular REWARD by anyone referenced on any receipt voids any further obligation of HOTEL to USER for that REWARD. No REWARD may be redeemed more than once.**
- 4.14 Each REWARD shall expire 30 to 60 days after the date of entitlement depending upon what is printed on the REWARD. If USER accrues sufficient credit for a REWARD, HOTEL will provide it to USER at the time of the last transaction entitling USER to award. If HOTEL fails to provide the REWARD at the time of the last transaction entitling USER to award, under any circumstance, including the negligent, gross-negligent, or intentional conduct of HOTEL, USER shall be entitled to a 30 day extension of the expiration date on the receipt.**
- 4.15 The accumulation of credit toward REWARDS does not entitle USER to any vested rights whatsoever, including, but not limited to REWARDS and credit toward REWARDS. Accrued REWARDS and credit toward REWARDS do not constitute property of the member. In accumulating credit toward REWARDS, USERS may not rely upon the continued availability of any reward or reward level. HOTEL makes no representation, warranty or guarantee as to any value or benefit of REWARDS or any credit towards any REWARDS.**

**4.16 Credit toward REWARDS will not be transferred from one USER to another USER because credits toward REWARDS accrued by a USER are for the member's benefit only. Such a policy applies even in the case of death, incapacity, divorce or inheritance. Should USER die or otherwise become incapacitated, the credit towards REWARDS shall be forfeited. However, any REWARDS in the possession of the USER may be used by third parties. To the extent that there are outstanding REWARDS held by USERS who have died or become incapacitated, and those REWARDS are not in the possession of the USER at the time they die or become incapacitated, HOTEL will not re-issue such REWARDS and USER specifically agrees that all such REWARDS have been forfeited.**

4.17 USER may request a listing of the credit toward REWARDS at any time. HOTEL shall comply with all such requests in good faith, but in no event no more than once per week, unless good reason exists for further requests. Any more frequent events require a written request to the HOTEL which has the sole discretion to grant or deny the request.

5 This PROMOTION is offered at the sole discretion of HOTEL.

5.1 HOTEL has the right to change, limit, modify or cancel the PROMOTION, its rules, regulations, and benefits at any time, without notice, even though such changes may affect the value of credit toward REWARDS already accumulated, the ability to use accumulated credit toward REWARDS, or the ability to obtain certain REWARDS. HOTEL may, among other things: (a) increase or decrease amount of credit required for a REWARD; (b) withdraw, limit, modify, or cancel any REWARD; (c) add blackout dates, limit purchases for any REWARD, or otherwise restrict the continued credit toward REWARDS or REWARDS; (d) change PROMOTION benefits including percentage discount, conditions of participation, rules for credit toward REWARDS or rules governing the use of REWARDS.

5.2 HOTEL has the sole discretion to interpret and apply this CONTRACT.

5.3 Changes in this CONTRACT will be effective when posted on the WEBSITE. USER'S continued use of the PROMOTION after any changes to this CONTRACT are posted will be considered acceptance of those changes by USER. HOTEL may terminate, change, suspend or discontinue any aspect of the PROMOTION at any time.

5.4 HOTEL may impose limits on certain features and services or restrict USER'S use of all or part of the PROMOTION without notice or liability.

5.5 HOTEL has no liability or obligation to USER if KANG FAMILY, LLC ceases doing business as the Santa Ynez Valley Marriott Hotel, sells the hotel known as the Santa Ynez Valley Marriot, files for bankruptcy, or cancels the PROMOTION.

- 5.5.1 If HOTEL cancels this PROMOTION and/or this CONTRACT cancellation, all REWARDS provided by HOTEL to USER as of the effective date of cancellation ("CANCELLATION DATE") will be eligible to be redeemed up until the listed expiration date (on the REWARDS certificate) of any REWARDS in USER'S possession.
- 5.5.2 Any credit towards any future REWARDS that a USER may have in the PROMOTION shall be of no force or effect after the CANCELLATION DATE. USER agrees to forfeit such credit by virtue of USER'S participation in the PROMOTION and agrees that any such credit has no value as of the CANCELLATION DATE.
- 5.6 HOTEL may assign this CONTRACT, or any or all of HOTEL'S rights in the PROMOTION, without notice to USER.

