HOTEL MANAGEMENT AGREEMENT

for	
BETWEEN	
- and –	
Dated as of	

HOTEL MANAGEMENT AGREEMENT

for
THIS AGREEMENT is made as of,
BETWEEN:
alimited partnership ("Owner");
AND
alimited liability company (the "Operator");
AND WHICH AGREEMENT IS JOINED IN, AND CONSENTED TO BY:
a United States banking corporation, as trustee (the "Trustee") under that certain land trust agreement with Owner, numbered, and dated(the "Land Trust").
RECITALS
A. The Trustee holds fee simple title to the Hotel, excluding the, for the benefit of the Owner, and will, in accordance with the terms of the Land Trust, convey fee simple title to the Hotel, excluding the, to the Owner.
B. Owner has leased the pursuant to the Lease and also has certain easement access rights to the pursuant to the Access Easement.
C. The Operator has or has access to expertise in the acquisition, development, construction furnishing, equipping, marketing, maintenance, operation, management, supervision and direction of hotels, including Full Service Luxury Hotels;
D. The Owner wishes to obtain the benefit of the Operator's expertise in advising and providing services to hotel owners in connection with the furnishing, equipping, marketing, maintenance operation, management, supervision and direction of Full Service Luxury Hotels, and the Operator has agreed to provide such advice and services to the Owner in connection with the Hotel upon and subject to the terms and conditions set forth in this Agreement; and
E. The Owner also wishes to obtain the use of the Proprietary Materials for the benefit of the Hotel, and the Operator has agreed to make available the Proprietary Materials to the Owner for the benefit of the Hotel, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties covenant and agree as follows:

ARTICLE I. INTERPRETATION

1.1 Defined Terms

In this Agreement, unless the subject matter or context otherwise requires, the following terms shall have the following meanings:

"Accounting Principles" means, at any time, those accounting principles applicable to the hotel industry which are recognized as being generally accepted in the United States, as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, all as modified to reflect hotel operating accounting principles recommended by the Uniform System of Accounts for Hotels adopted by the American Hotel and Motel Association of the United States as in effect from time to time.

"ADA" means the American with Disabilities Act (42 USC 12181 et seq.) or any equivalent state or local law or ordinance.

"Affiliate" means, with respect to any Person, any other Person which, directly or indirectly through one or more Persons, Controls, is Controlled by, or is under common Control with, such Person.

"Agency Account" means the bank account to be maintained pursuant to Section 7.5.

"Annual Budget" means the annual budget approved pursuant to Article 4.

"Applicable Laws" means all laws, statutes, regulations, codes, bylaws, ordinances, treaties, orders, judgments, decrees, directives, rules, guidelines, policies and other requirements of any Governmental Authority having jurisdiction, whether or not having the force of law, including without limitation, the Environmental Laws and the ADA.

"Approval Amount"	means \$	as adjusted by the Index Ratio

"Approved Bank" means any bank selected by Operator and reasonably approved by the Owner.

"Basic Fee" has the meaning set forth in Section 9.1.

"Building Systems" means, the systems and related facilities necessary for the Operation of the Hotel, including, without limitation, all life/safety, heating, ventilation, air conditioning, elevator, escalator, telephone, computer, electrical, plumbing, sanitation, laundry, dry cleaning, kitchen, mechanical and other systems and facilities.

"Business Day" means a day, other than a Saturday, Sunday, or statutory holiday, on which banks are open for the transaction of business in both the City of ______, ____ and the city in which the Hotel is located.

"Capital Expenditures" means expenditures for or on account of Capital Improvements. "Capital Improvements" means all alterations, additions, replacements and improvements to the Hotel that are considered to be of a capital nature under the Operator's Accounting Policies, including, without limitation, Building Systems, Furniture, Fixtures and Equipment, structural repairs and changes or replacements of structural components, but excluding repairs and maintenance and Building Systems and Furniture, and Equipment expenditures properly chargeable as Operating Expenses. "Casualty Compensation Payment" means a payment pursuant to Article XIII equal to: during the first _ (____) years of the Initial Term of this Agreement: ____ and one-half (__.5) times the Management Fees earned by Operator for the _____ (__) month period preceding the applicable termination (if there has not been one complete _____ (__) month period under this Agreement prior to such termination, then the Management Fees that would have been earned by the Operator for the ___ (__) month period under the Annual Budget for such Fiscal Year as though all projections therein were realized); during the second _____ (__) years of the Initial Term of this Agreement: _ () times the Management Fees earned by Operator for the _____ (__) month period preceding the applicable termination; during the third ____ (__) years of the term of this Agreement: ____ and onehalf (.5) times the Management Fees earned by Operator for the _____ (__) month period preceding the applicable termination; during the fourth _____ (__) years of the term of this Agreement: _ (__) times the Management Fees earned by Operator for the ____ (___) month period preceding the applicable termination; and during the last _____ (__) years of the term of this Agreement: ____ and one-half (.5) times the Management Fees earned by Operator for the _____ (__) month period preceding the applicable termination. "Centralized Services" has the meaning set forth in Section 6.2. "Commencement Date" means the date that Owner closes on its acquisition of the Hotel, excluding the "Comparable Aggregate Cost Test" has the meaning set forth in Section 3.8. "Competitive Set" means, from time to time during the Operating Term, the (not less than and not more than _____ (__)) hotels in the Hotel's immediate market area that are most comparable to the Hotel in quality, price and market (with due consideration given to age, quality, size, amenities, amount of meeting space and business mix). Owner and Operator agree that, as of the Effective Date, the hotels that would be included in the Competitive Set are those identified in the Schedule 1.1(a) as the Competitive Set. All determinations as to which hotels are to be included in the Competitive Set shall be made by the mutual agreement of Owner and Operator or, if the Owner and Operator are unable to reach agreement, as determined by the Hotel Expert. In the event of a material change to any hotel in the Competitive Set, including, but not limited to, the cessation of operation of a hotel, or a material change in the standards of operation of a hotel, either Owner or Operator may request the replacement of such hotel in the Competitive Set, provided the replacement hotel has been in operation for at least _____ (__) full years. If the Owner and Operator cannot agree on a replacement hotel for the Competitive Set, the matter may be submitted by either Owner or Operator for resolution to the Hotel Expert. "Complete Destruction" means the destruction of or damage to the Hotel by fire, casualty, or any other cause whereby the destruction of or damage to the Hotel is such that the cost of repairing, rebuilding or replacing the Hotel exceeds _____ percent (___%) of the Replacement Value of the Hotel. "Control," "Controlled" and similar expressions mean a relationship between two Persons wherein one of such Persons has the ability, through the ownership of securities or otherwise, to direct or manage the

affairs of, or to make the business decisions of, or for, the other of such Persons, and includes, in the case of a corporation, the ownership, either directly or indirectly through one or more Persons, of voting securities of such corporation carrying more than ______ percent (___%) of the votes that may be cast to elect directors of such corporation either under all circumstances or under some circumstances that have occurred and are continuing, other than securities held as collateral for a bona fide debt, provided that such votes, if exercised, are sufficient to elect a majority of the directors of such corporation.

"Core Executive Staff" has the meaning set forth in Section 5.3.

"Corporate Design and Construction Fee" has the meaning set forth in Section 10.4.

"**Dispute**" has the meaning set forth in Section 19.1.

"Employee Benefits" means the benefits provided to the Hotel Staff in connection with their employment, which may include, without limitation, a pension plan, medical insurance, life insurance, travel accident insurance, and bonus and service award programs.

"Employee Expenses" has the meaning set forth in Section 5.2.

"Environmental Laws" means all applicable federal, state, local, and foreign laws and regulations relating to the pollution of the environment (including without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including without limitation laws and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials. Environmental Laws shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Insecticide, Fungicide, and Rodenticide Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, and the Superfund Amendments and Reauthorization Act of 1986, all as amended from time to time.

"Extension Term"	' means a pe	riod of	f ()	consecutive	e Fiscal	Y	ears.

"Fiscal Year" means a calendar year, provided that the first Fiscal Year shall be the period commencing on the Commencement Date, and ending on ______ of the year in which the Commencement Date occurs (sometimes referred to as the "initial Fiscal Year"), and provided that the final Fiscal Year may be less than a full calendar year if this agreement is terminated early.

"Force Majeure Event" means any act of God, labor dispute, shortage of labor or materials, earthquake, hurricane, flood, fire or other casualty, taking, civil commotion, riot, mob violence, insurrection, malicious mischief, sabotage, rebellion, act of public enemy, terrorism, war, invasion, embargo or other event beyond the reasonable control of the Party claiming the benefit of the event, including any material and adverse changes in general economic or market conditions directly or indirectly resulting from the foregoing conditions, but excluding the inability of a Party to meet its financial obligations.

"Full Service Luxury Hotel" means a full service luxury resort and conference center as understood in the international hotel industry and having development, construction, operating, service and maintenance standards at least equal to those of other similar resort hotel facilities which are Operator Hotels.

"Furniture, Fixtures and Equipment" means all furniture, furnishings, fixtures and equipment required for the proper and efficient Operation of the Hotel in accordance with the Standard, including, without limitation, lobby furniture, carpeting and floor coverings, draperies, wall coverings, artwork, bedspreads, television sets, radios, office furniture and equipment such as safes, cash registers and accounting,

computer, duplicating and communication equipment, telephone equipment, guest room furniture, specialized hotel equipment such as equipment required for the operation of kitchens, laundries, the front desk, dry cleaning facilities, bars and cocktail lounges and decorative lighting, material handling equipment and cleaning and engineering equipment and all other furniture, furnishings, fixtures, equipment, apparatus and personal property needed for such purposes or for the Operation of the Hotel, but excluding (i) Building Systems, (ii) Operating Equipment, (iii) Operating Supplies and (iv) Proprietary Materials.

"General Account" has the meaning set forth in Section 7.8.

"General Manager" means the general manager of the Hotel appointed by the Operator from time to time pursuant to this Agreement.

"Global Reservations System" means the Global Reservations System normally provided to Operator Hotels by the Operator or by subcontractors engaged by the Operator.

"GOP" means Total Revenues minus Operating Expenses.

"Governmental Authority" means any government, whether federal, provincial, state, county, municipal, local or other, and any ministry, department, agency, entity or other body exercising executive, legislative, regulatory or administrative functions of government, including, without limitation, any board of fire underwriters or any other body which may exercise similar functions.

"Guest Records License" has the meaning set forth in Section 8.2.

"Hazardous Materials" means all chemicals, pollutants, contaminants, wastes and toxic substances, including without limitation: (i) "solid or hazardous wastes", "hazardous substances," "toxic substances," or "insecticides," "fungicides," or "rodenticides," in each case as defined in any Environmental Law; and (ii) gasoline or any other petroleum product or byproduct, polychlorinated biphenyl, asbestos and urea formaldehyde.

"Head Office Personnel" means any member of the Operator's head office personnel or regional office personnel.

"Hotel" means the Hotel Facilities and the Hotel Property.

"Hotel Expert" means an independent nationally recognized hotel consultant, selected and retained jointly by Operator and Owner.

"Hotel Facilities" means (i) the Lands, (ii) the Improvements, (iii) the Hotel Related Facilities, (iv) any related buildings and improvements which in the future may be owned or leased by the Owner, and (v) all entrances, exits, rights of ingress and egress, licenses and easements related to any of (i) through (iv) above.

"Hotel Property" means the Furniture, Fixtures and Equipment, the Operating Equipment and the Operating Supplies.

"**Hotel Purchases**" has the meaning set forth in Section 3.8.

"Hotel Related Facilities" means (i) the common areas of the Hotel, as the same may from time to time be altered, reconstructed or expanded, which are from time to time intended, made available and

maintained for the use and enjoyment in common of the Operator and occupants of the Hotel, (ii) the parking facilities servicing the Hotel, (iii) those rooms within the Hotel to be used for meetings and conferences, (iv) the receiving facilities for the delivery of laundry and other goods and services, (v) the restaurant facilities located within the Hotel, (vi) the Spa, and (vii) any amenities and facilities made available for the use and enjoyment of the occupants of the Hotel, all as indicated on the plans for the Hotel Facilities delivered to and reviewed by the Operator.

"Hotel Staff" means all Persons employed at or for the direct benefit of, or performing services in or about, the Hotel other than Head Office Personnel.

"**Improvements**" means all buildings, structures and other improvements situated on, in, under or over the Lands, including, without limitation, the Building Systems.

"**Incentive Fee**" has the meaning set forth in Section 9.1.

"Independent Accountants" means a reputable firm of independent certified public accountants having hotel experience selected by the Owner and reasonably approved by the Operator as set forth for each Fiscal Year in the respective Annual Budget.

"Index Ratio" means, at a particular time, a fraction, the denominator of which shall be the Consumer Price Index for All Urban Consumers (Base 1982-1984=100) published by the U.S. Bureau of Labor Statistics for the entire United States ("CPI") published immediately prior to the date of this Agreement, and the numerator of which shall be the CPI published immediately prior to the date of calculation. In the event that the CPI ceases to use the 1982-84 base of 100, or the CPI shall be discontinued for any reason, the Bureau of Labor Statistics shall be requested to furnish a new index comparable to the CPI together with information which will make possible the conversion to the new index in computing the adjusted amount in accordance with this paragraph. If for any reason the Bureau of Labor Statistics does not furnish such an index and such information for the United States area, the parties hereto shall thereafter accept and use such other index, or comparable statistics on the cost of living for the consumer in the United States area, as shall be computed and published by an agency of the United States, or by a responsible financial periodical or recognized authority, then to be selected by the Parties.

"**Initial Operating Term**" has the meaning set forth in Section 2.1.

"Lands" means the lands described in **Schedule 1.1(b)(i)**, together with the benefit of the covenants therein set forth, but subject to the Permitted Encumbrances.

"Management Fees" means, for any Fiscal Year, the Basic Fee and the Incentive Fee for such Fiscal Year.

"Marketing" means all marketing, advertising, promotion, sales, public relations, publicity and related activities conducted by the Operator for the purpose of promoting the name and business of the Hotel pursuant to the terms of this Agreement, either for the Hotel separately or as one of the Operator Hotels, including, without limitation, all literature and promotional materials related thereto.

"Material Default" means any breach or failure by a Party to comply with any of its covenants and agreements contained in this Agreement, other than any such breach or failure that in the context hereof is

minor, immaterial or insubstantial and not reasonably likely to prejudice any other Party or any part of the Hotel in any material way.

"Operating Equipment" means all blankets, linens, uniforms, glassware, silverware, china, crockery and other items of a similar nature necessary for the Operation of the Hotel, all such items being of a class or grade corresponding with the Standard and not less in quality or relative scope than that generally used from time to time in other Operator Hotels.

"Operating Expenses" has the meaning set forth in Section 9.5.

"Operating Supplies" means all food and beverage supplies, fuels, mechanical stores, paper supplies, stationery, literature, soap, toiletries, cleaning materials, light bulbs, matches and other consumable items and inventories utilized in the day-to-day Operation of the Hotel.

"**Operating Term**" means the period for which this Agreement is operative, which period shall consist of the Initial Operating Term and all Extension Terms, if applicable.

"**Operation**" means the operation, direction, management and supervision of the Hotel, and "**Operating**" has a corresponding meaning.

"Operator Hotels" means the Hotel and other hotels of a nature and type similar to the Hotel, operated and maintained as Full Service Luxury Hotels by the Operator or any of its Affiliates using any of the Operator Names and the Operator Symbols (excluding, however, hotels operated by the Operator's Affiliates which are <u>not</u> operated or identified as "______" hotels or as part of the integrated system of Full Service Luxury Hotels affiliated with "______").

"Operator Indemnified Parties" has the meaning set forth in Section 18.1.

"Operator Names" means the names "_____," "____," "____," and any other names or identifying terms used or proposed to be used by the Operator from time to time for the Hotel or other Operator Hotels.

"Operator Parent" means ______, a _____ corporation.

"Operator Proprietary Materials" means all trademarks, trade names, trade secrets, distinct emblems, insignia, logos, slogans, distinguishing characteristics, copyright materials (including, without limitation, written or recorded material related to Marketing), software applications and data (whether in tangible, electronic or oral form), and information in written or tangible form which is indicated as being confidential or which from its nature or content would be understood by a reasonable Person to be confidential, relating to the Operator or any of its Affiliates, the business or affairs of the Operator or any of its Affiliates, or any hotel or resort which the Operator or any of its Affiliates owns or operates and manages and includes, without limitation, (i) the Operator Names and the Operator Symbols, (ii) operational manuals (including, without limitation, accounting, financial administration, personnel administration, and policies and procedures manuals), (iii) corporate records of the Operator, guest profiles and guest histories, (iv) employee attitude surveys, both on a departmental and on a total Hotel basis, (v) recipes, menus, wine lists and related materials, (vi) software and other management programs developed by or on behalf of the Operator, notwithstanding any modification or alteration made for application at the Hotel and notwithstanding their maintenance or administration by any other Person, (vii) the operating and design standards of any hotel or resort owned or operated by the Operator or any of its Affiliates and any materials relating thereto, (viii) business and Marketing plans, and (ix) internal audit reports, but excludes the Owner Names and other Owner Proprietary Materials.

"Operator Symbols" means the Operator's trade names, trade marks, logos, insignia, slogans and distinguishing characteristics owned or used under license by the Operator and used in connection with the Hotel or any other Operator Hotel.

"Operator's Accounting Policies" means the accounting policies established from time to time by the Operator in connection with the operation of the Operator Hotels and, in all cases, complying with the Accounting Principles.

"Owner Indemnified Parties" has the meaning set forth in Section 18.1.

"Owner	Names" me	ans the	followi	ng nam	es used	in connect	ion with	the Hotel	or any Ho	otel F	acilities:
	&	,"	and an	y other	name	previously	used b	y Owner's	Affiliate	that	includes
"	" in the na	me.									

"Owner Proprietary Materials" means all trademarks, trade names, trade secrets, distinct emblems, insignia, logos, slogans, distinguishing characteristics, copyright materials, software applications and data (whether in tangible, electronic or oral form), and information in written or tangible form which is indicated as being confidential or which from its nature or content would be understood by a reasonable Person to be confidential, relating to the Owner or any of their Affiliates, or the business or affairs of the Owner or any of their Affiliates, and includes, without limitation, (i) the Owner Names, (ii) operational manuals, (iii) corporate records of the Owner, (iv) business plans, and (v) internal audit reports, but excludes the Operator Names and Operator Symbols.

"Partial Destruction" means any destruction of or damage to the Hotel by fire, casualty or any other cause, which does not constitute a Complete Destruction.

"Parties" means the Owner and the Operator and their respective successors and assigns as parties hereto, and "Party" means any one of the Parties.

"Permitted Encumbrances" means those matters set forth on Schedule 1.1(c) hereto, together with mortgages permitted under Section 17.3 and other matters which shall not materially and adversely affect the operation of the Hotel or the Operator's right to the uninterrupted control and operation of the Hotel during the term of this Agreement contemplated by Article 12.