- 6 USER agrees that: The PROMOTION is provided "as is" and, to the maximum extent permitted by law, HOTEL disclaims any express or implied warranties with respect to the PROMOTION, including any implied warranties of merchantability or fitness for a particular purpose.
- 6.1 HOTEL will not be liable for any damage that USER may suffer in connection with USER'S participation in the PROMOTION, and unless the damage results directly from HOTEL'S failure to perform HOTEL'S express obligations under this CONTRACT.
- 6.2 HOTEL will not be liable to USER or any other person for any indirect, special, incidental, contingent, consequential, reliance or special damages (including lost profits) in connection with this CONTRACT or the PROMOTION, whether or not HOTEL has been advised of the possibility of such damages.
- 6.3 USER agrees to defend, indemnify and hold HOTEL and HOTEL'S subsidiaries, affiliates, successors and assigns, and HOTEL'S and their respective shareholders, directors, officers, employees and agents, attorneys, harmless from and against any and all claims, damages, costs and expenses, including attorneys' fees, arising from or relating to your alleged violation of this CONTRACT, or USER'S improper participation in HOTEL'S PROMOTION.

- 7 USER may cancel this CONTRACT and/or USER'S participation in the PROMOTION at any time by providing written notice to the General Manager of HOTEL at 555 McMurray Way, Buellton, CA 93427 and returning the CARD to HOTEL at the above-noted address. Said cancellation shall be of no effect on HOTEL'S obligations specified under this contract. The sole effect shall be that USER is no longer involved with the PROMOTION.**
  
- 8 HOTEL may suspend USER'S participation in the PROMOTION, immediately and without notice and has the right to take appropriate administrative and/or legal action, and consider all credit toward REWARDS and REWARDS earned through the PROMOTION forfeited and the account closed, if --**

  - 8.1 USER does not perform USER'S obligations under this CONTRACT/PROMOTION;**
  - 8.2 USER provides HOTEL any false or misleading information;**
  - 8.3 USER engages in any illegal or improper transaction;**
  - 8.4 USER engages in negligent, intentional, or abusive behavior that negatively impacts HOTEL, HOTEL'S employees, HOTEL guests, or to the PROMOTION in any way;**
  - 8.5 USER does not make a qualifying purchase at the HOTEL for over 120 days.**
  - 8.6 USER engages in any fraud or abuse involving the PROMOTION, either directly or indirectly,**
  
- 9 Any waiver by HOTEL of HOTEL'S rights under this CONTRACT must be in writing and signed by HOTEL. A waiver of a right by HOTEL in one instance will not limit HOTEL'S ability to enforce the right in another instance.**

- 10 If USER'S REGISTERED CARD is invalid or inactive for a period of 120 days following the date of a use that earned USER credit toward REWARDS, the HOTEL may delete USER from the PROMOTION which will result in USER forfeiting its rights to all of USER'S credit toward REWARDS even if such credit was previously credited to USER'S PROMOTION account as well as a REWARDS not yet redeemed.
  
- 11 USER is responsible for any tax consequences resulting USER'S receipt or use of REWARDS under the PROMOTION. HOTEL may report REWARDS provided to USER to relevant tax authorities; but the HOTEL is under no obligation to do so. It is the USER'S responsibility to comply with USER'S company policy concerning PROMOTIONS. Information regarding a member's accumulation of points or miles for business purposes is subject to disclosure to the USER'S company.
  
- 12 USER agrees to the terms of HOTEL'S Privacy Policy which is that any INFORMATION is not private.
  
- 12.1 All comments, feedback, and other information of any kind or nature disclosed, submitted, or conveyed by USER to HOTEL (collectively, AUSER INFORMATION@) shall be and remain HOTEL'S property and may be reprinted by HOTEL or others without USER'S permission. USER'S provision of USER INFORMATION to HOTEL constitutes an assignment to HOTEL of all worldwide rights, titles, and interests in all intellectual properties of the USER INFORMATION. USER warrants that: (i) any use of Comments by HOTEL will not violate any right of any third PARTY; and (ii) any USER INFORMATION is not private, libelous, unlawful, or obscene.