"**Person**" means an individual, a corporation, a partnership, a Governmental Authority, a trustee, limited liability company, limited partnership, or other legally recognized entity, and includes the heirs, executors, administrators, successors in office or other legal representatives of an individual.

"Prime Rate" means, on any day, the base rate of interest per annum established from time to time by, ______, or its successors, if any and designated as its prime rate as in effect on such day.

"Property Taxes" means all taxes, rates, duties, levies and assessments whatsoever, whether municipal, legislative, or otherwise, including, without limitation, ad valorem real property taxes, commercial personal property taxes and association dues and assessments, which are from time to time levied, imposed or assessed by governmental, quasi-governmental, or property owners associations or similar entities against (i) the Furniture, Fixtures and Equipment, the Operating Equipment, the Operating Supplies or any other personal property in the Hotel or (ii) the Hotel Facilities, including those levied, imposed or assessed as a lien against the Hotel Facilities for education, schools, utilities and local

[&]quot;**Procuring Party**" has the meaning set forth in Section 3.8.

improvements or with respect to any occupancy or use of the Hotel Facilities (but excluding taxes with respect to the income, capital or place of business of, or otherwise personal to, the Parties).

"Proposed Annual Budget" has the meaning set forth in Section 4.1.

"**Purchasing Fee**" has the meaning set forth in Section 3.8.

"Qualified Person" means a Person that, in the opinion of the Operator, acting reasonably, is Creditworthy, and is not an Affiliate of: (i) a Competitor of the Operator; (ii) a Person controlled by, or associated with organized crime, a felon, a Person convicted of a capital crime; (iii) a Person directly or indirectly owned or controlled by the government of any country that is subject to a United States Embargo; (iv) a Person any of whose owners or officers, directors or executive employees or officers, directors or executive employees of such owners are named as a "Specially Designated National and Blocked Persons" as designated by the United States Department of the Treasury's Office of Foreign Assets Control (a listing of which is currently published under the internet website address www.ustres.gov/terrorism.html.), or as a Person or nation designated in Presidential Executive Order 13224 as a Person or nation who commits, threatens to commit, or supports terrorism; or (v) a Person otherwise generally recognized in the business community as being a person, firm, or corporation with whom neither a prudent business person nor a reasonable financial institution would wish to associate in a commercial venture such as the Hotel. As used in this definition: a "Competitor" of the Operator or any of its Affiliates shall mean and include any Person who engages in the branded operation or management of hotels as a material component of its business activities, and is not solely an investor in or owner of hotels; "Creditworthy" shall mean any Person who has a net worth (the excess of total assets over total liabilities, calculated according to the Accounting Principles), both prior to and after taking ownership of the Hotel, if applicable, of at least ______ Dollars (\$_____), of which at least ___ percent (_____%) is in the form of cash, cash equivalents and readily marketable securities, as evidenced by independently verifiable financial statements. For purposes of determining the net worth of a Person, the aggregate net worth of the principals, parent or holding companies of the Person shall be considered as if such principals or companies were the Person, if such principal, parents or holding companies guarantee or otherwise assure performance by the Person of any obligations under this Agreement.

"Related Person" means, with respect to any Person, (i) an Affiliate of such Person, (ii) a Person connected by blood relationship, marriage or adoption to such Person, (iii) a director, officer or employee of such Person, (iv) a partner of such Person, or (v) an Affiliate of a Person that is a Related Person of such Person.

"Replacement Value" means the cost of repairing, replacing or reinstating any item of property with materials and construction of like kind and quality on the same or similar site without deduction for physical, accounting or any other depreciation.

"Resort Area" means and includes the portion of the Hotel located on those Lands described on Schedule 1.1(b)(iii), which includes, without limitation, the hotel rooms and conference facilities.

"Restricted Area" means the area of	located	excluding, as applicable, (i)
, (ii), an	d (iii)	

[&]quot;Replacement Reserve" has the meaning set forth in Section 11.1.

[&]quot;Replacement Reserve Account" has the meaning set forth in Section 7.7.

, 20, by and among Operator Parent,, a limited
liability company,, a limited liability company, and, which terms governed the closing of the Owner's acquisition of the Hotel, excluding the Premises, and the Owner's lease of the Premises.
"Signature Memberships" means the membership club programs affiliated with the Hotel, including without limitation, memberships, spa memberships, and social memberships.
"Spa" means that portion of the Hotel to be operated as a spa and branded as a Spa.
"Special Capital Improvements Project" means those items that were approved by the Owner and Operator as a condition of Operator's execution of this Agreement that are to be funded and completed by Owner, subject to Force Majeure Events, within () years of the date of this Agreement in accordance with Schedule 21.1.
"Standard" means the physical and operational standards applicable to the Full Service Luxury Hotels comparable to the Hotel (i.e. within the same regional grouping, if any, established by Operator to reflect regional physical and operational variations and the same resort, city center or other pertinent product category as the Hotel) under management by the Operator as of the date of any determination. Owner acknowledges that Owner has reviewed the current physical and operational standards for such Operator Hotels prior to the date of this Agreement. Changes to such referenced standards shall be treated as part of the Standard only upon the implementation (or the commencement of the process of implementation) of such changes at substantially all of the Operator Hotels comparable to a resort and conference center.
"Taxes" means all taxes imposed by any Governmental Authority, including, without limitation, income, profits, goods and services, gross receipts or occupancy, sales, use, transfer, purchase, franchise, advalorem, value added, capital stock or surplus, occupation, excise, payroll, employment, disability, employees' income withholding, social security and withholding taxes, and income, capital or franchise taxes of a Party, but excluding Property Taxes.
" Termination Date " means the last day of the Operating Term or any earlier date on which this Agreement is terminated.
"Total Revenues" has the meaning set forth in Section 9.3.
"Transfer" and similar expressions mean any transaction whereby an interest or any rights, whether legal or beneficial, in a Party in this Agreement, in the Hotel, or in any part of this Agreement may be sold, granted, conveyed, leased, assigned, exchanged, transferred, disposed of, encumbered, pledged, charged mortgaged, hypothecated, given, devised, bequeathed or otherwise dealt with, voluntarily or involuntarily, directly or indirectly, by merger, consolidation, dissolution, operation of law or any other manner, and includes an assignment by specific or floating charge whereby the interest of a Party is mortgaged or pledged as security for any indebtedness or other obligation.
"Valuator" means a nationally or internationally recognized hotel consulting or valuation firm which has been engaged in the valuation of hotels in the United States for at least () years, which is licensed as an MAI appraiser by the Appraisal Institute and which is not an associate (as defined in Rule 14a-1 of the Proxy Rules under the Securities and Exchange Act of 1934) of any of the Parties.

Accounting Policies.

"Working Capital" means the funds classified as working capital in accordance with the Operator's

ARTICLE II. OPERATING TERM

2.1 Operating Term

	The	initial	Operating	Term	of	this	Agreement	shall	be	the	period	commencing	on	the
Comme	encem	nent Dat	te, and endi	ng			the	_ (_) c	ompl	ete calei	ndar year after	the	yea
in whic	h the	Comme	encement D	ate occ	urs	(the "	['] Initial Opera	ting T	erm	").				

2.2 Extension Terms

Upon the condition that no Material Default hereunder by the Operator shall have occurred and be continuing at the time of each exercise, the Operator shall have the right to extend the Operating Term for up to _____ (____) additional consecutive ____-year Extension Terms. In addition, the Operating Term shall be extended automatically by a period equal to the period between any termination and subsequent reinstatement of this Agreement pursuant to Section 13.5.

2.3 Exercise of Extension Rights

The right to extend the Operating Term granted to the Operator pursuant to Section 2.2 shall be deemed to have been exercised and the Operating Term shall be deemed to have been extended for an additional Extension Term unless the Operator shall have given written notice to the Owner of the Operator's intention not to exercise such right, which notice shall be given by the Operator not later than ____ (___) months prior to the end of the Initial Operating Term or the then current Extension Term, as the case may be.

2.4 Covenants to Apply

During each Extension Term, this Agreement shall continue in full force and effect in all respects, and all of the terms, covenants, conditions and provisions of this Agreement shall apply, including the right of the Operator further to extend the Operating Term until the Operator has exercised all of the rights of extension contemplated in Section 2.2.

ARTICLE III. OPERATION OF THE HOTEL

3.1 Engagement of the Operator

Upon and subject to the terms and conditions of this Agreement (including, without limitation, the limitations set forth in Section 3.2 below), the Owner hereby engages the Operator as the sole and exclusive operator of the Hotel during the Operating Term and the Operator hereby accepts such engagement upon and subject to such terms and conditions. Subject only to the provisions of this Agreement, the Operator shall have sole and exclusive control, discretion and authority with respect to, and be responsible for, the Operation of the Hotel. Such control, discretion and authority shall, subject to the terms of this Agreement and any express obligation or limitation set forth in the applicable Annual Budget, include, without limitation, the following:

(a) Employment of Hotel Staff. Subject to the rights of the Owner under the provisions of Sections 3.2 and 5.3 of this Agreement and the balance of this paragraph, the determination of labor

policies, including the negotiation of collective bargaining agreements, the determination of appropriate staffing levels, and the selection, employment, training, termination of employment, determination of salary and wages, supervision, direction, training and assigning of the duties of the Hotel Staff. Although the Operator shall have the right to engage in collective bargaining with the bargaining representative or representatives of Hotel Staff, and to enter into collective bargaining agreements, the Operator shall meet with the Owner prior to commencing such collective bargaining negotiations to develop a mutually acceptable strategy, shall keep the Owner advised on a current basis of the status of such collective bargaining negotiations, shall consult with the Owner with respect thereto, and shall obtain the Owner's approval prior to accepting or entering into any such collective bargaining agreements;

- (b) <u>Marketing of the Hotel</u>. The planning, preparation and conduct of and contracting for all Marketing with respect to the Hotel, both separately and as one of the Operator Hotels, taking into consideration, in good faith, the Owner's suggestions and recommendations with respect thereto;
- (c) <u>Hotel Policies and Prices</u>. The establishment and implementation of all operating policies, standards, prices, price schedules, rates, rate schedules, rebates and refunds for or with respect to the Hotel, and the collection, receipt and giving of receipts for all revenues of any nature from the operations of the Hotel;
- (d) <u>Purchasing</u>. Subject to the limitations set forth in Section 3.8 below, the acquisition of all Hotel Property and all other goods, supplies and services which in the ordinary course of business are required or desirable to properly maintain and operate the Hotel;
- (e) Operating Contracts and Equipment Leases. The negotiation and entering into of such operating contracts, equipment leases and other undertakings as are required or desirable in the ordinary course of business in Operating the Hotel, including, without limitation, contracts for electricity, gas, telephone, cleaning, maintenance, security, pest control, elevator and boiler maintenance and other services and equipment that the Operator from time to time considers appropriate;
- (f) <u>Leases</u>. Subject to Section 3.2(c) below, the negotiation and execution of such leases, agreements to lease, subleases, licenses, concessions and other contracts (and all revisions, extensions, renewals, replacements or substitutions of such instruments) affording any Person a right to use or occupy any part of the Hotel Facilities or render services therein, other than contracts entered into with guests to occupy rooms and facilities, as the Operator deems necessary or desirable in connection with the Operation of the Hotel and the supervision and control of the activities of the holders of such rights of use or occupancy and their employees, including the dispossessing or termination of the rights of such holders for non-payment of rent or other proper cause;
- (g) <u>Repairs</u>. The arrangement, completion and supervision of all repairs, maintenance, alterations and decorations to the Hotel contemplated by this Agreement;
- (h) <u>Extension of Credit</u>. The determination of credit policies, including agreements with credit card organizations, check validation companies or other similar services;
- (i) <u>Entertainment Policies</u>. The determination of all entertainment policies for the Hotel, taking into consideration, in good faith, the Owner's suggestions and recommendations with respect thereto; and
- (j) <u>Legal Counsel</u>. Subject to the limitations set forth in Section 3.11 below, the selection and engagement of legal counsel to provide legal counsel in connection with the Operation of the Hotel.

3.2 Limitations on the Operator's Authority

Notwithstanding the foregoing or anything to the contrary in this Agreement, the Operator shall not, without the Owner's approval, unless the specific agreement is identified in the Annual Budget:

- (a) enter into any service or operating contract (i) which provides for payments that are, in the aggregate, in excess of the Approval Amount, or (ii) for a term exceeding __ (___) years;
- (b) enter into any agreement creating a voluntary lien or encumbrance affecting the Hotel except for: (i) any equipment lease or other type of lease which provides for payments that are, in the aggregate, less than or equal to the Approval Amount, or (ii) any construction contract (and any related Notice of Commencement) that provides for payments that are, in the aggregate, less than or equal to the Approval Amount;
- (c) enter into any lease, agreement to lease, sublease, license, concession or other contract for stores, office space or tenant or lobby space at a Hotel (i) if the premises exceed ____ (___) rentable square feet; or (ii) such lease, license or concession agreement is for a term exceeding __ (___) years.

For purposes of this Section 3.2, approval shall be deemed to have been given if the Owner fails to respond in writing, with explanation of any objection, within ___ (___) Business Days after receipt of the Operator's written request, which request shall be accompanied by such information as is reasonably necessary to enable the Owner to make an informed decision.

3.3 The Operator's Duties

In the performance of its duties as operator of the Hotel pursuant to this Agreement and in accordance with the Annual Budget, the Operator shall act solely on behalf of for the Owner and not on its own behalf. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the Operator and the Owner. To the extent permitted by law, the Operator shall not be deemed the fiduciary of the Owner. Subject to Article XVIII, all debts, obligations and liabilities to third parties incurred by the Operator in the course of its Operation of the Hotel in accordance with the terms of this Agreement shall be the debts, obligations and liabilities of the Owner only, and the Operator shall not be liable for any such debts, obligations and liabilities solely by reason of its Operation of the Hotel for the Owner in a manner consistent with the requirements of this Agreement. The Operator may so inform third parties with whom it deals on behalf of the Owner and may take any other reasonable steps to carry out the intent of this Section 3.3.

3.4 Engagement of Other Persons by the Operator

Subject to Section 5.3 and the provisions of the Annual Budget under the provisions of Article IV of this Agreement, the Operator may engage, on behalf of the Owner, one or more Persons to perform services in connection with the furnishing, equipping, Marketing, maintenance and Operation of the Hotel, and each Person engaged by the Operator to perform such services, including, without limitation, any of its Affiliates, any agent or employee of the Operator or any of its Affiliates, or any agent or employee of the Owner or any of its Affiliates, shall be acting solely on behalf of the Owner for such purposes, provided that no such engagement shall derogate from the duties and obligations of the Operator set forth in Section 3.6.

3.5 Delegation of Authority by the Operator

The Operator may delegate to one or more Persons in its general employ or to the General Manager of the Hotel responsibility for employing, paying, supervising and discharging the Owner's employees at the Hotel, and each Person to whom any such duty is delegated by the Operator shall be acting, subject to the Operator's continuing obligation to train and supervise Hotel Staff, solely on behalf of the Owner for such purposes, provided that no such delegation shall derogate from the duties and obligations of the Operator set forth in this Agreement.

3.6 Standard

The Operator shall exercise good faith efforts at all times to operate the Hotel and all of its facilities and activities in a manner consistent with the Annual Budget, the provisions of this Agreement and, subject to the provisions of the Annual Budget under the provisions of Article 4 of this Agreement, the Standard. In carrying out its duties and obligations hereunder, the Operator shall not be responsible for matters beyond its reasonable control or for matters involving the expenditure of funds which are not made available by the Owner as required by this Agreement. The Operator, in performing the services and functions contemplated by this Agreement, shall exercise in such performance the same degree of care, skill and supervision as would be exercised by any honest, reasonable and prudent hotel manager of Full Service Luxury Hotels who is experienced in performing like services and functions and the Operator's responsibility in each case shall be limited to this performance standard consistent with Operator Hotels. The Operator shall not otherwise be held responsible for the defaults of contractors or other third parties with whom it deals at arm's length; the Operator's responsibility is limited to being honest, reasonable, and prudent in the selection and supervision of contractors and other third parties.

3.7 Liaison

The Operator shall advise the Owner, at the Owner's reasonable request, concerning all policies and procedures affecting all phases of the conduct of business at the Hotel, including, without limitation, all marketing, membership program, employment, labor and staffing issues. The Operator shall establish and maintain from time to time, any and all necessary liaisons with Governmental Authorities, local tourism and convention organizations, utilities suppliers and others as may be appropriate in connection with the Operation of the Hotel.

3.8 Purchases

All purchases of goods, supplies and services required in connection with the Operation of the Hotel ("Hotel Purchases") shall be made by the Operator through one or more of the following (each a "Procuring Party") (i) Operator's corporate departments, (ii) Operator's Affiliates or (iii) any non-Affiliate purchasing or brokering service, specifically including, without limitation, Avendra (in which Operator or an Affiliate of Operator currently owns a minority interest), provided that the aggregate cost to the Owner (including the Purchasing Fee) of any Hotel Purchase shall not be in excess of the costs that a third party would charge on a competitive basis for goods, supplies and services of comparable quality and character (the "Comparable Aggregate Cost Test"). All Hotel Purchases shall be subject to the following provisions:

(a) the Operator shall have the right to arrange any Hotel Purchase, directly or indirectly, through any Procuring Party or, in Operator's sole discretion, directly with any vendor on a direct purchase basis in accordance with specifications and purchasing standards adopted by the Operator from time to time;

- (b) the Operator shall have the right to charge the Owner for all Hotel Purchases purchased through any Procuring Party, the price paid by the Procuring Party for such goods, supplies and services plus any purchasing fee charged by such Procuring Party and described in the Annual Budget (the "Purchasing Fee"), provided that the prices and Purchasing Fee are no less favorable than those generally charged to other Operator Hotels by such Procuring Party;
- (c) the Operator may retain rebates, sponsorship fees, discounts and similar considerations on Hotel Purchases made by a Procuring Party that is either a corporate department of the Operator or an Affiliate of the Operator, provided that all Hotel Purchases with respect to which such considerations are made nevertheless satisfy the Comparable Aggregate Cost Test. Non-Affiliate Procuring Parties may retain rebates or discounts on Hotel Purchases made by such Procuring Party;
- (d) the amounts charged to the Owner with respect to all Hotel Purchases (determined in accordance with the provisions of Sections 3.8(a) and (b)) shall be Operating Expenses of the Hotel (except to the extent such expenses constitute Capital Expenditures or are otherwise excluded from treatment as Operating Expenses pursuant to Section 9.6) and shall be paid by the Owner as provided herein; and
- (e) notwithstanding any other provision of this Section 3.8 to the contrary, (i) all Hotel Purchases involving goods, supplies and services identified with any Operator Names or Operator Symbols shall be purchased from or through a Procuring Party for such purpose, provided that the prices and terms thereof are no less favorable than those generally charged to other Operator Hotels by such Procuring Party (allowing for regional variation in pricing due to scarcity, delivery costs, and other factors that reasonably vary with region); and (ii) with respect to all major Hotel Purchases involving Furniture, Fixtures and Equipment or Capital Improvements (other than "consumables" and categories of items necessary to ensure consistency with other Operator Hotels, including Operating Equipment or Operating Supplies displaying Operator Names or Operator Symbols), (A) the Operator shall seek competitive bids and (B) the Owner may purchase such goods or services independently, subject to the Operator's approval of the quality and character of goods or services purchased.

3.9 Laws and Ordinances

The Operator, on behalf of the Owner, shall exercise commercially reasonable efforts to comply, and shall comply in all cases where such failure to comply would have a material adverse effect on the Operation of the Hotel, with all Applicable Laws affecting the Hotel and its Operation, including those of any alcoholic beverage control board or board of fire underwriters, the requirements of any insurance companies covering any of the risks against which the Hotel is insured and the Environmental Laws. The costs and expenses of such compliance shall be borne by the Hotel and shall be treated as Operating Expenses or Capital Expenditures, as appropriate under Operator's Accounting Policies. The Operator and the Owner (provided it shall have received the Operator's approval of its proposed course of action, which consent shall not be unreasonably withheld) shall have the right to contest by proper legal proceedings, the validity or application of any such Applicable Laws. The costs of such contest shall be treated as Operating Expenses. If failure by the Operator or the Owner to comply with any such laws or requirements would result in the suspension of Operations of the Hotel or would expose the Owner or the Operator to danger of criminal or civil liability, then the Operator promptly shall use reasonable efforts to cause compliance as an Operating Expense or as a Capital Expenditure, as appropriate under Operator's Accounting Policies. The Operator and the Owner shall engage mutually acceptable local counsel to advise the Operator with respect to compliance with all aspects of Applicable Laws. If, despite the reasonable efforts of the Operator to comply with Applicable Laws, the Operator receives notice that the

Hotel does not comply with Applicable Laws, the Operator shall promptly take such steps as are then reasonably required, coordinating with the Hotel's legal counsel and the Owner, as appropriate, to remedy such non-compliance with diligence. The Owner specifically agrees that any costs or expenses incurred in connection with any inspection, remediation or alteration of the Hotel Facilities in connection with water intrusion or related air quality issues shall be solely the Owner' expense and not treated as either Operating Expenses or Capital Expenditures of the Hotel.

3.10 Notices of Non-Compliance

The Operator shall provide to the Owner, promptly following receipt and within a period sufficient to allow the Owner to take appropriate and available remedial action), a copy of any notice in writing received by the Operator from any Governmental Authority or mortgagee of the Hotel advising of any defects in the construction, state of repair or state of completion of the Hotel, or ordering or directing that any alteration, repair, improvement or other work be done, or relating to non-compliance with any building permit or Applicable Laws, or relating to any threatened or impending condemnation or taking of property, or relating to any notice of non-compliance, control order, stop order, or any other order or decree made by any Governmental Authority with respect to any environmental issue or under any environmental protection legislation.

3.11 Legal Proceedings

Legal proceedings which may arise from time to time in the ordinary course of business relating to the Operation of the Hotel, such as collections, enforcement of contracts and proceedings against guests, which in each case involve claims not in excess of the Approval Amount, may be instituted by the Operator on behalf of the Owner and in the Owner's name without the Owner's consent and by counsel designated by the Operator. All other legal proceedings relating to the Operation of the Hotel and all legal proceedings involving a monetary claim in excess of the Approval Amount may be instituted by the Operator on behalf of an Owner and in an Owner's name only with the Owner's prior approval of the action and designated counsel, which approval shall not be unreasonably withheld. In addition, on behalf of the Owner, the Operator shall have the right to defend, on behalf of the Owner and through counsel designated by the Operator, legal proceedings which arise in the ordinary course of business, including, without limitation, guest claims for loss of property or injury to Persons and claims relating to employment, termination of employment or application for employment at the Hotel. The defense of other types of actions against the Hotel (including, without limitation, claims which represent extraordinary and material litigation matters or those which, in the good faith business judgment of the Operator could yield liability in excess of the Approval Amount as to which an insurer denies coverage or reserves rights as to coverage) shall be coordinated with the Owner and designated counsel shall be subject to the Owner's approval, which shall not be unreasonably withheld. The Operator shall provide the Owner with a current description, full particulars and a periodic and regular status report of any legal proceedings involving the Operation of the Hotel as, and as often as, the same occur, but such reports will not be less often than monthly. Any expense incurred and any amount paid upon settlement or pursuant to a judgment against the Operator or the Owner shall be an Operating Expense, except those matters excluded from the definition of Operating Expenses.

3.12 Property of Guests

All baggage or other items checked or left in the care of the Hotel, and any items in the "Lost and Found Bin" will be listed in an inventory, prepared Operator on the Commencement Date. Operator will be responsible from and after the Commencement Date for all property so listed and shall hold harmless, indemnify and defend the Owner, from and against any and all claims arising out of the subsequent loss of or damage to such listed property. Operator shall also indemnify the Owner from and against any and

all claims arising out of any loss of or damage to property of guests at the Hotel prior to the Commencement Date or not so listed in such inventory. The Operator shall use reasonable efforts to have Hotel guests who have left items in any of the Hotel's safe deposit boxes (not including in-room safes) confirm on the Commencement Date that no such items are missing, but Owner shall not be deemed liable for any guest claim made after the Commencement Date with respect to items allegedly left in a Hotel safe deposit box before the Commencement Date, merely because such items could not be listed on the above described inventory.

ARTICLE IV. ANNUAL BUDGET

4.1 Annual Budget

The annual budget for the Operation of the Hotel (the "Annual Budget") shall be determined as follows:

- (a) Upon the execution of this Agreement for the first Fiscal Year, and not later than _____ of each Fiscal Year thereafter, the Operator shall submit to the Owner a proposed annual budget for the Hotel for the subsequent Fiscal Year (the "Proposed Annual Budget") containing a Marketing plan, an Operating budget, minimum Working Capital requirements, and a schedule of, and budget for, Capital Improvements and replacements, substitutions and additions to Furniture, Fixtures and Equipment, together with a cash flow forecast and a monthly breakdown of each of the foregoing for such Fiscal Year, and shall consult with the Owner in good faith at the Hotel concerning such plan, budget, schedule and forecast and give good faith consideration to suggestions made by the Owner with respect thereto and provide such other information relating thereto as the Owner may reasonably request;
- (b) the Owner shall review the Proposed Annual Budget, and, if the Owner approves the Proposed Annual Budget, shall give its written approval to the Operator within ____(___) days of receipt thereof. The Operator, through the ______, shall meet with the Owner at the Hotel as reasonably requested by the Owner to discuss the Proposed Annual Budget. The Owner shall not unreasonably withhold its approval of any portion of the Proposed Annual Budget, and shall not withhold its approval of any portion of the Proposed Annual Budget which represents an expenditure or expenditures necessary to maintain or operate the Hotel in accordance with the Standard;
- (c) if the Owner does not comment upon a Proposed Annual Budget within ____(__) days after it has been submitted by the Operator, then the Owner shall be deemed to have accepted the Proposed Annual Budget as submitted and the Proposed Annual Budget shall be deemed to be the Annual Budget for the Fiscal Year to which it relates;
- (d) if the Owner objects to any portion of the Proposed Annual Budget, the Owner and the Operator shall attempt to reach agreement with respect to the items to which the Owner objects, and, to the extent that agreement is reached before the end of the first calendar month of the Fiscal Year to which the Proposed Annual Budget relates, the Proposed Annual Budget shall be deemed to have been modified accordingly and the Proposed Annual Budget, as so modified, shall be the Annual Budget for the Fiscal Year to which it relates, effective as of the date of commencement thereof;
- (e) if the Owner objects to any portion of the Proposed Annual Budget and the Owner and the Operator fail to agree with respect to the items to which the Owner objects before the end of the first calendar month of the Fiscal Year to which the Proposed Annual Budget relates, then those remaining disputed items shall be resolved by a Hotel Expert, which shall determine: (i) as to Total Revenue projections to the extent disputed by Owner, whether the Operator's projections are reasonable in light of

general market conditions and Operator's overall pricing structure (but not as to specific pricing decisions), and (ii) with respect to disputed Operating Expenses and Capital Expenditures, whether the items provided for in the Proposed Annual Budget are reasonably necessary to permit the Operator to operate the Hotel Facilities in accordance with the Standard and the provisions of this Agreement. Such consultant may not make a determination as to whether (i) any expenditure required to meet the Standard is unreasonable or unnecessary in the current Fiscal Year or (ii) what constitutes the Standard (excepting solely whether the item satisfies the Standard's definitional requirements set forth in Section 1.1), but shall limit the determination as to whether the proposed expenditure is an appropriate methodology of achieving compliance with the Standard. If the Owner objects to a portion but not all of the Proposed Annual Budget in accordance with the above or if Operator and Owner agree with respect to an item prior to such item being referred to the Hotel Expert as provided for above, any portion of the Proposed Annual Budget not timely objected to, or otherwise agreed to, shall be deemed to have been approved;

- (f) the Proposed Annual Budget, modified as necessary to reflect any determination by an independent consultant as aforesaid, shall be the Annual Budget for the Fiscal Year to which it relates, effective as of the date of such modification;
- (g) notwithstanding any other provision of this Agreement, the Operator shall be authorized to incur expenditures pending resolution of any dispute with respect to a Proposed Annual Budget in accordance with the Proposed Annual Budget: (a) as to any undisputed portion of the Proposed Annual Budget, and (b) as to any disputed portions of the Proposed Annual Budget, (i) and, solely with respect to the initial Proposed Annual Budget, in accordance with the Proposed Annual Budget, and (ii) with respect to all subsequent Proposed Annual Budgets, in an amount equal to the amount included in the Annual Budget for the preceding Fiscal Year, adjusted upward in accordance with the Index Ratio; provided, however, that during the period of any unresolved dispute under the provisions of this Section 4.1, relating to Capital Expenditures, the applicable Capital Improvements shall not be commenced unless the failure to undertake such Capital Improvement would result in the Operator's being unable to operate the Hotel in a safe and efficient manner, complying with all Applicable Laws and maintaining in full operation all facilities and services operated or provided in accordance with the terms of this Agreement in the immediately preceding Fiscal Year. Notwithstanding the provisions of the foregoing sentence, any Capital Improvements that are the continuation of a Capital Improvement project previously approved, including, without limitation, the Special Capital Improvement Project, may continue; and
- (h) the Proposed Annual Budget shall not be modified to reflect any objection of the Owner if, as a result thereof, the Operator would be unable to operate the Hotel in a safe and efficient manner, complying with all Applicable Laws and the Standard and maintaining in full operation all facilities and services operated or provided in accordance with the terms of this Agreement in the immediately preceding Fiscal Year.

4.2 Amendment of Annual Budget

The Owner acknowledges that the projections contained in the Proposed Annual Budget may be affected by changes in financial, economic, market, competitive, labor, natural and other conditions and circumstances beyond the Operator's control. If, by reason of any of such changes, the Operator determines that, in its reasonable judgment, expenditures materially and adversely different from or additional to those provided for in the Annual Budget are required, or that Total Revenues and Operating Expenses materially and adversely different from the Approved Budget will result in an adverse change to projected GOP for the applicable Fiscal Year of _____ percent (____ %) or more of the projected GOP, then the Operator shall prepare and submit to the Owner for its review and approval an amendment of the Annual Budget which, for purposes of Section 4.1, shall be deemed to be a Proposed Annual Budget and shall be subject to the Owner's approval in accordance with Section 4.1; provided, however, that in the

event that the Owner reasonably objects to any portion of the proposed amendment of the Annual Budget and Owner and Operator fail to agree with respect to such item within __(___) days of Owner's initial receipt of the proposed amendment, then at the written request of Owner, given on or before the end of such __ (___) day period, the dispute shall be resolved by a Hotel Expert in accordance with the provisions of Section 4.1(e) above. The Annual Budget, as amended and approved, shall be the Annual Budget for the remainder of the Fiscal Year to which the Annual Budget, as so amended, relates.

4.3 Comparison Statements

In addition to any other statement to be prepared and submitted pursuant to the provisions of this Agreement, the Operator shall prepare and submit to the Owner, not later than ____ (___) days after the last day of each Fiscal Year, a detailed comparison statement, certified by the Operator, showing actual receipts and expenditures compared with the Annual Budget for such Fiscal Year.

4.4 Compliance with Annual Budget

During each Fiscal Year, the Operator shall purchase or provide the items specified in the Annual Budget for such Fiscal Year, including the maintenance and repair of the Hotel in accordance with the Annual Budget, shall use reasonable efforts otherwise to comply with the Annual Budget and shall not, except for circumstances beyond the control of the Operator and subject to Section 4.2, materially deviate from or incur any material expense not contemplated in the Annual Budget without the prior approval of the Owner, which approval shall not be unreasonably withheld. For such purposes and for the purposes of all other provisions in this Agreement which refer to adherence to the Annual Budget, (a) expenses which do not exceed the total expenses set out in the Annual Budget by more than percent (%) of the pertinent line item or cause the total expenses set out in the Annual Budget to be exceeded by more __ percent (____%) in the aggregate shall be deemed to be contemplated in the Annual Budget and (b) whenever, by reason of circumstances beyond the control of the Operator, emergency, unforeseen or special circumstances necessitate expenditures (including Capital Expenditures) which are in the reasonable opinion of the Operator required to be made for reasons of health or safety or to comply with Applicable Law, the Operator shall be entitled to make such expenditures notwithstanding that such expenditures are not provided for in the Annual Budget; provided, however, that except as set forth below, in no event shall such emergency expenditures in the aggregate exceed \$ _ in any Fiscal ____ limit shall not apply in the event Year without the Owner's prior approval. The foregoing \$___ of an emergency arising out of an imminent risk of life, health, safety, or civil or criminal liability. The Operator shall have the right to make Capital Expenditures pursuant to this Section in order to comply with legal requirements, the non-compliance with which presents a risk to the Operator of civil or criminal liability. The Operator shall use its reasonable efforts to give the Owner advance notice of any expenditures to be made by the Operator pursuant to clause (b) of this Section 4.4 and, in any event, the Operator shall give the Owner notice as soon as practicable after such expenditures, but in no event later than _____ (__) days after such expenditures are made of the nature of the emergency, unforeseen or special circumstances giving rise to such expenditures, the action taken by the Operator and the amount of such expenditures.

4.5 No Warranty Re Annual Budget

The Operator makes no guarantee or warranty in connection with the Annual Budget other than that it shall be honest, reasonable, and prudent, and shall exercise good faith efforts commensurate with Operator's skill and expertise, in its preparation of the Annual Budget, and the Owner acknowledge that projections contained therein are only the best estimates (at the time they are made) of an experienced hotel operator. Failure of the Operator to achieve the projections and line items in the Annual Budget shall not be the basis for a claim that the Operator is in default under this Agreement.

ARTICLE V. EMPLOYEES

5.1 Employees

Except as otherwise provided in this Agreement, all members of the Hotel Staff shall be the employees of the Owner or an Affiliate of the Owner. Collective bargaining and other labor agreements shall be negotiated and executed in accordance with the provisions of Section 3.1(a) of this Agreement.

5.2 Salaries and Wages

The salaries and wages of the Hotel Staff, including costs of payroll and similar Taxes, Employee Benefits, relocation expenses and severance (collectively, "Employee Expenses"), shall be Operating Expenses, and the Operator shall be reimbursed therefor as and when the same are paid by the Operator on behalf of the Owner. The respective compensation, Employee Benefits, relocation and severance packages of the Hotel Staff shall be in accordance with those for similar positions in comparable hotels and other Operator Hotels with due consideration to the location thereof, provided, the Owner shall have the right to approve Employee Expenses in the aggregate within each Annual Budget. Notwithstanding the foregoing, the Owner may not disapprove Employee Expenses mandated by the Operator's system policies or otherwise required to operate the Hotel consistent with the Standard and the Owner shall not have the right to approve any employee-specific or category-specific compensation or Employee Benefits. All reasonable out-of-pocket costs of relocating Hotel Staff to the Hotel shall be borne by the Hotel, consistent with the Operator's system policies.

5.3 Core Executive Staff

The Owner shall have the right to consult with the Operator and have reasonable rights of approval with respect to the hiring, initially and with respect to any replacement, of the following Hotel Staff positions (the "Core Executive Staff"), provided, however that the final decision as to any termination or transfer shall be that of the Operator, after notice to and consultation with the Owner: (i) General Manager; (ii) Director of Finance; (iii) Director of Sales and Marketing; and (iv) Director of Food and Beverage. The Operator shall provide notice to Owner, accompanied by the resume of the candidate for the proposed Core Executive Staff position, and Owner shall then have a period of _ (____) Business Days within which to object to the hiring of such initial candidate in writing. Owner may require an opportunity to interview the candidate during such ____ (__) Business Day period as a condition of its approval. Owner's objection to the hiring of such candidate shall be in writing, and shall specify, in detail, the reasons for such objection. The Owner shall have the right to consult with the Operator with regards to the performance standards applicable to the Core Executive Staff, provided however, that the Operator may change or replace the Hotel Staff at any time, and shall be entitled to offer positions at any of the Operator Hotels to all members of the Hotel Staff, including, without limitation, the Core Executive Staff. Except as otherwise provided in the first sentence of this Section 5.3, all decisions in regard to any such changes, replacements or offers, including any changes or replacements of the Core Executive Staff, and all other Hotel Staff hiring decisions shall be at the sole discretion of the Operator. All costs of relocation of Core Executive Staff to (or from, provided that the Owner agreed to such relocation from the Hotel in connection with such person's hiring) the Hotel, for any reason, shall be an Operating Expense; provided, however, that the relocation costs (to and from) resulting from the transfer of more than one person with respect to each Core Executive Staff position (_) months for the sole convenience of Operator shall be a cost of the Operator and not an Operating Expense. The Operator shall consider in good faith any request by the Owner that any member of the Core Executive Staff be replaced. Notwithstanding the provisions of Section 5.1 above, the Operator shall have the right to designate the General Manager as an employee of the Operator if the

General Manager serves also in the capacity as one of the Operator's regional managers. In such event, the General Manager's salary and wages, including costs of payroll and similar Taxes, Employee Benefits, relocation expenses and severance, shall be treated as (and be reimbursable to the Operator) an Operating Expense, provided that the Operator shall bear an equitable allocation of such expenses based upon the Operator's policies and procedures for the Operator Hotels.