- 12.2 USER agrees that HOTEL may provide to (and receive from) third party vendors USER INFORMATION, USER'S REGISTERED CARD and USER'S participation in the PROMOTION, in connection with HOTEL'S operation of the PROMOTION, including, but not limited to, directly or indirectly determining USER'S eligibility for Rewards and compliance with this CONTRACT.
- 12.3 USER has no expectation of privacy whatsoever with regards to USER's use of the PROMOTION and the USER INFORMATION. By registering the CARD, USER waives all right to privacy with regard to USER'S use of the PROMOTION for ELIGIBLE PURCHASES as well as USER INFORMATION disclosed by USER to HOTEL at any time for purposes of registering or using the CARD.
- 12.4 When HOTEL must collect personally identifiable information from USER to provide USER with a particular service, HOTEL will ask USER to voluntarily supply HOTEL with the information HOTEL needs. YOU ARE HEREBY ADVISED THAT HOTEL HAS NO OBLIGATION TO, NOR WILL IT KEEP SUCH USER INFORMATION PRIVATE. The USER INFORMATION USER provides will be used by HOTEL for marketing of HOTEL and other products. This includes special offers and promotions that may be of interest to USER such as HOTEL offers and the promotions of select, reputable third parties with whom HOTEL has a strategic marketing relationship because they offer products or services ("HOTEL INFORMATION") HOTEL may use the services of third-parties to distribute HOTEL INFORMATION. IF YOU DO NOT AGREE WITH THIS POLICY, YOU MAY OPT OUT OF THE PROMOTION BY GIVING NOTICE TO THE HOTEL AT THE ADDRESS LISTED ABOVE IN THIS CONTRACT.
- 12.5 By choosing to become a USER in the PROMOTION, USER will have consented to receive HOTEL INFORMATION.

- 12.6 The communication of HOTEL INFORMATION is important to administering the PROMOTION and providing USER the opportunity to maximize the benefits of USER'S use of the PROMOTION. Said communications may be done by any means, including but not limited to the U.S. Mail, third party carriers, email, fax, AIM, Skype, text message, telephone, facsimile, or any other means of communication ("COMMUNICATIONS"). It is HOTEL'S intention to only send COMMUNICATIONS that will be useful to USER and that USER wants to receive. USER agrees to receive COMMUNICATIONS from HOTEL
- 12.7 Should a user wish to define and modify user communication preferences including unsubscribing from certain marketing communications, USER shall notify the HOTEL at the address listed below. In addition, every time USER receives an email, user will be provided the choice to opt out of future emails by following the instructions provided in the email. Please be advised that communication by the HOTEL to the USER is essential and that the right to communicate to USER information about the HOTEL, this PROMOTION and other promotions is, in part, the consideration for participation in this PROMOTION. As such, if USER wishes to opt out of all communications, it will be necessary for USER to withdraw from this PROMOTION, as set forth in this CONTRACT.
- 12.8 HOTEL may disclose USER INFORMATION to the Marriott group of companies, Marriott franchisees, fulfillment houses, email service providers and mail houses that process mail for such entities; and marketing companies, as well their respective parent companies, subsidiaries, employees, vendors, attorneys, that provide services to the Marriott group of companies and Marriott franchisees; for the following purposes:
- 12.8.1 to service USER'S account and preferences by keeping USER informed of your account status and activities through printed or electronic statements;
  - 12.8.2 to assess USER'S entitlement to benefits;
  - 12.8.3 to offer USER'S additional products and services;
  - 12.8.4 to send USER periodic satisfaction or market research surveys;

- 12.9 If USER is a customer who resides in the State of California, USER has the right to request from HOTEL a list of third parties with whom HOTEL shared personally identifiable information about USER for their HOTEL'S direct marketing purposes during the previous calendar year. If USER would like to request information about the third parties that may have obtained personally identifiable information about USER during the immediately preceding calendar year, please send a written request to the HOTEL at the address located above.
- 12.10 The USER INFORMATION provided to HOTEL by USER when enrolling the PROMOTION and redeeming REWARDS is processed in HOTEL'S and its vendors' computer systems.
- 12.11 The USER INFORMATION provided to HOTEL by USER when enrolling the PROMOTION and redeeming REWARDS is processed in HOTEL'S and its vendors' computer systems.
- 12.12 The USER INFORMATION provided to HOTEL by USER when enrolling the PROMOTION and redeeming REWARDS is processed in HOTEL'S and its vendors' computer systems.
- 12.13 As a participant in the PROMOTION, USER has consented to receive HOTEL INFORMATION. However, USER will be given the opportunity to opt out of mailings from such third PARTIES and from e-mails from Marriott but not all communications as that is part of the consideration USER are giving to be involved in the PROMOTION. If USER would rather the HOTEL did not provide USER HOTEL INFORMATION, then USER must not participate in the PROMOTION.
- 12.14 When USER uses the PROMOTION AND/OR THE WEBSITE, USER agrees to the Terms of use for the WEBSITE, as in effect from time to time. The terms of the Privacy Policy and Terms of use for the WEBSITE are hereby incorporated into this CONTRACT.