5.4 Benefit Plans

The Operator shall comply with all Applicable Laws with respect to pension, medical, health, life insurance and similar employee benefits in the name of the Owner, and may, in its discretion, enroll the Hotel Staff in additional pension, medical, health, life insurance and similar employee benefit plans in the name of the Owner and in accordance with industry standards. Such plans may be joint plans for the benefit of employees at more than one Operator Hotel, subject to the provisions of Applicable Laws. Employer contributions to such plans on behalf of the Hotel Staff and reasonable administrative fees which the Operator may expend in connection therewith shall be Operating Expenses. The administrative expenses of any joint plans shall be apportioned by the Operator among the participating Operator Hotels on an equitable basis.

5.5 Use of Hotel by Executive Staff

The Operator, in its discretion, but always in accordance with (a) the policies and procedures of the Operator for the Operator Hotels (which shall limit accommodations to space projected to be available and not reserved or occupied by members of the public), and (b) the Annual Budget, may provide food, beverages, temporary accommodations and other use of the Hotel for the following members of the Hotel Staff and their immediate families: the Core Executive Staff, the director of human resources, the director of operations, the front office manager, the human resources manager, the chief engineer and such other department heads and personnel determined by the Operator to be necessary for the efficient operation of the Hotel. All costs incurred for such food, beverages, temporary accommodation and use shall be Operating Expenses. In addition to the foregoing, if the Operator reasonably determines that, in order to provide a competitive salary and benefits package to employees, it is necessary to offer permanent accommodations at the Hotel or otherwise subsidize off-site housing to certain Hotel employees, the Operator shall include the cost of such accommodations and/or subsidies as an Operating Expense in the Proposed Annual Budget, and such costs shall be approved or disapproved by Owner pursuant to Article 4 above.

5.6 Use of Hotel by Head Office Personnel

The Operator may provide Head Office Personnel and other representatives of the Operator who are providing the services to the Hotel described in Section 5.7 below with food, beverages, accommodation and use of the Hotel in accordance with the policies and procedures of the Operator for the Operator Hotels (which shall limit accommodations to space projected to be available and not reserved or occupied by members of the public) without charge to the Operator or its Head Office Personnel or representatives.

5.7 Head Office Support

The Operator shall make available from time to time, and for the periods of time reasonably required, its Head Office Personnel and other representatives of the Operator for the purpose of providing services in connection with the Operation or control of the Hotel, including, without limitation, for the purpose of improving the operations of the Hotel or supervising the operations of the Hotel to ensure that the Standard is achieved and maintained. In connection with such services and subject to the Annual

Budget, the following shall be Operating Expenses to the extent such charges are not duplicative of other Operating Expenses of Hotel Staff or otherwise that are being charged pursuant to this Agreement:

- (a) reasonable out-of-pocket expenses actually incurred by or for Head Office Personnel;
- (b) if in any three consecutive calendar months the time which a member of Head Office Personnel devotes to the problems and affairs of the Hotel, whether at the Hotel or otherwise, amounts to an equivalent of eight working days, the allocated portion of the salary of such Person, including payroll and similar Taxes and the cost of employee benefits, for all time so devoted during such three calendar months; and
- (c) if any member of Head Office Personnel is engaged in duties at the Hotel on a temporary basis fulfilling a function that is normally a full time function until a replacement employee can be obtained, the salary of such member, including payroll and similar Taxes and the cost of employee benefits for the relevant period.

5.8 Cost of Consultants

All reasonable fees and expenses, including reasonable costs of transportation, accommodation, food, beverages, laundry and valet services, of third party consultants and experts retained by the Operator to contribute to the efficient Operation of the Hotel shall be for the account of the Hotel and shall be Operating Expenses in accordance with the Annual Budget. The Operator shall be entitled to reimburse itself from the Agency Account of the Hotel for any fees and expenses of such consultants and experts which are advanced by the Operator from its own funds. No consultant or expert shall be retained without the prior approval of the Owner, either by being identified in the Annual Budget or otherwise, if the fees and expenses of such consultant or expert could reasonably be expected to exceed the Approval Amount at the time the consultant or expert is retained.

5.9 Employee/Staff Use of the Hotel

In addition to the rights described in Sections 5.5 and 5.6 above, the Operator may provide gratuitous or discounted food, beverages and accommodation at the Hotel as part of the benefits afforded the Operator's employees, Hotel Staff and the employees at other of the Operator Hotels, provided that such rights shall be consistent with the policies and procedures of the Operator for the Operator Hotels (which, in any event, shall limit accommodations to space projected to be available and not reserved or occupied by members of the public).

5.10 Gratuitous Use of the Hotel

Except where consistent with the Annual Budget and the policies and procedures of the Operator for the Operator Hotels (which shall limit accommodations to space projected to be available and not reserved or occupied by members of the public), industry practice or as otherwise set forth in this Article V, no Person shall be provided with gratuitous food, beverages, accommodation or services at the Hotel without the approval of the Operator and the Owner. The Owner acknowledges that the Operator's policies and procedures for the Operator Hotels may from time to time afford (i) identified representatives of the owners of the Operator Hotels rights of gratuitous or discounted use and access to other Operator Hotels and (ii) guests of the Operator Hotels rights of gratuitous or discounted use and access to other Operator Hotels pursuant to a "loyalty" or "frequent guest" program.

5.11 Gratuitous Use of the Hotel by Owner

The Owner, subject to availability at the time of booking, may authorize Operator to provide gratuitous or discounted accommodations, food, beverages, and other resort amenities and memberships (the "Owner's Gratuities") to those representatives of Owner, their guests and designees, as set forth on, and limited by, Schedule 5.11, it being the intent of the parties to minimize the displacement of retail guests of the Hotel. The Operator's Basic Fee, Incentive Fee, Total Revenues, GOP, RevPAR and the Operator's compliance with the Performance Test will all be calculated upon, and adjusted to, the amounts that would have been achieved if the Owner' Gratuities had been provided at the standard rates for such services, provided that any room rates are based on the Best Available Transient Segment Rate (BAR) level for the given room type on the day of check-in and this rate will be extended for the entire stay of the guest. The Operator reserves the right to adjust the rate for stays longer than ___(__) days to the Best Available Transient Segment Rate (BAR) level for the given room type as at the _____ (___) day of the stay forward for a period of ____ (___) days. This ability to adjust rates would occur after each successive () nights of stays. The rate for the Owner' Gratuities shall not negatively impact the Operator's compliance with the Performance Test. A separate ledger of these complimentary or discounted services will be maintained by Operator, and transferred to the Owner' account, which will be signed off by the Owner at month end.

ARTICLE VI. GLOBAL RESERVATIONS SYSTEM AND CENTRALIZED SERVICES

6.1 Global Reservations System

The Operator shall provide, or shall cause any of its Affiliates to provide, directly or indirectly, for the Hotel and its guests the full benefit of the Global Reservations System to the extent available to other Operator Hotels. The Owner shall be charged as an Operating Expense a reasonable monthly fee on a charge per key for such service as well as a charge on a per-reservation basis, to be described in the Annual Budget and charged, subject to the guidelines and policies approved from time to time by the Operator, on the same basis or formula as charged to other Operator Hotels and, in all cases, consistent with Section 6.4 below and as set forth in the applicable Annual Budget.

6.2 Centralized Services

The Operator shall offer, or shall cause any of its Affiliates to offer, for the Hotel and its guests the full benefit of its centralized services (the "Centralized Services") as normally provided to other Operator Hotels located within the United States. In addition to Global Reservation Services, each Proposed Annual Budget will set forth certain Centralized Services that represent core Centralized Services required to maintain brand standards, and are mandatory for substantially all of the comparable Operator Hotels located within the United States, including the Hotel. The Hotel shall utilize all such mandatory services and reimburse the Hotel's share of the expenses for such services (as provided in this Article 6) as Operating Expenses of the Hotel. In addition each Proposed Annual Budget will set forth a list of available additional, optional Centralized Services, together with the Operator's proposal as to which services are appropriate for the Hotel, and the Owner shall select and approve such optional Centralized Services as the Owner deems appropriate as part of the approval of the Annual Budget. Such mandatory and optional Centralized Services may change from time to time as the Operator reasonably deems appropriate for Operator Hotels, but the Operator may designate services as mandatory or change the cost of any such services only in connection with the Annual Budget approval process.

6.3 The Owner's Contribution

The Owner agrees to pay the Operator for the Hotel's pro rata share of the total costs incurred by the Operator in providing the Centralized Services on a system-wide basis to Operator Hotels, which amount shall be subject to the guidelines, policies and rate schedules approved from time to time by the Operator and set forth in the Annual Budget. The Hotel's pro rata share of such costs shall be determined in an equitable manner by the Operator and the share so determined shall be an Operating Expense, it being understood that such amount and share shall be determined by the Operator on a consistent basis among substantially all comparable Operator Hotels.

6.4 Adjustment of Charges

The Operator acknowledges that the fees contemplated in this Article 6 are intended to permit the Operator to recover the costs of providing Centralized Services and the benefits of the Global Reservations System, in each case without profit, but with inclusion of the Operator's internal costs equitably allocable to the Operator's provision of the Services and may include, without limitation, reimbursement for the costs incurred by the Operator in connection with the salaries (including payroll and similar Taxes, Employee Benefits, relocation expenses and severance) of the employees and officers of the Operator and its Affiliates involved in the provision of the Centralized Services or the Global Reservations System, out-of-pocket expenses and disbursements (including, without limitation, travel, communication, courier and mail) and the costs of all facilities, equipment and services employed in the provision of such services. Accordingly, the Operator's provision of Centralized Services and the Global Reservations System shall be subject to audit by the firm of independent accountants engaged by the Operator to provide accounting and audit services with respect to the Operator's corporate activities. Such auditors shall provide the Owner and its independent accountants' reasonable back-up information pertaining to the audit. Each of the methods used to calculate the fees for Centralized Services and the Global Reservations System, however, shall be subject to change by the Operator; provided that the Operator's provision of Centralized Services and the benefits of the Global Reservations System shall remain subject to the constraints and audit and annual reconciliation procedures set forth in this Section 6.4 and that any method adopted shall remain true and consistent for substantially all Operator Hotels, but with some variations based on regional pooling.

6.5 Cost of Equipment

If equipment required for the provision of services to the Hotel is installed and maintained at the Hotel in connection with the provision of the Global Reservations System or any Centralized Services, all costs thereof shall be identified in the Annual Budget and shall be the responsibility of the Owner and charged as Operating Expenses to the Operation of the Hotel either as (a) a current expense in the Fiscal Year, or (b) a capital expenditure financed by the Owner and charged over a period of years in accordance with the Operator's Accounting Policies.

6.6 Credit Cards

The Owner authorizes the Operator to accept the Operator-sponsored credit cards and all other credit cards designated by the Operator for charges authorized in accordance with the Operator's credit card billing system.

ARTICLE VII. PROVISION OF FUNDS, ACCOUNTS AND SECURITY

7.1 Basis of Calculations

The amounts to be calculated for purposes of this Article 7 shall be calculated in accordance with and on the basis of the books of account and other records to be kept by the Operator pursuant to the provisions of Section 8.1.

7.2 Reserved

7.3 The Owner's Obligation to Fund

Subject to Section 3.3 and all other provisions of this Agreement, in performing its duties hereunder during the Operating Term, the Operator is contracting for goods and services, and incurring expenses solely on behalf of, and independent contractor for, the Owner. All Operating Expenses, as provided herein or otherwise approved in the Annual Budget, incurred by the Operator in performing its duties shall be borne exclusively by the Owner. To the extent required Working Capital is not generated by the Operation of the Hotel in an adequate amount or on a timely basis, Working Capital shall be supplied by the Owner to the Operator in the manner provided in this Article 7.

7.4 Provision of Working Capital

Within _____ (____) Business Days following a request by the Operator to the Owner, the Owner shall furnish to the Operator funds sufficient in amount to constitute required Working Capital for the uninterrupted and efficient Operation of the Hotel in accordance with the Annual Budget, this Agreement and the Standard, including, without limitation, sufficient funds to pay current liabilities as they become due, to replace necessary Operating Supplies as they are consumed, to make Capital Improvements and otherwise to operate, repair and maintain the Hotel in accordance with the Standard, in each case, to the extent consistent with the Annual Budget under the provisions of Article 7. The initial Working Capital that shall be provided by the Owner to the Operator on the Commencement Date is the amount set forth on **Schedule 7.4** attached hereto. The Operator shall provide to the Owner periodic cash flow forecasts of the Hotel's financial needs as part of the Operator's regular updates of the Annual Budget. If at any time the Operator should determine, in the exercise of its reasonable business judgment, that the Owner's persistent failure to furnish such requested Working Capital in full and timely fashion jeopardizes or impairs the uninterrupted and efficient operation of the Hotel, the Operator may request, and the Owner shall arrange and thereafter maintain a credit facility at an Approved Bank (such as a line of credit) intended to provide financing for the Operator of the Hotel in an amount sufficient to ensure that funds can be made available for Working Capital purposes. The Operator shall manage accounts receivable and inventories as would a prudent operator of a hotel similar to the Hotel and consistent with its operation of the Operator Hotels.

7.5 Agency Account

All funds received by the Operator in the course of the Operation of the Hotel, including Working Capital furnished by the Owner, shall be deposited in an account (the "Agency Account") in an Approved Bank. Such funds shall not be commingled with the Operator's funds and shall not be subject to a lockbox or similar provision in favor of any lender. Out of the Agency Account, the Operator shall pay all Operating Expenses and all other payments, deposits and applications of funds to be made by the Operator hereunder. The Operator also shall remit from the Agency Account to the appropriate Governmental Authority all applicable withholding Taxes (including social services tax, goods and

services tax and hotel room Taxes) attributable to the Hotel or the Operation thereof and shall deliver to Owner original invoices and bills from any Governmental Authority and, upon request, furnish the Owner reasonable evidence of the payment of such Taxes.

7.6 Operation of Agency Account

The Agency Account shall be opened and maintained at all times solely by the Operator and shall bear the name of the Hotel. Checks or other documents of withdrawal may be signed only by authorized representatives of the Operator and any checks or other documents of withdrawal so signed may, at the Operator's option, bear an appropriate legend indicating that the Hotel is operated by the Operator on behalf of the Owner. The Operator shall prepare all bank reconciliations and do all necessary accounting with respect to the Agency Account. The Owner may review the bank reconciliations in detail at any time. The Owner's sole right with respect to the funds in the Agency Account shall be to receive therefrom the payment to be made by the Operator to the General Account pursuant to Section 7.8. Notwithstanding the foregoing, the Owner shall bear any losses that may be occasioned by a bankruptcy or other financial failure or instability of the Approved Bank at which the Agency Account is maintained.

7.7 Replacement Reserve Account

The Operator and the Owner shall establish and maintain an account (the "Replacement Reserve Account") with an Approved Bank into which the Replacement Reserve shall be deposited. The funds in such account shall not be commingled with funds of the Operator.

7.8 Transfer to General Account

No later than the _____ (___) day of each calendar month, the Operator shall transfer to a single general account (the "General Account") any funds in the Agency Account in excess of those necessary to pay Management Fees for the prior calendar month, to fund the Replacement Reserve, and to constitute required Working Capital. The General Account shall be established in the name of the Owner in an Approved Bank. All checks for the withdrawal of funds from the General Account shall bear the signature of such signatory or signatories as may be designated by the Owner.

ARTICLE VIII. BOOKS, RECORDS AND STATEMENTS

8.1 The Operator to Keep Records

The Operator shall, for the account of the Owner, keep full and adequate books of account and other records reflecting the results of the Operation of the Hotel on an accrual basis, all in accordance with the Operator's Accounting Policies established by Operator, from time to time, with such exceptions as may be required by the provisions of this Agreement; provided, however, that the Operator may make such modifications in its books of account and other records as are consistent with the Accounting Principles and the Operator's standard practice of accounting for its operations under management contracts for the Operator Hotels so long as such modifications do not affect the determination of the Basic Fee or the Incentive Fee, are consistent with good hotel accounting practices and the requirements of this Agreement, and do not impair the Owner' ability to comply with any requirements of Applicable Laws.

8.2 Location and Inspection

The books of account and all other records relating to or reflecting the Operation of the Hotel (which shall in any event be sufficient to reflect the Operation of the Hotel) shall be kept at the Hotel. Provided, however, Owner and Operator agree that solely with respect to centralized Hotel Purchases, the Global Reservations System and Centralized Services, at the Operator's central office, or at any other location in Canada or the United States considered by the Operator to be suitable for the purpose, and shall be available to the Owner and its representatives at all reasonable times for examination, audit, inspection and transcription. All books and records which are kept at the Hotel, excluding any such books or records which are Proprietary Materials but otherwise including, without limitation, books of account, guest records and preferences, and front office records, shall at all times be the property of the Owner and, except as herein otherwise provided, shall not be removed from the Hotel by the Operator without the Owner's consent except to the extent necessary for the proper operation of a central billing system or other Centralized Services. The Owner shall be entitled to receive a copy of any data or information ascertained by the Operator during the Operation of the Hotel, excluding any such data or information which is Proprietary Materials. Notwithstanding anything herein to the contrary, Owner grants the Operator the right and license to copy and utilize, for corporate purposes related to the Hotel and to other hotels operated or licensed by Operator Parent and its Affiliates, all guest records and preferences created during the entire Operating Term of this Agreement ("Guest Records License"). The Guest Records License shall survive and continue in effect notwithstanding the expiration or termination of this Agreement.

8.3 Periodic Statements

Within _____ (___) Business Days after the end of each calendar month, the Operator shall deliver to the Owner a trial balance statement as of the end of such calendar month, a profit and loss statement showing the results of the Operation of the Hotel, the calculation of the Total Revenues, GOP and Management Fees for such calendar month and for the portion of the Fiscal Year to the end of such calendar month, and a comparison of such results with the results budgeted for such calendar month and portion of the Fiscal Year in the applicable Annual Budget and with the results at the end of the same calendar month and portion of the Fiscal Year in the immediately preceding Fiscal Year together with commentary on any significant variation from the Annual Budget. All statements provided pursuant to this Section 8.3 (i) shall be in the form customarily prepared by the Operator for the Operator Hotels, (ii) shall be derived from the books and records maintained by the Operator in the manner herein specified, (iii) shall follow the general form set forth in the Operator's Accounting Policies.

8.4 Annual Statements

Within ____(___) days after the end of each Fiscal Year, the Operator shall deliver to the Owner an annual unaudited statement (including a balance sheet, a statement of income, a statement of capital and a statement of changes in financial position) which (i) shows the results of the Operation of the Hotel and the calculation of the Total Revenues, GOP and Management Fees for such Fiscal Year, (ii) shall be certified by the Operator as having been prepared in accordance with the Accounting Principles, and (iii) shall be subject to audit by the Independent Accountants. The cost of any such audit shall be an Operating Expense. The Owner shall cause: (i) such audit to be completed within __ (____) days after the delivery to Owner by Operator of the annual unaudited statement and such other information as is required by this Agreement, and (ii) a copy of the audited annual statement to be delivered to Operator within _____ (____) Business Days of the Owner's receipt of such audited statement. If the Owner does not present objections to an annual statement within ____ (_____) days following the Owner's receipt of the audited annual statement from the Independent Accountants, such audited annual statement shall be deemed to be correct and conclusive for all purposes, in the absence of manifest error.

8.5 Quarterly Statements

Within () days after the end of each calendar quarter, the Operator shall deliver to the
Owner an aged receivable listing as of the end of such calendar quarter and an unaudited statement
(including a balance sheet, a statement of income, a statement of capital and a statement of changes in
financial position) which (i) shows the results of the Operation of the Hotel and the calculation of the
Total Revenues, GOP and Management Fees for such calendar quarter, and (ii) shall be certified by the
Operator as having been prepared in accordance with the Accounting Principles. If the Owner does not
present objections to any such statement within () days of delivery thereof by the Operator, such
statement shall be deemed to be correct and conclusive for all purposes, in the absence of manifest error
and subject to any changes as the result of an audit.

8.6 Other Reports

The Operator shall deliver to the Owner such additional reports as are prepared by the Operator with respect to Hotel operations and are delivered to a substantial number of the owners of other Operator Hotels from time to time, including periodic bank reconciliations.

ARTICLE IX. MANAGEMENT FEES

9.1 Management Fees

During each Fiscal Year during the Operating Term, the Owner shall pay to the Operator as partial consideration for services rendered pursuant to this Agreement: (i) a fee (the "Basic Fee") equal to ______ percent (____%) of the Total Revenues of the Hotel for such Fiscal Period, and (ii) an additional fee (the "Incentive Fee") equal to _____ percent (____%) of GOP for such Fiscal Year. Except as provided in Section 9.2, payment of the Basic Fee and the Incentive Fee shall be monthly and is not subject to subordination or deferral to payment of Operating Expenses, items excluded from Operating Expenses described in Section 9.6, and items constituting Owner's expenses.

9.2 Subordination of Incentive Fee

Notwithstanding any other provision of this Agreement, in the event that the Total Revenue attributable to the calendar month, Fiscal Year or portion of a Fiscal Year under consideration is not sufficient to provide for the following expenses attributable to such period: (i) Operating Expenses, (ii) land or building mortgage payments on the senior debt relating to the Resort Area, (iii) Property Taxes, (iv) deposits into the Replacement Reserve pursuant to Section 11.2, and (v) insurance premiums for insurance obtained by or on behalf of the Operator or the Owner with respect to the Hotel pursuant to Article 14 (collectively, the "Incentive Expenses"), then _____ (____) of the Incentive Fee due for such period (the "Subordinated Incentive Fee") shall be subordinated to the payment of the Incentive Expenses attributable to such period. The Subordinated Incentive Fee shall become payable to the Operator upon the date that the accrued Total Revenue exceeds the accrued Incentive Expenses. If pursuant to this Section 9.2, the payment of the Subordinated Incentive Fee is deferred for a period exceeding ____ (___) year, the Subordinated Incentive Fee shall be subject to interest thereon at a rate equal to the ___-day LIBOR rate plus 250 bps beginning after such ____ (___) year period has ended.

9.3 Total Revenues

"Total Revenues" means, subject to Section 9.4, all revenue, income and proceeds of sales of every kind, whether in cash or on credit, resulting from the Operation of the Hotel and properly attributable to the calendar month, Fiscal Year or portion of a Fiscal Year under consideration,

determined on an accrual basis under the Operator's Accounting Policies, and for purposes of greater certainty, Total Revenues shall include, but shall not be limited to, the following:

- (a) all revenues from the rental of guest rooms and suites in the Hotel and all revenues earned from guests, patrons and other Persons occupying space in or using the Hotel, including, without limitation, all revenues derived from goods sold and services provided in connection therewith;
- (b) the rentals and other payments received or receivable from the holders of leases, licenses or other similar contracts for occupancy or use but not including the gross receipts of such holders or the amounts collected from such holders with respect to Property Taxes or other items which are to be remitted to a third party;
 - (c) all revenues from food and beverage sales at the Hotel;
- (d) the net proceeds of use and occupancy or business interruption insurance payable to either the Owner or the Operator with respect to the Operation of the Hotel after deduction from such proceeds of all necessary expenses incurred in the adjustment or collection thereof; and
- (e) any other form of revenue from any source whatsoever which is directly attributable to the Operation of the Hotel, including, without limitation, dues and other charges relating to Signature Memberships, except as excluded in section 9.4 hereof.

9.4 Exclusions from Total Revenues

For the purpose of calculating the Management Fees payable pursuant to this Agreement, Total Revenues shall not include any of the following:

- (a) excise, sales, use and other Taxes (including room taxes) or similar charges which are required by Applicable Laws to be collected directly from patrons or guests or as part of the sale price of any goods or services or displays and which must be remitted to a Governmental Authority;
- (b) actual bad debts arising from Total Revenues, provided that any recovered bad debts shall again become part of Total Revenues in the Fiscal Year in which they are recovered;
- (c) gratuities, service charges or other similar receipts collected for payment to and paid to Hotel Staff and complementary food and beverage bills for Hotel Staff and guests;
 - (d) revenue, income and proceeds of sales of tenants, licensees and concessionaires;
- (e) proceeds of sales received or receivable at the Hotel for other hotel accommodation, goods and services unrelated to the Operation of the Hotel or to be provided at other hotels, although arranged by the Operator;
- (f) revenues, including gains or losses arising from the sale or other disposition of capital assets, including Hotel Property no longer required for the Operation of the Hotel;
- (g) proceeds or awards arising from a taking or condemnation of capital property other than an award for temporary use;
- (h) receipts or credits for settlement of claims for loss or theft of or damage to personal property or furnishings, or any recoveries relating to breach of warranty or guaranty, excluding, however,

those amounts that are compensation for items that would otherwise be included in Total Revenues hereunder:

- (i) proceeds from any insurance policy other than the net proceeds of use and occupancy or business interruption insurance;
 - (j) receipts of a capital nature, including any financing of the Hotel;
- (k) deposits or sales proceeds from the sale of Signature Memberships or proceeds from Signature Membership resignations;
- (l) interest, if any, earned on the Replacement Reserve or on funds invested on behalf of the Owner; or
 - (m) Working Capital provided by the Owner.

9.5 Operating Expenses

"Operating Expenses" means, subject to Section 9.6, all costs and expenses of Operating the Hotel during the Operating Term pursuant to this Agreement which are provided for in the Annual Budget and are properly attributable to the calendar month, Fiscal Year or portion of a Fiscal Year under consideration under the Operator's Accounting Policies, including, without limitation, the following:

- (a) salaries and wages of Hotel Staff, including costs of payroll and similar taxes, Employee Benefits, relocation expenses and severance, the costs of home leave transportation, and the costs of moving Hotel Staff; their families and their belongings to a location within reasonable commuting distance of the Hotel (including the pre-tax cost of relocation loans made by the Operator) at the commencement of their employment at the Hotel and returning them to their point of origin upon the conclusion of their employment at the Hotel, provided that relocation costs are allocated without duplication between the Hotel and the other hotel on a consistent basis in accordance with the Operator's policy for relocation;
 - (b) costs incurred with respect to sales and other revenues generated at the Hotel;
- (c) the costs of all utilities and services including, without limitation, heat, air conditioning, water, light and power, local and long distance telephone service, and data communication and computer services;
- (d) the costs of all food and beverages sold or consumed and of all Operating Equipment and Operating Supplies placed in use, including the sale, consumption and placement in use of Operating Equipment and Operating Supplies initially supplied pursuant to this Agreement. For the purposes of this Agreement, Operating Equipment and Operating Supplies shall be considered to have been placed in use when they are transferred from the storerooms of the Hotel to the appropriate operating departments, or in such other manner as may be implemented and used by the Operator Hotels;
- (e) the costs of all other goods and services provided, arranged or obtained by the Operator in connection with its Operation of the Hotel including, without limitation, public utilities charges and the cost of accounting systems, data processing and telecommunications equipment, office supplies, services performed by third parties and all other supplies, services and hotel equipment of the nature and type normally used by operators of hotels similar to the Hotel and as is common in the industry;

- (f) all reasonable costs and fees of any arbitrators, auditors, lawyers and similar Persons who perform services required or permitted pursuant to this Agreement;
- (g) the reasonable costs and expenses of technical consultants and specialized operational experts or personnel, including Head Office Personnel, for services rendered as provided in Sections 5.7 and 5.8:
- (h) the costs of repair and maintenance of the Hotel pursuant to Section 10.1, excluding any expenditures paid for out of the Replacement Reserve or any other Capital Expenditures;
 - (i) all expenses related to Marketing;
- (j) the costs of maintaining books of account and other records and producing statements pursuant to Article 8;
- (k) service charges paid to the Operator under the Global Reservations System and Centralized Services provided for in Article 6 and all sales commission charges;
- (l) the actual amount of any goods and services or other similar value added Taxes imposed by any Governmental Authority having jurisdiction and paid as a result of the operations of the Hotel, less any credits with respect to such Taxes otherwise granted with respect to the operations of the Hotel;
 - (m) reasonable reserves for bad debts in accordance with the Operator's Accounting Policies;
 - (n) all expenses otherwise contemplated by this Agreement to be Operating Expenses;
- (o) all out-of-pocket expenses and disbursements determined by the Independent Accountants to have been incurred by the Operator or any of its Affiliates pursuant to, in the course of, and directly related to the Operation of the Hotel under this Agreement, including, without limitation, all reasonable travel, telephone, telegram, facsimile transmission, radiogram, cablegram, voice and data communication, courier, air express and other incidental expenses and for which the Owner has reimbursed the Operator; and
- (p) all rent and other charges under leases or licenses of personal property incurred in the ordinary course of business consistent with the practices of the Operator at the date of this Agreement.

9.6 Exclusions from Operating Expenses

For the purpose of calculating the Management Fees payable pursuant to this Agreement, Operating Expenses shall not include any of the following:

- (a) subject to Section 11.1, any payments, whether principal or interest, relating to Capital Improvements to or encumbrances with respect to the Hotel, including expenditures for initial Furniture, Fixtures and Equipment and replacements or substitutions therefor or additions thereto;
- (b) land or building rental or mortgage payments, including without limitation, any payments paid for lease, access or parking rights to ______ or _____;
- (c) depreciation and amortization expenses, including costs of Capital Improvements which are made in accordance with Section 10.2;
 - (d) income, capital or franchise taxes of a Party;

- (e) excise, sales, use and other taxes (including room taxes) or similar charges (i) collected directly from patrons or guests or as part of the sale price of any goods or services or displays, (ii) remitted to a Governmental Authority and (iii) excluded from Total Revenues pursuant to Section 9.4(a) above:
- (f) salaries, wages, asset management fees or amounts paid to individuals or entities by or upon the instruction of an Owner to the extent such individuals or entities are not under the supervision or direction of the Operator;
 - (g) interest payable on any bank credit facility provided to fund Working Capital;
- (h) insurance premiums for insurance obtained by or on behalf of the Operator or the Owner with respect to the Hotel pursuant to Article 14, except for the insurance required pursuant to Sections 14.2 and 14.3:
 - (i) all Property Taxes;
- (j) any rent or other charges payable by the Owner with respect to the Building Systems or the Hotel Property other than those referred to in Section 9.5(p);
 - (k) expenses of the Owner related to asset management;
- (l) deposits into the Replacement Reserve pursuant to Section 11.2 and all other Capital Expenditures;
- (m) any refunds in connection with Signature Memberships required by virtue of a change in the nature of those memberships;
 - (n) the Basic Fee and Incentive Fee
 - (o) any payments due under the Licensing Agreement;
- (p) any cost or expense incurred in connection with the creation of any item of revenue, income or proceeds that is excluded from Total Revenues pursuant to Section 9.4, including, without limitation, any costs or expenses incurred in connection with the sale and administration of any Signature Membership program.

9.7 Payment of Management Fees

Upon delivery of the financial statement pursuant to Section 8.3 for each calendar month during the Operating Term, and the delivery to Owner of a corresponding invoice containing all customary information to allow Owner to comply with applicable laws with regard to withholding taxes, the Operator shall be paid from the Agency Account the Basic Fee based upon the Total Revenue for that calendar month. Subject to Section 9.2, in addition thereto the Operator shall be paid from the Agency Account an amount on account of the Incentive Fee equal to the Incentive Fee for the applicable calendar month of the then current Fiscal Year as determined upon the basis of year-to-date results. The amounts paid to Operator as Basic Fee and Incentive Fee shall be adjusted on the basis of the final statements for each such Fiscal Year.

9.8 Adjustments

Subject to Section 9.2, contemporaneously with the delivery of the annual statements referred to in Section 8.4 and containing a computation of the Incentive Fee for the preceding Fiscal Year, the Operator shall remit to itself the balance, if any, of the Incentive Fee with respect to the prior Fiscal Year which had not been remitted in the monthly payments during the prior Fiscal Year. In the event that such annual statement and the computation of the Incentive Fee indicate an overpayment of the Incentive Fee for such Fiscal Year, the Operator shall repay the amount by which the Incentive Fee was overpaid concurrently with the delivery of such statements. The Owner hereby irrevocably authorizes the Operator to make payments to itself contemplated in Section 9.7 and this Section 9.8 on the Owner's behalf.

9.9 Signature Membership Sales Fee

During the Operating Term, the Owner shall pay to the Operator a fee equal to _____ percent (__%) of the net proceeds (net of any related refunds or similar costs) received from the sale of any Signature Memberships during the Operating Term (the "Signature Membership Sales Fee"). Payment of the Signature Membership Sales Fee shall be monthly and is not subject to subordination or deferral to any other payment hereunder. The Owner hereby authorizes the Operator to make payment to itself of the Signature Membership Sales Fee earned for the prior month from the Agency Account on the Owner' behalf.

9.10 Net Losses

Any deficits in available working capital or negative cash flow at any time or times in any Fiscal Year shall be borne exclusively by the Owner.

ARTICLE X. REPAIRS, MAINTENANCE AND CAPITAL IMPROVEMENTS

10.1 Repairs and Maintenance

Subject to the Annual Budget and the provisions of Article 4 of this Agreement and the Owner' providing the required Working Capital pursuant to Section 7.3, the Operator shall from time to time make such repairs and maintenance (other than Capital Expenditures) as are required to maintain the Hotel in accordance with the Standard.

10.2 Capital Improvements

The Owner shall maintain the Hotel in accordance with the Standard and shall approve, in the Proposed Annual Budget or an amendment to an Annual Budget, any Capital Improvements proposed by the Operator which are required to maintain the Hotel in accordance with the Standard. Subject to the Owner providing the necessary Working Capital pursuant to Section 7.3, the Operator, on behalf of the Owner and at the Owner's sole expense, shall make all Capital Expenditures necessary for the continued Operation of the Hotel and to maintain the Hotel in accordance with the Standard. To the extent that the same are provided for in the Annual Budget, such expenditures may be made without the Owner's approval, but expenditures in any Fiscal Year in excess of the amount provided for in the Annual Budget for such Fiscal Year shall require the Owner's prior written approval, subject to the provisions of Article

4 of this Agreement. Notwithstanding any other provision of this Agreement and other than those changes contained in the Special Capital Improvements Project, any material changes to the Hotel must be approved by the Operator, which approval shall not be unreasonably delayed or withheld.

10.3 Warranties

If any Capital Expenditures or other repairs and maintenance shall be made necessary by any condition against the occurrence of which an Owner has received the guarantee or warranty of the builder of the Hotel or any portion thereof or of any supplier of labor or materials for the construction of the Hotel or any portion thereof, then the Operator shall invoke such guarantee or warranty in the Owner's or the Operator's name and the Owner shall cooperate fully with the Operator in the enforcement thereof.

10.4 Corporate Design and Construction Fee

Following the Commencement Date, if the Owner chooses or is required by the provisions of this Section 10.4 to retain the services of the Operator or an Affiliate of the Operator designated by the Operator to perform technical consulting, project management and purchasing services in connection with any approved refurbishing, maintenance, repairs or Capital Improvements to the Hotel, including, without limitation, refurbishing, maintenance, repairs or Capital Improvements contemplated in any Annual Budget and Capital Improvements referred to in Section 10.2, and if such services require the Operator to engage Home Office Personnel, as opposed to Hotel Staff, then for such project management services the Owner shall pay to the Operator a mutually agreed upon fee commensurate with the level and scope of services to be provided (the "Corporate Design and Construction Fee") not to exceed (%) of the total cost of any such refurbishing, maintenance, repairs or Capital Improvements plus any out-of-pocket expenses. Such total cost shall include the cost of freight, storage and installation, taxes, fees (other than the Corporate Design and Construction Fee) and commissions to other parties and the costs of any contracts awarded and items purchased, leased or hire-purchased on conditional sale. For technical consulting services on other than approved refurbishing, maintenance, repairs or Capital Improvements to the Hotel, such as advice for maintenance and repairs, preparation of design briefs or purchasing specifications for future projects, energy saving initiatives and technical consultation in general, the fee shall be on an hourly rate set forth in the Annual Budget plus any out-of-pocket expenses. The Operator may retain a department, division or Affiliate of the Operator as a consultant to perform such technical consulting and project management services. The Operator will not, however, duplicate the services the Owner typically provides for these types of projects, nor will it engage others to do so, except as required to be performed by Operator, or an Affiliate thereof, in order to ensure the maintenance of the brand consistency or insure consistency with the Standard. The Owner and Operator agrees and acknowledges that the Operator has agreed to provide project management services and technical consulting services in connection with the Special Capital Improvements Project for a fee equal to improvements and percent (%) with respect to any percent (%) with respect to other such improvements, of the total cost of such improvements plus any out-of-pocket expenses such as travel and travel-related expenses. Notwithstanding the provisions of this Section 10.4, but subject to Section 21.2, the Owner is not obligated to utilize the services of the Operator in connection with any particular refurbishing, maintenance, repairs or Capital Improvements except to the extent necessary to (i) maintain brand consistency, (ii) insure consistency with the Standard or (iii) minimize interference with the Operations of the Hotel.

ARTICLE XI. REPLACEMENT RESERVE

11.1 Replacement Reserve

A cumulative reserve (the "Replacement Reserve") shall be established solely for the replacement, substitution, addition or refurbishing of the Hotel's Furniture, Fixtures and Equipment by depositing into the Replacement Reserve Account from time to time in accordance with Section 11.2 an aggregate amount equal to: (i) percent (%) of Total Revenue for each Fiscal Year until the Special Capital Improvements Project is completed; (ii) _____ percent (____%) of Total Revenue for each Fiscal Year until the end of the next full Fiscal Year following the completion of the special Capital Improvements Project; and (iii) _____ percent (___%) of Total Revenue for each Fiscal Year thereafter. Notwithstanding the foregoing, for as long as: (i) the named Owner to this Agreement (or any Affiliates thereof or lenders thereto) retain title ownership to the Lands and, (ii) the Owner has commenced and is diligently pursuing the completion of the Special Capital Improvements Project, the deposits required to be made into the Replacement Reserve as set forth in this Section shall be reduced to: (i) (___%) of Total Revenue through December 31, 20__; (ii) ____ percent (__%) of Total Revenue through December 31, 20_; and (iii) ____ percent (_%) of Total Revenue for each Fiscal Year thereafter. The Operator may draw from the Replacement Reserve to pay for such Furniture, Fixtures and Equipment incurred in accordance with Section 10.2. Notwithstanding the foregoing, the Operator's use of the Replacement Reserve for such purposes shall not relieve the Owner from its obligation to replenish and fully fund the Replacement Reserve by an amount equal to the amount utilized by the Operator for replacement, substitution, addition or refurbishing of the Hotel's Furniture, Fixtures and Equipment.