**13 WEBSITE TERMS AND CONDITIONS OF USE: PLEASE READ THIS CONTRACT CAREFULLY BEFORE USING THIS WEBSITE. This WEBSITE is provided by the HOTEL. This CONTRACT applies exclusively to USER'S access to and use of the WEBSITE, and does not alter any other CONTRACT USER may have with HOTEL.**

**13.1 This is a United States website and is subject to United States and California law.**

**13.2 HOTEL will disclose any information regarding the use of this WEBSITE including personal information pertaining to USER without your permission when required by law, or in good faith belief that such action is necessary to investigate or protect against harmful activities to HOTEL guests, visitors, associates, or property (including this WEBSITE), or to others.**

**13.3 The WEBSITE may be used for obtaining information about the PROMOTION. In order to access the WEBSITE, USER must be at least 18 years old and a resident of the United States.**

**13.4 HOTEL does not knowingly market to, or solicit or collect information from, children under the age of 18.**

**13.5 The content and information displayed on this WEBSITE is the property of HOTEL. The downloading, reproduction, or retransmission of this WEBSITE, other than for non-commercial individual use, is strictly prohibited.**

**13.6 HOTEL will never send USER an email requesting your password, credit card number or social security number. If USER receives an email that looks like it's from HOTEL Marriott, but asks USER for your credit card number or social security number, it's a fraudulent email, or "phish." HOTEL recommends that USER do the following: Forward the email to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or call 1-877-FTC-HELP (1-877-382-4357) to report it (The FTC uses the spam stored in this database to pursue law enforcement actions against people who send deceptive email.) and delete the email, without responding.**



- 13.7 The WEBSITE as a whole, and all Content, is protected by copyright, trademarks, trade dress and/or other intellectual properties owned by or licensed to HOTEL, unless otherwise noted. The WEBSITE may contain service marks, including, but not limited to Marriot Hotels and Resorts, Starbucks Coffee, and Hertz Car Rental, as well as other service marks from time to time.
- 13.8 All rights in the intellectual property relating to the WEBSITE and any Content are reserved, and USER agrees not to take any action to register or otherwise interfere with or challenge any intellectual property rights relating to the WEBSITE or the Content.
- 13.9 This WEBSITE does not collect personally identifiable information when USER browses this WEBSITE and request pages from HOTEL'S servers unless USER voluntarily and knowingly provides it to HOTEL.
- 13.9.1 This means that HOTEL will not know someone's name, email address, or any other personally identifiable information just because someone browses the WEBSITE unless that someone access the WEBSITE from a link in an email that HOTEL sent or is a USER who has created a profile and USER has either logged in to USER'S account or choose to be remembered via a "cookie."
- 13.9.2 In these cases, HOTEL will know who the individual is who is accessing the WEBSITE based on the information the individual or the USER previously supplied to HOTEL. When a USER or other individual responds to an email or provides a name, email address or other information, requests a page from HOTEL'S WEBSITE, HOTEL'S servers log the information provided in the HTTP request header including the IP number, the time of the request, the URL of USER request and other information that is provided in the HTTP header.
- 13.9.3 HOTEL collects the HTTP request header information in order to make HOTEL'S WEBSITE function correctly and provide USER and others who access the WEBSITE the functionality of WEBSITE.

13.9.4 HOTEL also uses this information to personalize content presented to USER and others who access the WEBSITE, better understand how visitors use HOTEL'S WEBSITE and how HOTEL can better tune it, its contents, and functionality. In addition to the travel related services and required information sharing described in this CONTRACT, HOTEL does use the services of third PARTIES, such as market researchers, fulfillment houses, email service providers and mail houses that process mail for the Marriott group of companies, and Marriott franchisees, their respective employees, parent companies, subsidiaries, attorneys and vendors as well as such entities and marketing companies that provide these services for the Marriott group of companies and Marriott franchisees.

13.9.5 The WEBSITE uses "cookie" technology. "Cookies" are encrypted strings of text that WEBSITE stores on a user's computer. WEBSITE may require the use of a Cookie. Cookies allow the HOTEL to keep INFORMATION USER enters on multiple pages together, allow registered users to sign in without typing their PROMOTION number, measure usage of WEBSITE pages to help HOTEL make HOTEL'S information more pertinent and provide functionality . The types of Cookies that HOTEL uses are referred to as "session" Cookies and "persistent" Cookies. Session Cookies are temporary and are automatically deleted once the person accessing the WEBSITE closes the Internet browser. Persistent Cookies remain on the computer hard drive of the person accessing the WEBSITE until that person, or someone else on that computer, deletes the cookie or the cookie is otherwise removed upon expiration. HOTEL does not use Cookies to ascertain any personally identifiable information about individuals who access the WEBSITE apart from what that individual voluntarily provides HOTEL in that person's dealings with HOTEL.

13.9.6 HOTEL uses third party advertising technology to serve ads when someone visits HOTEL'S WEBSITE and other websites upon which HOTEL advertises. This technology uses information about individual's visits to the website and the websites upon which HOTEL advertise, (not including USER'S name, address, or other personally identifiable information), to serve HOTEL'S ads to user. In the course of serving HOTEL'S advertisements to user, a unique third party persistent Cookie may be placed or recognized on the browser on the computer used for access. In addition, HOTEL uses beacon gifs (see description below), provided by HOTEL'S ad serving providers, to help manage HOTEL'S online advertising. These beacon gifs enable HOTEL'S ad server to recognize a browser's Cookie when a browser visits this WEBSITE and to learn which banner ads bring users to HOTEL'S Web WEBSITE. The information from the HOTEL'S ad serving providers and that HOTEL collects through this technology is not personally identifiable. One accessing the WEBSITE user may set the browser to block Cookies (consult the instructions for a particular browser on how to do this), although doing so will adversely affect the WEBSITE'S ability to perform certain transactions, the browser's use certain functionality, and prevent access to certain content on the WEBSITE.

13.9.7 HOTEL and its third-party service providers use pixel tags (also known as "clear gifs" "beacon gifs" etc.). Pixel tags are not visible to the user of the WEBSITE and consist of a few lines of computer coding delivered with the Web page. Pixel tags are not used to collect any personally identifiable information about user apart from what user voluntarily provide HOTEL in USER'S dealings with HOTEL. Marriott and HOTEL'S email service provider use pixel tags to:

*13.9.7.1 Track customer response to HOTEL advertisements and WEBSITE content;*

*13.9.7.2 Determine the computer being used by the person accessing the WEBSITE'S ability to receive HTML-based email messages. HOTEL'S email service provider includes a pixel tag, which they refer to as a "coded sensor" in all of the HTML-based messages sent on HOTEL'S behalf. The sensor activates when the email message is opened and flags the email address of the user as one that is capable of receiving HTML-based email messages. This capability helps HOTEL'S service provider to send the email in a format user can read. The sensor does not collect or use any other information. If user cannot receive HTML, user will not receive a functioning sensor;*

*13.9.7.3 Know how many users open an email and allow HOTEL'S service provider to compile aggregated statistics about an email campaign for us; and*

*13.9.7.4 Allow HOTEL to better target interactive advertising, enhance customer support and WEBSITE usability, and provide offers and promotions that HOTEL believe would be of interest to user.*

**13.10 USER agrees not to:**

**13.10.1** disrupt or interfere with the security of, or otherwise abuse, the WEBSITE, or any services, system resources, accounts, servers or networks connected to or accessible through the WEBSITE or affiliated or linked web WEBSITES;

**13.10.2** disrupt or interfere with any other person's access, use or enjoyment of the WEBSITE or affiliated or linked web WEBSITES;

**13.10.3** upload, post or otherwise transmit through or on the WEBSITE any viruses or other harmful, disruptive or destructive files;

**13.10.4** use or attempt to use or access another person's account or personal information, or create or use a false identity on the WEBSITE;

**13.10.5** attempt to obtain unauthorized access to the WEBSITE or portions of the WEBSITE which are restricted from general access; and

**13.10.6** Violate any local, state or federal laws or regulations that apply to USER'S access to or use of the WEBSITE.