11.2 Funding of Replacement Reserve

Except as the Operator may otherwise elect pursuant to Section 11.3, during each calendar month the Operator shall deduct from the Agency Account an amount equal to the product of the Total Revenues for the immediately preceding calendar month and the applicable Replacement Reserve percentage stipulated in Section 11.1 and shall deposit such amount in the Replacement Reserve Account at the time that a transfer of funds is made pursuant to Section 7.8.

11.3 Temporary Deferral of Replacement Reserve Funding

Notwithstanding the provisions of Sections 11.1 and 11.2, the Operator may, in its sole discretion, in any calendar month and for a period of not more than three successive calendar months in any Fiscal Year, elect to deduct from the Agency Account an amount less than the Replacement Reserve amount calculated pursuant to Section 11.2 in order to make available, on a temporary basis, additional Working Capital to support the efficient Operation of the Hotel. The Operator shall not be obligated to make, or consider making, any such reduction in the deduction of the amount of the funding of the Replacement Reserve, and any such action shall not relieve the Owner of its obligation to provide required Working Capital pursuant to this Agreement. If the Operator has elected to reduce the deduction in any month or months below the Replacement Reserve funding calculated in accordance with Section 11.2, the Operator may, at any time, deduct funds from the Agency Account to restore the cumulative amount deducted to fund the Replacement Reserve to the amount provided for in Section 11.2.

11.4 Capital Expenditures

Any Capital Expenditures on account of the replacement, substitution, addition or refurbishing of the Hotel's Furniture, Fixtures and Equipment made in any Fiscal Year which are provided for in the Annual Budget for such Fiscal Year, up to the then remaining balance of the Replacement Reserve, shall be deemed to be made in the ordinary course and may be made by the Operator without any further approval from the Owner or Owner. Notwithstanding any amount established pursuant to Section 11.1, the Owner shall approve as part of the Annual Budget and make, promptly upon the request of the Operator and after utilization of the funds in the Replacement Reserve, any replacements, substitutions, additions or refurbishing of the Hotel's Furniture, Fixtures and Equipment which are necessary to maintain the Hotel in accordance with the Standard. All such expenditures shall be for the Owner's account. In addition, in accordance with Section 3.8(e), the Owner may independently make major purchases of Furniture, Fixtures and Equipment, subject to the Operator's approval of the quality and character of goods so purchased, such approval not to be unreasonably withheld or delayed.

ARTICLE XII. COVENANTS OF QUIET ENJOYMENT

12.1 Quiet Enjoyment

Subject to the provisions of this Agreement, the Owner warrants, represents and covenants that the Operator shall and may peaceably and quietly possess, manage and operate the Hotel throughout the Operating Term, and the Operator, the Hotel Staff and the guests of the Hotel shall have the right of use of the Hotel during the Operating Term contemplated hereby, and the Owner shall at its own expense undertake and prosecute any appropriate action, judicial or otherwise, to assure such peaceful and quiet possession and enjoyment by the Operator, with which action the Operator shall fully cooperate. Except as otherwise expressly provided in this Agreement, the Owner shall not participate in the Operation of the Hotel, and, except as otherwise expressly provided in this Agreement, the Owner shall only contact the General Manager for guidance in performing Owner's obligations under this Agreement.

12.2 Prompt Payment

The Owner covenants and agrees that, throughout the Operating Term, it shall promptly pay and discharge any and all amounts for which it is responsible pursuant to this Agreement, and shall pay, keep, observe and perform all payments, terms, covenants, conditions and obligations required under any lease or access agreement, or under any mortgage, debenture or other agreement creating a lien on the Hotel, or under any other agreement involving a debt obligation related to the ownership or operation of the Hotel, time being of the essence with respect to any monetary obligation or undertaking of the Owner hereunder.

12.3 Property Taxes

The Owner shall make funds available to pay and, subject to the availability of funds, the Operator shall (i) cause to be paid, prior to the dates the same become delinquent, with the right to pay the same in installments to the extent permitted by law, all Property Taxes attributable to the Hotel or any of its component parts or the Operation thereof, and (ii) furnish the Owner, before the respective dates on which Property Taxes will become delinquent, proof of payment thereof, in accordance with Applicable Laws, in form satisfactory to the Owner, acting reasonably. The Owner shall permit the Operator to participate, together with the Owner, in any negotiations with the assessment authority if and to the extent that the Property Taxes which arise out of any such assessment are or could be Operating Expenses. Notwithstanding the foregoing, the Owner may contest the validity or the amount of any Property Taxes, provided that such contest in no way jeopardizes the rights of the Operator with respect to the Hotel Facilities or under this Agreement. The Operator shall cooperate with the Owner and execute any documents or pleadings required for such purpose, provided that the Operator is satisfied that the facts set forth in such documents or pleadings are accurate.

12.4 Payments by the Operator

If the Owner shall fail or neglect to provide Working Capital pursuant to Section 7.4 above or to pay any amounts required under Sections 12.2 and 12.3, the Operator, after prior written notice to the Owner (unless otherwise entitled to advances without notice pursuant to this Agreement) may, but shall not be required to, make any and all payments on behalf of the Owner, and any sums so advanced shall constitute demand loans with the Owner, jointly and severally, as maker, and shall bear interest at a rate equal to the lesser of the Prime Rate plus _____ percent (___%) per annum or the highest rate permitted by law, compounded monthly, and calculated on the basis of a _____ (___) day year. Operator shall repay any such advances by Operator from the Agency Account whenever sufficient funds are available in such account. Any failure on the part of Owner to repay any sums so advanced, together with all accrued interest, within ____ (___) days after demand shall constitute a Material Default by Owner.

12.5 Scope of Operations

Subject to the other terms and conditions of this Agreement and consistent with the grants to the Operator of authority and responsibility under this Agreement with respect to the management of all aspects of Hotel Operations, the Owner and anyone by, through or under, shall not implement or agree to implement any change in the scope or nature of Operations, contact directly the Hotel Staff (other than the General Manager) with regard to the management or operation of the Hotel, or otherwise interfere with the Operator's exercise of its rights and responsibilities.

12.6 General Undertakings

The Owner further covenants with the Operator, and, where specifically provided below, the Operator further covenants with the Owner, as follows:

- (a) (i) subject to the provisions of Article 12, the Owner will, throughout the Operating Term, maintain or cause to be maintained the title to the Hotel Facilities and the Hotel Property, respectively, free and clear of any liens, charges and encumbrances of any nature or kind other than Permitted Encumbrances and those items permitted pursuant to Section 17.3, and that (ii) none of the Permitted Encumbrances will interfere with the Operation of the Hotel as currently being contemplated;
- (b) the Hotel will not, as a result of any action by the Owner or Operator, become subject to any zoning, land use or development control restrictions of any nature or kind that prevent, impede or delay in any material respect the furnishing, equipping, marketing, maintenance, operation, management, supervision or direction of the Hotel as contemplated by this Agreement or the rights granted to the Operator pursuant to this Agreement;
- (c) consistent with the authority afforded the Operator under this Agreement, and except as provided in the Annual Budget or in connection with the Special Capital Improvements Project, the Owner shall not make or contract for any alteration, addition, improvement, design or other modification to the Hotel during the term of this Agreement that will have a material effect on the financial performance of the Hotel without the Operator's prior written approval;
- (d) the Owner shall provide to the Operator and the Operator shall provide to the Owner, forthwith upon receipt, a copy of any notice in writing received by such Party from any Governmental Authority or mortgagee of the Hotel advising of any defects in the construction, state of repair or state of completion of the Hotel Facilities, or ordering or directing that any alteration, repair, improvement or other work be done, or relating to non-compliance with any building permit or Applicable Laws, or relating to any threatened or impending condemnation or taking of property, or relating to any notice of non-compliance, control order, stop order, or any other order or decree made by any Governmental Authority with respect to any environmental issue or under any environmental protection legislation;

(e) the Owner will promptly following receipt, but in no event later than () days following receipt, notify Operator, and the Operator will promptly following receipt, but in no event later than () days following receipt, notify Owner of the full particulars of any plans to widen, modify or realign any of the streets or other public thoroughfares or rights of way contiguous to the Hotel Facilities or any development controls, planning decisions or other such regulations which might in any way restrict the Operation of the Hotel as contemplated by this Agreement or the rights to be afforded to the Operator hereunder of which such Party receives written notice;
(f) subject to the provision of Article 4, the Owner shall provide to the Operator the funds required to make Capital Improvements and to maintain the Hotel Facilities and the Furniture, Fixtures and Equipment in good working order and condition and in a good state of repair consistent with that of the Standard;
(g) the Owner shall promptly provide Operator, and the Operator shall promptly provide Owner, with written notice of any action, suit or proceeding of which such Party may become aware which is pending or, to the knowledge of such Party, threatened at law or in equity or before or by any Governmental Authority which affects or may affect the Hotel Facilities or this Agreement;
(h) the Owner and Operator shall take, or refrain from taking, all such actions as may be necessary to ensure that the Owner and Operator, respectively, shall not be in default under or in breach of any material contract, agreement or other instrument which relates to the Hotel or this Agreement, to the extent that such Party has knowledge of the terms of such instrument, to the extent such default or breach would impair the Operator's ability to operate the Hotel Facilities as contemplated in this Agreement;
(i) the Owner shall not revise, amend or replace any material provision of the membership programs, structure, plans or documents for the club currently named the without the prior written consent and approval from Operator, which consent and approval shall not be unreasonably withheld or delayed, provided that it shall be reasonable for Operator to withhold its consent and approvals of such modification of any aspect of any such club membership programs, structure, plans or documents if such modification would have a material adverse economic impact on Operator or would affect the guest experience typically enjoyed by guests at Operator Hotels. To the extent that any modification or any aspect of such club membership programs, structure, plans, or documents would create an obligation on the part of the Owner to compensate the club members, such compensation shall be deemed for all purposes of this Agreement to be an expense of the Owner and not an Operating Expense;
(j) the Owner and (whenever the Owner consists of a partnership, each general partner thereof) shall maintain at all times its good standing in the jurisdiction of its formation and its due qualification to do business and good standing under the laws of the State of

ARTICLE XIII. DAMAGE AND DESTRUCTION

13.1 Partial Destruction

(a) If the Hotel experiences a Partial Destruction at any time or times during the Operating Term by fire or any other casualty, then the Owner will with due diligence repair, rebuild or replace the damaged or destroyed portions of the Hotel, so that after such repairing, rebuilding or replacing the Hotel shall be substantially the same as prior to such damage or destruction. If the Owner fail to begin such work (including, without limitation, the planning, retention of architects and other consultants and other

similar work necessary to repair, rebuild or replace the Hotel) within _____ (___) days after the proceeds of any insurance policies are available for distribution, subject to the provisions of Section 13.1(c) below, or fails to complete the work diligently, the Operator may pursue any recourse at law or in equity it may have, and in addition may, at its option, terminate this Agreement by written notice to the Owner on the terms and subject to the conditions set forth in Section 16.5, and subject to Section 16.4, and __ (___) days after the giving of such notice this Agreement shall terminate. Subject to the provisions of this Article 13, the Owner shall use its reasonable efforts to obtain all consents necessary to make insurance proceeds available for application to such repairing, rebuilding or replacing.

- (b) If the Owner, by reason of any Force Majeure Event of which the Owner provides the Operator with written notice promptly after its occurrence (which in no event shall include the Owner's financial incapacity), shall be unable to undertake the repairs or restoration within the time provided in this Section 13.1, the time during which the Owner shall be able to undertake to accomplish the repairs or restoration shall be extended by the number of days of delay caused by such Force Majeure Event accordingly.
- (c) The Operator shall, notwithstanding any delay or interruption resulting from any such damage or destruction, be entitled to receive from any insurance proceeds as and when paid in respect of the business interruption insurance contemplated in Section 14.1 of this Agreement (i) any portion of such insurance specifically designed to compensate the Operator for lost Management Fees or reimbursements otherwise payable under this Agreement or (ii) an amount equal to an equitable apportionment of such insurance proceeds, after deducting amounts for Operating Expenses (other than the Management Fees) paid in respect of the operation of the Hotel, based on the ratio that the aggregate of the Management Fees historically earned by the Operator bears to the amounts historically paid to the Owner under this Agreement.

13.2 Complete Destruction

If the Hotel experiences a Complete Destruction at any time during the Operating Term by fire or any other casualty, regardless of whether the Proceeds together with the value of the Lands are sufficient or insufficient to repair, rebuild or replace the damaged or destroyed portions of the Hotel, the Owner will, at the election of the Owner, either (a) with due diligence repair, rebuild or replace the damaged or destroyed portions of the Hotel so that after such repairing, rebuilding or replacing the Hotel shall be substantially the same as prior to such damage or destruction or (b) terminate this Agreement upon the payment to the Operator of the Casualty Compensation Payment, provided that if the Proceeds together with the value of the Lands are insufficient to repair, rebuild or replace the damaged or destroyed portions of the Hotel then the Casualty Compensation Payment shall not exceed the total of the Proceeds plus an amount equal to the value of the Lands. If the Owner fails to either begin such work (including, without limitation, the planning, retention of architects and other consultants and other similar work necessary to repair, rebuild or replace the Hotel) or pay the Casualty Compensation Payment to the Operator and terminate this Agreement within _____ (___) days after the proceeds of any insurance policies are available for distribution or fails to complete the work diligently, the Operator may pursue any recourse at law or in equity it may have, and in addition may, at its option, terminate this Agreement by written notice to the Owner on the terms and subject to the conditions set forth in Section 16.5, and subject to Section 16.4, and _____(___) days after the giving of such notice this Agreement shall terminate. Subject to the provisions of this Article 13, the Owner shall use reasonable efforts to obtain all consents necessary to make insurance proceeds available for application to such repairing, rebuilding or replacing if the Owner elect not to terminate this Agreement. Notwithstanding the foregoing, if the Owner, by reason of any Force Majeure Event of which the Owner provides the Operator with written notice promptly after its occurrence (which in no event shall include the Owner's financial incapacity), shall be unable to undertake any repairs or restoration to which the Owner has committed as provided above within the time

provided in this Section 13.2, the time during which the Owner shall be able to undertake to accomplish the repairs or restoration shall be extended accordingly.

13.3 Condemnation

Subject to Section 13.4, if at any time during the Operating Term the whole or any part of the Hotel shall be taken by any lawful power or authority by means of condemnation, taking of property, down-zoning, or other compulsory acquisition, and such condemnation, taking of property, down-zoning or other compulsory acquisition renders it unreasonable or imprudent, in the opinion of the Operator and the Owner each acting reasonably, to use and operate the remaining portion of the Hotel Facilities in accordance with the Standard, then either the Owner, or the Operator may, within ___ (___) days of the occurrence of such condemnation, taking of property, down-zoning or other compulsory acquisition, terminate this Agreement on the terms and subject to the conditions set forth in Section 16.5, and, subject to Section 16.4, ____(__) days after the giving of such notice this Agreement shall terminate, in which case the Owner shall reimburse the Operator for all unpaid sums expended in the satisfaction or settlement of all operating and other business accounts incurred by the Operator in the Operation of the Hotel up to the Termination Date (including employee termination and relocation costs). In any condemnation proceeding, the Owner and the Operator shall, to the extent permitted by Applicable Laws, claim separately for any award to which it is entitled and cooperate with the other to enable the other to pursue its claim. If Applicable Laws do not permit separate claims or if the condemning authority grants only a single award with respect to all claims, the Owner shall pay to the Operator an amount equal to the Casualty Compensation Payment but in no case shall pay the Operator any amount greater than the amount of the award received by the Owner.

13.4 Condemnation for Temporary Use

In the event of condemnation, taking of property, or other compulsory acquisition of all or any part of the Hotel for temporary use, this Agreement shall remain in full force and effect. If such condemnation, taking of property, or other compulsory acquisition is for a period that does not extend beyond the Operating Term, any award with respect to such condemnation, taking of property, or other compulsory acquisition, including any interest, shall be paid into the Agency Account and included in Total Revenues to be allocated over the Fiscal Year or Fiscal Years included in the term of such taking on a prorated basis. If such condemnation, taking of property, or other compulsory acquisition is for a period extending beyond the Operating Term, that portion of any award with respect to such condemnation, taking of property, or other compulsory acquisition which is for the period up to the expiration of the Operating Term shall be paid into the Agency Account and included in Total Revenues to be allocated over the Fiscal Year or Fiscal Years included in the term of such taking on a prorated basis, and the remainder of such award shall be paid to the Owner.

13.5 The Operator's Reinstatement

If, following a termination of this Agreement in accordance with Section 13.1, 13.2 or 13.3, at any time during the ____ (___) year period following such termination, the Owner or any of its Affiliates commences to repair, rebuild or replace the Hotel, the Owner shall promptly give notice to the Operator in writing of such intention or commencement, and, at the Operator's election (exercisable by written notice given to the Owner within ___ (___) days of receipt by the Operator of the written notice given by the Owner or, if no such notice is given by the Owner, the Operator's actual knowledge of such commencement), this Agreement shall be reinstated (with only such amendments as are required due to changes in the type, scope or design of the Hotel); provided, however, that if the Operator was paid a Casualty Compensation Payment for the termination of this Agreement, such reinstatement shall not be effective unless and until the Operator delivers to the Owner, concurrently with its written notice to the

Owner as provided above, an amount equal to such Casualty Compensation Payment less any Management Fees that the Operator would have earned during the time of such termination had this Agreement remained in effect and the Hotel remained in the condition that it did immediately preceding the event that lead to such termination. For such purposes, Management Fees under this Agreement during the period of such termination shall be deemed to be the applicable prorata amount of Management Fees that were earned by the Operator during the last full Fiscal Year of this Agreement before such termination. The provisions of this Section 13.5 shall survive any termination of this Agreement under Sections 13.1, 13.2 or 13.3.