**13.11** The WEBSITE may contain links to third party services and resources. HOTEL does not control the availability and content of these third party websites. Any concerns regarding any such service or resource, or any link thereto, should be directed to the particular third PARTY service or resource that provides the content. The existence of a link to a third PARTY WEBSITE does not constitute HOTEL'S endorsement or recommendation of the third PARTY or the third party's website. HOTEL DISCLAIMS ALL LIABILITY FOR ANY LOSS OR DAMAGES ARISING FROM THE CONTENT OR PROVISION OF SERVICES OF ANY THIRD PARTY SERVICE OR RESOURCE.

**13.12** USER must receive HOTEL'S prior written permission before creating a link to the WEBSITE. Any unauthorized links or false or misleading uses of the WEBSITE or HOTEL'S trademarks or service marks are prohibited. USER may not use any robot, spider or other device to monitor Content on the WEBSITE.

**13.13 All INFORMATION shall be and remains HOTEL'S property and may be used and disclosed by HOTEL or others without USER'S further permission. USER'S provision of Comments to HOTEL constitutes an assignment to HOTEL of all worldwide, transferable rights, titles, and interests in all intellectual properties of the Comments. HOTEL may use and disclose USER'S INFORMATION in any way HOTEL chooses. USER warrants that: (i) any use of Comments by HOTEL or others will not violate any right of any third PARTY; and (ii) any Comments are not libelous, unlawful, or obscene.**

**13.14 All content on the WEBSITE (the "CONTENT") is subject to change without notice. HOTEL does not warrant the accuracy of the Information on the WEBSITE. HOTEL does not provide a warranty regarding virus free use of the WEBSITE or use of any Content downloaded from the WEBSITE.**

13.15 THE SERVICES PROVIDED BY HOTEL WITH RESPECT TO THE WEBSITE AND ALL CONTENT ON THE WEBSITE ARE PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, HOTEL DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY THAT THE SERVICES SUPPLIED UNDER THIS CONTRACT ARE OF A REASONABLY ACCEPTABLE QUALITY. HOTEL DOES NOT WARRANT THAT FUNCTIONS CONTAINED ON THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE, CONTENT OR THE SERVER ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

13.16 USER ACKNOWLEDGES, BY USER'S USE OF THE WEBSITE, THAT SUCH USE IS AT USER'S SOLE RISK AND THAT WE WILL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONTINGENT, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, LOSSES OR EXPENSES ARISING IN CONNECTION WITH USER'S USE OF THE WEBSITE, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13.17 HOTEL WILL NOT BE LIABLE FOR UNAUTHORIZED ACCESS BY THIRD PARTIES TO USER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT, LOSS OR DESTRUCTION OF USER'S NETWORK, SYSTEMS, APPLICATIONS, DATA FILES, PROMOTIONS, PROCEDURES, OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. THESE LIMITATIONS OF LIABILITY SHALL APPLY, TO THE FULLEST EXTENT PERMITTED BY LAW, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, OR TORT, AND SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY

**13.18** The WEBSITE may contain technical inaccuracies and typographical errors, including but not limited to inaccuracies relating to pricing or availability applicable to USER'S transaction. HOTEL shall not assume responsibility or liability for any such inaccuracies, errors or omissions, and shall have no obligation to honor reservations or information affected by such inaccuracies. HOTEL reserves the right to make changes, corrections, cancellations and/or improvements to the WEBSITE, and to the PROMOTION described in the WEBSITE, at any time without notice.

**13.19** USER agrees to defend, indemnify and hold HOTEL and HOTEL'S subsidiaries, affiliates, successors and assigns, and HOTEL'S and their respective shareholders, directors, officers, employees and agents, harmless from and against any and all claims, damages, costs and expenses, including attorneys' fees, arising from or relating to USER'S use of the WEBSITE, except to the extent that HOTEL fails to perform HOTEL'S express obligations to USER under this CONTRACT.

**13.20** HOTEL reserves the right, at HOTEL'S sole discretion, to modify, add or remove ("Change") any portion of this CONTRACT in whole or in part, at any time. Changes in this CONTRACT will be effective when posted on the WEBSITE. USER'S continued use of the WEBSITE after any changes to this CONTRACT are posted will be considered acceptance of those changes by USER. HOTEL may terminate, change, suspend or discontinue any aspect of the WEBSITE, including the availability of any features of the WEBSITE, at any time. HOTEL also may impose limits on certain features and services or restrict USER'S access to part or all of the WEBSITE.

**14** This CONTRACT and the relationship between USER and HOTEL shall be governed by the laws of the State of California without regard to choice of law principles.

- 15 If any portion of this *CONTRACT* is held invalid or inoperative, then so far as is reasonable and possible the remainder of this *CONTRACT* shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either *PARTY* to enforce against the other any term or Provision of this *CONTRACT* shall not be deemed to be a waiver of such *PARTY*'s right to enforce against the other *PARTY* the same or any other such term or condition in the future.
  
- 16 This *CONTRACT* shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state of California.
  
- 17 No Third *PARTY* Beneficiary. This *CONTRACT* is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third *PARTY* beneficiary or otherwise.
  
- 18 This *CONTRACT* embodies the entire *CONTRACT* between the *PARTIES* and supersedes all prior *CONTRACT*s and understandings of the *PARTIES*. This *CONTRACT* may be amended or supplemented only by an instrument in writing executed by the *PARTY* against whom enforcement is sought. However, this *CONTRACT* shall be automatically modified to the extent necessary at any time to comply with any valid state and federal laws, orders, and regulations, under the authority of such laws.

- 19 Time is of the essence of every provision contained in this *CONTRACT*. All periods of time referred to in this *CONTRACT* shall include all Saturdays, Sundays and California state or national holidays, unless the reference is to business days, in which event such weekends and holidays shall be excluded in the computation of time, and provided that if the last day to perform any act or give any notice with respect to this *CONTRACT* shall fall on a Saturday, Sunday or California state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next succeeding business day.
- 20 All notices required or permitted hereunder shall be in writing and shall be provided as set forth above.
- 21 This *CONTRACT* contains the entire *CONTRACT* between the *PARTIES*, and supersedes all prior negotiations, drafts, and other understandings which the *PARTIES* may have had concerning the subject matter hereof.
- 22 Whenever possible, each provision of this *CONTRACT* shall be interpreted so as to be effective and valid under applicable law. If any provision of this *CONTRACT* is held to be prohibited by, or invalid under, applicable law, the remainder of this *CONTRACT* and any other application of such provision shall not be affected thereby.
- 23 The *PARTIES* acknowledge and agree that the legal doctrine stating that a writing will be construed against the *PARTY* who prepared it shall not apply to any interpretation of this *CONTRACT*, judicial or otherwise, inasmuch as this *CONTRACT* has been freely negotiated by the *PARTIES* hereto.

24 The PARTIES represent and agree that (1) they have been advised to consult with an attorney of their choice concerning this *CONTRACT*; (2) they have either thoroughly discussed all aspects of this *CONTRACT* with an attorney or voluntarily chosen not to do so; (3) they understand that their legal rights or claims will be affected by signing this *CONTRACT* (4) they have carefully read and fully understand this *CONTRACT* and (5) they hold the other *PARTY*, and its agents and attorneys harmless from any lawsuit, liability, claim, damages, loss, cost or expense which may result from their use of this *CONTRACT*.

25 The PARTIES waive any and all right they may have against each other for any consequential damages, except as specifically set forth herein, arising out of the performance or non-performance of any obligation therein and understand that they may only recover, as damages for any breach of *CONTRACT*, the benefit of the bargain and not any other related damages. Said waiver includes any claim for damages or indemnity filed by third PARTIES against either PARTY.

26 Nothing in this *CONTRACT* grants any interest of any kind in the real or personal property of HOTEL to USER.

27 This entire *CONTRACT* is used by the PARTIES under a license from the owner of the *CONTRACT*. The *CONTRACT* is copyrighted. The PARTIES agree that to abide by this Copyright by not reproducing the *CONTRACT* or using the *CONTRACT* for any other purpose other than set forth in the Recitals in this *CONTRACT*.