ARTICLE XIV. INSURANCE

14.1 Property and Liability Insurance

At all times throughout the Operating Term, and unless the Owner can procure same or superior terms and coverages at lower cost and with a comparably creditworthy insurer, the Operator shall, on behalf of, at Owner's cost and expense and for the account of the Owner, obtain and maintain:

- (a) (i) insurance against damage to the Hotel from risks of all nature including, without limitation, terrorism to the extent available on commercially reasonable terms, hurricane, flood and earthquake and comprehensive boiler and machinery insurance with respect to any boiler, pressure vessel and unfired pressure vessel and all air conditioning equipment, auxiliary piping, motors, compressors and electrical equipment (all on a broad form, blanket replacement-cost basis), in aggregate amounts which shall not be less than the full Replacement Value thereof and in no event less than the minimum amount necessary to avoid the effect of co-insurance provisions of such policies; and (ii) use and occupancy or business interruption insurance covering loss of income to the Owner and the Operator for a minimum indemnity period of __ (___) months resulting from the interruption of business caused by the occurrence of any of the risks insured against under the property damage insurance referred to above;

The Operator may reasonably require the Owner to increase such limits of insurance coverage and may reasonably require the Owner to carry other or additional insurance, it being agreed that it shall be reasonable for the Operator to require insurance of the types and in the amounts generally carried on other Operator Hotels. If the Operator arranges insurance for the Hotel and for other hotels which either the Operator or an Affiliate owns or operates and premiums are not separately allocated by the insurer, the premiums shall be allocated among the relevant hotels (including the Hotel) by the Operator, acting reasonably, on a consistent basis.

14.2 Workers' Compensation, Employers Liability, and Crime Insurance

Without limiting Section 14.1, and unless the Owner can procure same or superior terms and coverages at lower cost and with a comparably creditworthy insurer, the Operator shall, throughout the Operating Term, provide and maintain, or cause to be provided and maintained, (i) workers' compensation insurance or similar insurance required by employee benefit acts as well as Employers Liability Insurance having a minimum per occurrence limit of \$______ against all claims which may be brought for personal injury or death of any Hotel Staff, and (ii) crime insurance covering Hotel Staff for a minimum of \$______ per loss.

14.3 Employment Practices Liability Insurance

Without limiting Sections 14.1 and 14.2, and unless Owner can procure same or superior terms and coverages at lower cost and with a comparably creditworthy insurer, the Operator shall, throughout the Operating Term, provide and maintain, or cause to be provided and maintained, Employment Practices Liability Insurance having a minimum limit per occurrence and in the aggregate of \$_______, providing protection for the Owner and the Operator against claims made by employees, former employees, or potential employees for wrongful termination of employment, sexual harassment, and other employment-related allegations.

14.4 Umbrella Liability

Without limiting Sections 14.1 and 14.2, and unless the Owner can procure same or superior terms and coverages at lower cost and with a comparably creditworthy insurer, the Operator shall be authorized to, throughout the Operating Term, provide and maintain, or cause to be provided and maintained, umbrella liability coverage to a limit of not less than \$_______which shall provide excess coverage of all underlying insurances including those liability insurances outlined in Sections 14.1 and 14.2.

14.5 Deductibles

The Owner and the Operator may, at its option, effect the insurance required to be maintained by it pursuant to this Article 14 under a policy or policies in the amounts required less a reasonable deductible amount.

14.6 Evidence of Insurance

The Owner and the Operator shall produce to the other, upon request, evidence, including, if requested, copies of policies, of the renewal or replacement of insurance required to be provided by it and evidence of payment of all premiums and other sums of money payable for maintaining such insurance in force upon the Hotel.

14.7 Insurance Policies

All insurance policies shall be in appropriate amounts and forms and with reputable insurance companies reasonably acceptable to the other Party. All insurance provided for in this Article 14 shall be written in the name of the Owner and the Operator and their respective Affiliates and any mortgagee of the Owner permitted by this Agreement, as their interests may appear, and shall contain (i) a provision requiring the insurance company to notify each Party of any cancellation or material change at least ____ (___) days prior thereto, and (ii) a standard provision for the benefit of such mortgagee.

14.8 Insurance Proceeds

The fire damage and other property damage insurance policies obtained by or for the account of the Owner shall provide for payment of loss to the Owner and the Operator in accordance with their respective interests; provided, however, that the proceeds of all fire damage and other property damage insurance shall be paid into a separate account in the name of the Operator and the Owner jointly. The Owner shall be entitled to withdraw funds from such account solely for the purpose of paying the costs and expenses of repair, rebuilding or replacement of the Hotel in accordance with Article 13, and any balance, if any, remaining in such account after all such costs and expenses have been paid shall be retained by the Owner. Any amount deductible under the terms of the insurance required by Section 14.1 (other than use and occupancy or business interruption insurance) shall be allocated among the categories of properties insured according to the related repair, rebuilding or replacement cost of the damage or destruction to each such category. The proceeds of the use and occupancy or business interruption insurance shall be paid to the Agency Account and be included in Total Revenues for the Fiscal Year or Fiscal Years in which they are received, except to the extent that such insurance separately pays the Operator for lost Basic Fees and Incentive Fees.

14.9 Certificates

At least once during each Operating Year, the Owner and the Operator shall furnish, if requested by the other, certificates of renewal of all policies required hereunder in a form acceptable to Operator (currently, Acord 28). If the Owner or the Operator, as applicable, fails to deliver such certificates within ____ (___) days prior to the expiration of the applicable policy, the Party not in default (i) may upon notice to the Party in default take whatever action may be necessary to ensure that any insurance in respect of which such certificates have not been delivered does not expire, and (ii) shall be entitled to be reimbursed therefor by the Party in default.

14.10 Waiver

All policies of fire damage and other property damage insurance provided for herein shall require each insurer to waive its rights of subrogation against the Parties and each of them and any of their respective Affiliates or the agents or employees thereof. The Owner hereby assumes all risks in connection with the adequacy of any insurance program and waives any claim against the Operator and its Affiliates for any liability, cost or expense arising thereby out of any uninsured claims.

14.11 Insurance Appraisals

Within a reasonable time following receipt of the Owner's written request (but not more frequently than annually), the Operator, where practicable, shall obtain such insurance appraisals of the Replacement Value of the Hotel or any parts thereof as are specified in such written request. The cost of such appraisals shall be an Operating Expense.

ARTICLE XV. NAMES AND SYMBOLS

15.1 Name

During the Operating Term, the Hotel shall at all times be known and designated as "_______" shall at all times be known and designated as "_______." The Operator may, with the reasonable approval of Owner, cause the use of any other name, logo or slogan in association with the name of the Hotel, provided that such other name, logo or slogan conveys reasonably

to the public that the Hotel is operated in accordance with the Standard; provided, however, that the Owner's approval will not be withheld where such other name, logo or slogan is used by a majority of the Operator Hotels and spas, or, for so long as the Owner or Owner's Affiliates own the Hotel, includes the name "

15.2 Owner Symbols

During the Operating Term, the Operator shall have the right, but not the obligation, for the purposes of Operating and Marketing the Hotel, to use any trade name, trade mark, logo, insignia, slogan or distinguishing characteristic developed, used, or licensed by the Owner in connection with the Hotel, provided that the use by the Operator is such as to convey reasonably to the public that the Hotel is operated in accordance with the Standard. Operator's right to use the Owner's trade names shall expire at the end of the Operating Term, or earlier termination of this Agreement.

15.3 Member of Group

During the Operating Term, the Hotel shall be described by the Operator and the Owner as an Operator Hotel. At no time subsequent to the Termination Date shall the Owner or the Operator make any representation that the Hotel is an Operator Hotel or is in any way affiliated with or under the operation of the Operator.

15.4 Operator Symbols and Names

During the Operating Term, the Operator shall have the right to use any of the Operator Names and Operator Symbols in connection with the Operation of the Hotel and to use Operating Equipment and Operating Supplies marked with any one or more of the Operator Names or Operator Symbols. Any use of Operator Names and Operator Symbols by the Operator shall be at all times in accordance with the Standard. The Operator, in association with the Operation of the Hotel, and at its sole discretion, may cease using any Operator Name or Operator Symbol which it has previously used or may adopt any Operator Name or Operator Symbol which it has not previously used, irrespective of whether such Operator Name or Operator Symbol is or continues to be used by the Operator with respect to Operator Hotels other than the Hotel, provided always that the Operator uses names and symbols which convey reasonably to the public that the Hotel is operated in accordance with the Standard. The cost of changes in signage, Operating Equipment or Operating Supplies containing the Operator Names or Operator Symbols based upon changes in Operator Names, Operator Symbols or the use of such names or symbols among the Operator Hotels shall be borne by the Owner as Operating Expenses or Capital Expenditures, as applicable, unless such change is solely for the purpose of making a system-wide change in name of the Operator or accommodating a segmentation of the brand, in which event such costs shall be borne by the Operator. Notwithstanding the foregoing provisions of this Section 15.4 or of Section 15.1, the Operator may change the name of the Hotel with the consent of the Owner, not to be unreasonably withheld or delayed, only under the following circumstance: If the Operator decides to segment the brand, and the Operator desires to re-brand the segment into which the Hotel falls to a name other than _, the name of the Hotel may be changed to accommodate such brand segmentation, provided that all of the following are then true: (1) all of the Operator Hotels with the applicable defining characteristic (e.g., Full Service Luxury Hotels of a resort destination or of a city center urban character) shall be included in the new brand to which the Hotel is changed, (2) such segmentation shall not include any Hotels that are not Full Service Luxury Hotels, (3) such brand shall not have fewer

than	rooms under management, and (4) the	_ name shall be a part of the Hotel
name unless	Owner otherwise approves in its sole discretion.	

15.5 Subsequent to Termination

From and after the Termination Date, neither the Owner nor any other owner or operator of the Hotel shall have the right to use any Operator Symbols or Operator Names in connection with the operation of the Hotel; provided, however, that the Owner shall have the right to use for_____ (___) days (or such lesser period of time that terminates upon the rebranding of the Hotel) all of the Operating Equipment and Operating Supplies existing at the Termination Date which are marked with an Operator Name or an Operator Symbol, but if within _____ (____) days after such date the Operator offers to buy at its cost any or all of such Operating Equipment and Operating Supplies, then the Owner shall forthwith, cease to use and sell such Operating Equipment and Operating Supplies and deliver the remainder thereof to the Operator against payment therefor. In the event of a breach of this Section 15.5 by the Owner, then in addition to all of the other remedies available to the Operator hereunder for a breach of this Agreement, the Operator shall be entitled to an injunction or injunctions (temporary, permanent, and mandatory) against the Owner and any other party claiming the right of use of the Operator Names and Operator Symbols by, through, or under the Owner.

15.6 Ownership of Operator Names and Operator Symbols

The Operator represents to the Owner that, for the purposes of this Agreement, the Operator or its Affiliates are or will be the owners of, or are and will be entitled to use, the Operator Names and Operator Symbols and that the Operator Names and Operator Symbols are and will be distinctive of the Operator or such Affiliates, as the case may be.

15.7 Ownership of Hotel Names

The Owner represents to the Operator that, for purposes of this Agreement, the Owner is the licensee of the Owner Names pursuant to and subject to that certain Licensing Agreement by and among Trust Number ______, as trustees, and the Owner ("Licensing Agreement"), and the Owner covenants and agrees to keep and maintain this license in effect and good standing continuously through the Operating Term of this Agreement. The Owner agrees, however, that this Agreement shall constitute a license from the Owner to the Operator providing for the use of any Owner Names on behalf of the Owner free of charge for the purposes of this Agreement, and shall be effective only for so long as this Agreement is in full force and effect and any such license shall automatically terminate upon the expiration or early termination of this Agreement. The Operator agrees that any such use of any Owner Names shall apply only for the purposes of the Operation of the Hotel in accordance with this Agreement. The Owner shall have the right to inspect the use of any Owner Names by the Operator. If the Owner shall determine, in their reasonable discretion, that any use or proposed use by the Operator of an Owner Name may be prejudicial to the good name or reputation of the Owner or its Affiliates or to the Owner's, or its Affiliates', proprietary rights, then the Owner may require the Operator to discontinue or modify such use, and the Operator shall comply forthwith with such requirement.

15.8 Advertising

The Owner shall not, without the prior written consent of the Operator, use or refer to any Operator Names or Operator Symbols in any advertising or any materials describing the business of the Owner other than as required by Applicable Laws or to state as a matter of fact that the Operator operates the Hotel.

15.9 Interest of the Operator in Proprietary Materials

- (a) The Owner acknowledges that the Operator has a proprietary interest in all Operator Proprietary Materials, which shall be under the exclusive control of the Operator and its Affiliates. The Owner shall, without charge to the Operator, execute, acknowledge and deliver all documents that may be necessary or desirable to enable the Operator to protect or register its proprietary interest in any Operator Proprietary Materials. The Owner shall, without charge to the Operator, co-operate with the Operator as it may request in proceedings relating to the protection and registration of any Operator Proprietary Materials and execute any documents or pleadings required for such purpose, provided that the Operator shall indemnify the Owner against any loss, cost, damage or expense which may result from such co-operation, such protection to be in form and substance satisfactory to the Owner, acting reasonably. The Owner shall not attack, or assist any other Person in attacking, the validity of the Operator's proprietary interest in the Operator Proprietary Materials. To the extent that any of the Operator Proprietary Materials are trade secrets or confidential information, the Owner shall keep such trade secrets or proprietary information confidential and shall safeguard the same at least as carefully as the Owner safeguards its own trade secrets or confidential information, as the case may be, and at least as carefully as the Operator safeguards its own trade secrets or confidential information, as the case may be.
- The Operator acknowledges that the Owner has a proprietary interest in all Owner (b) Proprietary Materials, which shall be under the exclusive control of the Owner and its Affiliates. The Operator shall, without charge to the Owner, execute, acknowledge and deliver all documents that may be necessary or desirable to enable the Owner to protect or register its proprietary interest in any Owner Proprietary Materials. The Operator shall, without charge to the Owner, co-operate with the Owner as it may request in proceedings relating to the protection and registration of any Owner Proprietary Materials and execute any documents or pleadings required for such purpose, provided that the Owner shall joint and severally indemnify the Operator against any loss, cost, damage or expense which may result from such co-operation, such protection to be in form and substance satisfactory to the Operator, acting reasonably. The Operator shall not attack, or assist any other Person in attacking, the validity of the Owner's proprietary interest in the Owner Proprietary Materials. To the extent that any of the Owner Proprietary Materials are trade secrets or confidential information, the Operator shall keep such trade secrets or proprietary information confidential and shall safeguard the same at least as carefully as the Operator safeguards its own trade secrets or confidential information, as the case may be, and at least as carefully as the Owner safeguard their own trade secrets or confidential information, as the case may be.

15.10 Operating Policies

The Owner shall not take any action that may preclude the Hotel from being operated in accordance with the Operator's policies and procedures. Nothing herein shall give any Owner any right, title or interest in or to any of such policies or procedures, whether written or oral, except as a mere privilege and license during the Operating Term to have such policies or procedures used on its behalf with respect to the Operation of the Hotel in accordance with this Agreement.

ARTICLE XVI. EVENTS OF DEFAULT AND TERMINATION

16.1 Insolvency

If any of the following acts (each, an "Act of Bankruptcy") occurs and is continuing, with respect to the Owner, then the Operator shall have the right to terminate this Agreement by delivering to the Owner a notice of termination within ___ (___) days following the date of occurrence, and if such notice is delivered, this Agreement shall terminate on the date on which such notice is delivered. If an Act of

Bankruptcy occurs and is continuing, with respect to the Operator, then the Owner shall have the right to terminate this Agreement by delivering to the Operator a notice of termination within ____ (___) days following the date of occurrence, and if such notice is delivered, this Agreement shall terminate on the date on which such notice is delivered. The institution by such Party of proceedings of any nature under any law of the United States whether such law is now existing or subsequently enacted or amended, for the relief of debtors wherein such Party is seeking relief as debtor on account of its insolvency, which proceedings are not discharged or dismissed within a period of ____ (___) days after the institution thereof; The institution by such Party of a proceeding under any section of Title 11 of the United States Code (the "Bankruptcy Code") or any other law or statute of any federal or state jurisdiction, in the United States, respecting insolvency, bankruptcy, foreclosure, reorganization, dissolution, winding-up, or liquidation as now existing or hereafter amended or becoming effective, but not including any such proceeding relating to reorganization instituted by such Party in circumstances where such Party is not insolvent and such proceeding is being entered into by such Party for the general corporate or trust purposes of such Party; The institution against such Party of a proceeding under any section of the Bankruptcy Code or any other law or statute of any jurisdiction respecting insolvency, bankruptcy, foreclosure, reorganization, dissolution, winding-up, or liquidation as now existing or hereafter amended or becoming effective, which proceeding is not dismissed, stayed or discharged within a period of () days after the filing thereof or, if stayed, which stay is thereafter lifted without a contemporaneous discharge or dismissal of such proceeding; The appointment of a receiver or other like officer to take possession of assets of such Party having a value in excess of \$______, which appointment remains undischarged for a period of ____ (___) days from the date of such appointment; Admission by such Party in writing of its inability to pay its debts as they become due; and Attachment, execution or other judicial seizure of all or any part of such Party's assets such attachment, execution or seizure being with respect to an amount not less than \$_____ and remaining undismissed or undischarged for a period of ____ (___) days after the levy thereof, provided that such attachment, execution or seizure shall not constitute an Act of Bankruptcy if such Party posts a bond sufficient to satisfy fully the amount of such claim or judgment within ____ (___) days after the levy thereof and such Party's assets are thereby released from the lien of such attachment. 16.2 **Material Defaults** If the Owner shall have committed a Material Default and, except where the Material Default is not one reasonably capable of being remedied within a reasonable time, shall have failed to remedy such Material Default within _____(___) days after notice thereof given by the Operator (or such longer period, if any, as may reasonably be required for the remedying of such Material Default if the defaulting Party has commenced to cure such Material Default within such period and diligently pursued the curing thereof thereafter), then the Operator, in addition to any other remedies specifically provided for herein, shall be entitled to terminate this Agreement pursuant to Section 16.5. If the Operator shall have committed a Material Default and, except where the Material Default is not one reasonably capable of being remedied within a reasonable time, shall have failed to remedy such Material Default within (___) days after notice thereof given by Owner (or such longer period, if any, as may reasonably be

required for the remedying of such Material Default if the defaulting Party has commenced to cure such Material Default within such period and diligently pursued the curing thereof thereafter), then Owner, in addition to any other remedies specifically provided for herein, shall be entitled to terminate this Agreement pursuant to Section 16.3

16.3 Rights of Non-Defaulting Party

A non-defaulting Party entitled to terminate this Agreement pursuant to Section 16.2 may give to the other Party (the Operator in the case of a defaulting Owner, or the Owner in the case of a defaulting Operator) notice electing to terminate this Agreement on the terms and subject to the conditions set forth in Section 16.5, and, subject to Section 16.4, ____ (___) days after the giving of such notice this Agreement shall terminate.