## 28 Dispute Resolution

- 28.1 By Registering USER'S CARD, USER agrees that (a) Any claim, dispute, or controversy between USER and HOTEL, HOTEL'S subsidiaries, HOTEL'S affiliates, and/or any holder of this CONTRACT, or the employees, agents or assigns of any of them arising from or relating to the PROMOTION, including this CONTRACT or the relationships that result from this CONTRACT ("CLAIM") or any issue relating directly, or indirectly to the WEBSITE, including but not limited to any tort or statutory CLAIM, and any CLAIM seeking monetary, equitable, or other relief will be, submitted to mediation in front of an agreed upon mediator in Santa Barbara County.
- 28.2 Should the *PARTIES* not agree to a mediator, one shall be appointed by Alternative Dispute Resolution Services 900 Avenue of the Stars, Suite 250, Los Angeles, California 90067 Tel (310) 201-0010, Fax (310) 201-0016 or Judicial Arbitration and Mediation Services located at 707 Wilshire Blvd. 46th Floor, Los Angeles, CA 90017, Phone: 213-620-1133, Fax: 213-620-0100 or any other mediation services company approved by the *PARTIES*. The *PARTIES* each agree to pay the mediator 50% of the Mediator's hourly rate plus one half (2) the applicable administrative fees.

- 28.3 Arbitration. If the mediation does not lead to resolution, then the matter shall be determined, settled and resolved by confidential arbitration in San Luis Obispo, California under the rules and auspices of the American Arbitration Association (AAA). Any award shall be final, binding and conclusive upon the *PARTIES*, and a judgment rendered thereon may be entered in any court having jurisdiction thereof under the rules set forth below. (To the extent these rules conflict with the AAA rules, the rules in this *CONTRACT* shall prevail.)
- 28.4 Time Limits Reduced Statute of Limitation, Discretionary Attorneys Fees. Within thirty (30) days after a written notice by either *PARTY* to the other requesting arbitration and stating the basis of the *PARTY*'s claim which must be made no more than one (1) year after any alleged breach of this *CONTRACT* or any other claim based directly or indirectly on this *CONTRACT*, one arbitrator shall be appointed by each *PARTY* who agrees to pay said arbitrator for his/her services directly in advance of the arbitration. Neither of the *PARTY*-appointed arbitrators shall be attorneys. Notice of the appointment shall be given by each *PARTY* to the other *PARTY* when made.
- 28.5 The two arbitrators shall, within fourteen (14) days, choose a third arbitrator (who may be an attorney) to act with them. The third arbitrator's fees and expenses shall be paid for one half (2) by *USER* and one half (2) by *HOTEL* in advance of the arbitration.
- 28.6 The Three arbitrators shall establish a date for the arbitration. In no event shall said date be more than ninety (90) days from the initial notice, unless stipulated by the *PARTIES* and the 3 arbitrators.

28.7 If a *PARTY* fails to select an arbitrator within the time allowed of if the two arbitrators fail to select a third arbitrator within fourteen (14) days after their appointment, or if the three (3) arbitrators fail to set a date within 90 days and/or the arbitration does not take place within ninety (90) days from to the initial notice under section 9.13.02.0, *supra*, or any other controversy exists regarding the arbitration, a petition may be filed by either *PARTY* under California Code of Civil Procedure (CCP) Section 1281.2 in the San Luis County Superior Court and otherwise for an order appointing the additional arbitrator(s) and/or setting the arbitration. The *PARTIES* specifically agree that since time is of the essence any such *PARTY* may make an Ex Parte Application with seven (7) days notice to seek relief under CCP Section 1281.2.

**PLEASE NOTE: THIS PROVISION PRECLUDES A COURT TRIAL OR JURY TRIAL OF ANY CLAIM RELATED DIRECTLY OR INDIRECTLY TO THE SUBJECT OF THIS CONTRACT USER SHALL NOT REGISTER USER'S CARD OR OTHERWISE PARTICIPATE IN THIS PROMOTION IF USER IS UNWILLING TO GIVE UP THIS RIGHT.**