16.4 Disputes

Any termination notice given pursuant to Section 16.3 or Sections 13.1, 13.2, or 13.3 shall not result in the termination of this Agreement if a bona fide dispute with respect to any alleged Material Default or other event entitling a Party to terminate this Agreement has arisen between the Parties and such dispute has been submitted to arbitration pursuant to Section 19.2 prior to the expiration of the ____ (___) day period commencing on the giving of such notice and referred to in the relevant Section. If an arbitration panel determines that a Material Default has in fact occurred or that any other event entitling a Party to terminate this Agreement has in fact occurred, then unless, in the case of a Material Default, the matters so complained of are adjusted or positive measures have been taken to rectify such Material Default in accordance with the award of the arbitration panel within ____ (___) days after the determination of the arbitration panel or such other period as the Parties may agree upon or the arbitrator may order, the Party entitled to terminate this Agreement may give notice to the other Parties, as provided above, of its intention to terminate this Agreement upon a date to be specified in such notice, which date shall be not less than ____ (___) days from the date of such determination. In the event such notice is given, this Agreement shall terminate upon the date specified in such notice.

16.5 Events on Termination

If this Agreement is terminated, expired, or is deemed to have been terminated pursuant to the provisions hereof, the following provisions shall apply:

- (a) all amounts due and owing between the Parties under this Agreement accrued to the Termination Date shall become immediately due and payable, including without limitation, any Subordinated Incentive Fee;
- (b) the Operator shall assign to the Owner all contracts and other instruments as may be in the Operator's name relating to the Operation of the Hotel and shall use reasonable efforts to obtain all consents necessary therefor;
- the Operator shall transfer to the Owner all of the Owner's books and records respecting the Hotel in the custody and control of the Operator, so as to ensure the orderly continuance of the Operation of the Hotel, but such books and records shall thereafter be available to the Operator as reasonably necessary (it being agreed that the Operator's use of such materials for purposes competitive with the Hotel is not reasonably necessary, provided that nothing in this subsection (c) shall, however limit in any manner the Guest Records License) at all reasonable times, upon reasonable notice, for inspection, audit, examination and transcription for a period of ____ (___) years;

(d) the Operator shall, to the extent permitted by Applicable Laws, assign and transfer to	the
Owner the Operator's right, title and interest (if any) in and to all liquor, restaurant and other licenses a	and
permits (if any) used by the Operator in the Operation of the Hotel, other than Proprietary Materials, a	and
shall use reasonable efforts to obtain all consents necessary therefor;	

(e) the Operator shall either provide to the Owner a copy of all data and information relating
to the Operation of the Hotel during the () months immediately preceding the Termination Date
excluding any such data or information which are Proprietary Materials other than guest histories an
guest profiles relating exclusively to the Hotel or, if permitted under the applicable software license
provide Owner with a () day no-fee license for continued use of any software containing suc
data and information, and the right to copy such data and information, but not the software;

(f) the Operator shall send a written notice to guests in the Hotel who have safe deposit
boxes, advising them of the termination and requesting the removal and verification of the contents
thereof within () days after such date. The Operator shall have a representative in the Hotel
during such () day period for this purpose. Boxes of guests not responding to such written
notice shall be listed at the end of such () day period and such boxes shall be opened in
compliance with Applicable Laws and in the presence of representatives of the Owner and the Operator
and the contents recorded. The Operator shall remain responsible for any claims pertaining to property
allegedly deposited in such safe deposit boxes before the Termination Date and not recovered by the
guests or delivered to the Owner;

- (g) the Operator shall peaceably and quietly surrender and deliver up to the Owner possession of the Hotel in accordance with its obligations contained herein, with the specific intent to effectuate a smooth transition of management of the Hotel to the Owner or a third party so as to minimize any potential disturbance of guests and to maintain a smooth operation of the Hotel and to not commit any "waste" of the physical components of the Hotel; and
- (h) upon the payment to the Operator of all amounts due to the Operator hereunder, all remaining amounts in the Agency Account and any other accounts created pursuant to the terms of this Agreement in Operator's name shall be transferred to the Owner.

16.6 Employment of Hotel Staff

In the event of the expiration or termination of this Agreement for any reason, the Owner shall reimburse the Operator for and indemnify the Operator from and against any and all costs, expenses, claims and liabilities, including, without limitation, claims for termination or severance pay, which the Operator may suffer, incur or be subject to in respect or as a result of the termination of the employment of any Hotel Staff upon the expiration or termination of this Agreement, except if termination is due to claims arising from Operator's bad faith, gross negligence, or willful misconduct. notwithstanding any provision of this Agreement to the contrary, if termination of this Agreement by the Owner prior to the expiration of the term would expose the Operator to any claim or liability based on a violation of the United States Worker Adjustment and Retraining Notification Act, as amended ("WARN Act") or similar laws or regulations, the effective date of such termination shall be deferred to the date _(___) days following the final determination of the termination date, unless the Owner (i) shall have delivered to the Operator an indemnity in favor of the Operator pursuant to which the Owner or the successor owner of the Hotel agrees to indemnify, defend and hold the Operator harmless against any and all claims by Hotel Staff whose employment is terminated prior to the close of such () day period and (ii) shall have established, to the reasonable satisfaction of the Operator, that the credit of the Owner or the successor are adequate to perform such indemnity obligation.

16.7 Rights in Addition

The rights granted pursuant to this Article 16 shall not be in substitution for, but shall be in addition to any and all rights and remedies for breach of contract granted by Applicable Laws.

16.8 Use of Operating Policies Following Termination

Subject to the provisions of Section 15.9, after the expiration or sooner termination of this Agreement, neither the Owner nor any of their officers, directors, employees, agents or independent contractors shall retain any copy of all or any part of any policies or procedures provided to the Owner in connection with the Operation of the Hotel, and neither the Owner nor any other owner, operator or manager of the Hotel shall have the right to use any such policies and procedures in connection with the operation of the Hotel or any other property. The Owner shall cause all copies of all such policies and procedures in the Owner's possession or control to be returned to the Operator promptly following any such expiration or sooner termination of this Agreement.

16.9 Special Provisions Relating to Interpretation and Enforcement of the Agreement

- (a) The Owner and the Operator acknowledge that, but for the term of this Agreement and the parties' commitment to the contemplated relationship for the term of this Agreement, the Operator would not have made the significant investments of money and time necessary to commence and conduct services under this Agreement and foregone other opportunities. The specific limitations to the parties' respective rights of termination set forth in this Agreement, therefore, have been the subject of material extensive and focused negotiation by the parties and their counsel for the purpose of avoiding a wrongful termination of this Agreement either by the Owner's wrongful termination of this Agreement or by Operator's termination of this Agreement pursuant to Section 16.2 herein as a result of an Owner's Material Default (collectively, a "Breach Termination").
- Owner and Operator further acknowledge and agree that Operator's damages in the event (b) of a Breach Termination of this Agreement would be difficult or impossible to determine, including, without limitation, loss of Management Fees and other revenue under this Agreement, harm to Operator's reputation, loss of goodwill, disruption of operations, loss of contributions to budgeted system expenses and loss of a hotel with strategic significance to Operator's system. Given the inherent uncertainty as to the measure of such damages and the parties desire to establish a methodology for the calculation of damages, Owner and Operator agree that Operator shall be entitled to receive a termination fee in the event of a Breach Termination in an amount (the "Breach Termination Fee") equal to the sum of the percent (%) discount factor) of the Management Fees estimated to be present value (using a received for each Fiscal Year of the remaining Operating Term of this Agreement, including all Extension Terms remaining under this Agreement. The Management Fees estimated to be received for any given Fiscal Year shall be determined by increasing the Management Fees received for the last full Fiscal Year prior to the termination of this Agreement (if there has not been one full Fiscal Year under this Agreement prior to such termination, then the Management Fees that would have been earned by Operator for the (____) month period under the Annual Budget for such Fiscal Year as though all projections therein were realized) using a _____ percent (____%) growth rate for each year that has elapsed since such termination. For example, if this Agreement was wrongfully terminated by an Owner at the end of Fiscal Year () so that there were () full Fiscal Years remaining under the term of this Agreement, and the Management Fees earned by Operator during Fiscal Year () totaled dollars (\$), the Breach Termination Fee would be calculated by (i) calculating the estimated Management Fees for Fiscal Years ____ (___) and ____ (___) using a _____ percent (___%) growth rate; (ii) discounting these estimated Management Fees to their present value using a _____

percent (___%) discount rate; and (iii) calculating the sum of these amounts. The Breach Termination Fee for a partial year shall be calculated on a pro rata basis.

- (c) Owner and Operator specifically acknowledge that the calculation of the Breach Termination Fee must take into account, and reasonably does take into account, (1) Operator's loss of Management Fees and the benefit of this Agreement over the full remaining term of this Agreement (assuming the effective exercise of all extension rights), (2) the material impact of inflation on Management Fees over such an extended period, (3) the inability to predict with a more certain method absolute growth in the measure of GOP and, therefore, the Incentive Fee payable to Operator over the balance of the term of this Agreement, and (4) the inherent difficulty in predicting or quantifying the measure of damages from the non-fee components of Operator's damages described in clause (b) above.
- (d) OWNER AND OPERATOR AGREE THAT THE BREACH TERMINATION FEE IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES OPERATOR WOULD SUFFER IN THE EVENT OF A BREACH TERMINATION, AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT. OWNER AND OPERATOR AGREE THAT OPERATOR'S RIGHT TO RECEIVE THE BREACH TERMINATION FEE SHALL BE THE SOLE MEASURE OF DAMAGES OF OPERATOR FOR OWNER'S WRONGFUL TERMINATION OF THIS AGREEMENT (DIRECTLY BY AN OWNER OR BY OPERATOR AS A RESULT OF OWNER'S BREACH OF THIS AGREEMENT) AT LAW, EXCEPTING IN THE CASE OF OPERATOR, OPERATOR'S RIGHT TO RECEIVE PAYMENT OF AMOUNTS ACCRUED, DUE OR OWING TO OPERATOR AS OF THE DATE OF THE BREACH TERMINATION UNDER THIS AGREEMENT AND WITHOUT AFFECTING OR LIMITING ANY RIGHTS OPERATOR MAY HAVE IN EQUITY.
- THE OWNER ACKNOWLEDGES THAT (1) OPERATOR WOULD SUFFER DAMAGES TO ITS BRAND AND REPUTATION IN THE EVENT OF A TERMINATION OF THIS AGREEMENT BY OWNER IN BREACH OF THE AGREEMENT AND THAT DAMAGES ON ACCOUNT OF SUCH HARM WOULD NOT BE AN ADEQUATE REMEDY, (2) THAT THE CHARACTER OF OPERATOR'S INTEREST IN THE HOTEL (IN TERMS OF OPERATOR'S FINANCIAL INVESTMENTS AND INTEREST IN PROSPECTIVE FINANCIAL ACHIEVEMENT OF THE HOTEL) IS AND SHALL BE DEEMED TO BE COUPLED WITH AN INTEREST, (3) THAT EACH OWNER KNOWINGLY AND AS A MATERIAL ELEMENT OF THE BARGAIN WAIVES ANY RIGHT OR POWER OTHERWISE AVAILABLE TO TERMINATE THIS AGREEMENT OTHER THAN IN STRICT ACCORDANCE WITH ITS TERMS AND (4) THAT THE OWNER SPECIFICALLY GRANTS THE OPERATOR THE RIGHT TO SEEK AND SECURE INJUNCTIVE RELIEF WITHOUT BOND AND SPECIFIC PERFORMANCE OF THIS AGREEMENT, IF THE OWNER SHOULD ATTEMPT A SUCH A TERMINATION IN BREACH. ANYTHING HEREIN CONTAINED, AND ANYTHING AT LAW OR IN EQUITY, TO THE CONTRARY NOTWITHSTANDING, IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES (INCLUDING, WITHOUT LIMITATION, ANY ARBITRATION PROCEEDING) ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR IN ANY MANNER PERTAINING TO THE HOTEL, THE HOTEL FACILITIES, OR TO THE RELATIONSHIP OF THE PARTIES HEREUNDER, EACH PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY AGREES TO SEEK ONLY ITS DIRECT AND ACTUAL DAMAGES AND WAIVES AND RELEASES ANY RIGHT, POWER OR PRIVILEGE EITHER MAY HAVE TO CLAIM OR RECEIVE FROM THE OTHER PARTY HERETO ANY PUNITIVE, EXEMPLARY, STATUTORY OR TREBLE DAMAGES, EACH PARTY ACKNOWLEDGING AND AGREEING THAT THE REMEDIES HEREIN PROVIDED, AND OTHER REMEDIES AT LAW AND IN EQUITY EXCEPT AS THE SAME MAY HAVE BEEN WAIVED HEREIN, WILL IN ALL CIRCUMSTANCES BE ADEQUATE. THE FOREGOING WAIVER AND RELEASE SHALL APPLY IN ALL ACTIONS OR PROCEEDINGS BETWEEN THE

PARTIES AND FOR ALL CAUSES OF ACTION OR THEORIES OF LIABILITY, WHETHER FOR BREACH OF THIS AGREEMENT OR FOR VIOLATION OF ANY OTHER DUTY OWING BY EITHER PARTY TO THE OTHER WHICH MAY IN ANY WAY RELATE TO OPERATOR'S MANAGEMENT OR OPERATION OF THE HOTEL, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO ANTI-TRUST OR FIDUCIARY OBLIGATIONS. BOTH PARTIES FURTHER ACKNOWLEDGE THAT THEY ARE EXPERIENCED IN NEGOTIATING AGREEMENTS OF THIS SORT, HAVE HAD THE ADVICE OF COUNSEL IN CONNECTION HEREWITH, AND HAVE BEEN ADVISED AS TO, AND FULLY UNDERSTAND, THE NATURE OF THE WAIVERS CONTAINED IN THIS SECTION, AND HAVE SPECIFICALLY AGREED THAT THE EXPRESS TERMS AND CONDITIONS OF THIS AGREEMENT ARE INTENDED TO FULLY EXPRESS AND DEFINE THE EXTENT AND LIMITATIONS OF THE RELATIONSHIP BETWEEN THE PARTIES, AND NO OTHER RIGHTS OR DUTIES ARE INTENDED TO BE IMPLIED OR INFERRED.

(f) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR THE COMMON OR STATUTORY LAW APPLICABLE TO THIS AGREEMENT, THE PARTIES STIPULATE AND AGREE AS FOLLOWS: (1) IF A CONFLICT EXISTS BETWEEN THE EXPRESS TERMS AND CONDITIONS OF THIS AGREEMENT AND THE TERMS AND CONDITIONS IMPLIED BY THE APPLICABLE LAW GOVERNING THE RELATIONSHIP BETWEEN A PRINCIPAL AND AGENT, THE EXPRESS TERMS AND CONDITIONS OF THIS AGREEMENT SHALL GOVERN AND CONTROL; (2) ANY COURT HAVING JURISDICTION OVER THE PARTIES TO, OR THE SUBJECT MATTER OF, THIS AGREEMENT MAY ORDER THE REMEDY OF SPECIFIC PERFORMANCE FOR THE ANTICIPATORY OR ACTUAL BREACH OR THE ATTEMPTED OR ACTUAL TERMINATION OF THIS AGREEMENT, NOTWITHSTANDING ANY EXISTENCE OF AN AGENCY RELATIONSHIP BETWEEN THE OWNER AND OPERATOR; (3) THE EXPRESS PROVISIONS OF THIS AGREEMENT ESTABLISH AND CREATE THE ONLY DUTIES AND OBLIGATIONS OF THE PARTIES TO EACH OTHER, EXCEPT FOR THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING. WHICH SHALL APPLY IN ALL SITUATIONS OTHER THAN WHERE THIS AGREEMENT PROVIDES THAT A PARTY MAY PERFORM A DUTY OR OBLIGATION IN THAT PARTY'S SOLE DISCRETION; AND (4) THIS AGREEMENT SHALL BE ENFORCEABLE BETWEEN THE PARTIES UNTIL THE EXPIRATION OF THE OPERATING TERM (INCLUDING ANY EXTENSION TERMS THAT ARE EXERCISED), SUBJECT ONLY TO RIGHTS OF EARLY TERMINATION THAT ARE SPECIFICALLY PROVIDED IN THIS AGREEMENT.

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OWNER'S INITIALS	

16.10 Failure to Maintain the Standard

Notwithstanding any other provision of this Agreement, if the Owner fails to approve or make any Capital Expenditures or repair expenditures necessary for the continued Operation of the Hotel or which in the opinion of the Operator are required to maintain the Hotel in accordance with the Standard, such failure shall be deemed to be a Material Default. However, in addition to the Operator's right to terminate this Agreement pursuant to Sections 16.2 and 16.3, the Operator shall also be entitled to the following remedy: Operator shall be entitled to provide written notice of default to the Owner. If the Owner does not either cure the default or provide to the Operator sufficient funds to enable the Operator to make the expenditures necessary to cure the default within a period of ____ (___) days after receipt of

notice, the Operator may, but shall not be required to, advance the required funds in accordance with Section 12.4 to pay such expenditures.

16.11 Reserved

16.12 Termination for Failure to Achieve Performance Test

Owner shall have the right to terminate this Agreement, if for each of any ()
consecutive Fiscal Years during the Operating Term beginning after the later of: (i) the () full Fixed Years of the Operating Terms and (ii) the () full Fixed Years of the Operating Terms and (iii) the
Fiscal Year of the Operating Term and (ii) the () full Fiscal Year of the Operating Term
following the full completion of the rebuilding of and the availability of to guests of
the Hotel, both (a) the annualized RevPAR for the Hotel is less than percent (%) of the
annualized RevPAR for the Competitive Set; and (b) the actual GOP is less percent (%) of the
Gross Operating Profit in the Annual Budget for each of such years (collectively, the "Performance Test"); provided that Owner shall not have the right to terminate this Agreement if the Performance Test
Test"); provided that Owner shall not have the right to terminate this Agreement if the Performance Test is failed as a result of a Force Majoure Event, a material reduction in the number of available room nights
is failed as a result of a Force Majeure Event, a material reduction in the number of available room nights
resulting from a major capital renovation or improvement program at the Hotel, or the failure of Owner to perform any of their obligations under this Agreement, including, without limitation, the obligation to
provide working funds. In the event no Annual Budget has been approved or deemed approved by the
Owner and Operator for any Fiscal Year, Operator shall be deemed to have passed the Performance Test
for such Fiscal Year. The RevPAR for the Competitive Set will be determined by referring to the STR
Report published by Smith Travel Research, or, if Smith Travel Research ceases publishing such data,
then another source, reasonably selected by Operator and Owner on the basis of its acceptance for similar
purposes within the hospitality industry, that provides comparable data. Operator shall have the right to
cure any Performance Test failure and avoid the termination of this Agreement by paying to Owner the
difference between (i) the actual GOP earned by the Hotel for the applicable Fiscal Years, and (ii) lower
of (a) the GOP that the Hotel would have earned had the Hotel achieved percent (%) of the
annualized RevPAR for the Competitive Set for such years, and (b) the actual GOP that the Hotel would
have earned had the Hotel achieved percent (%) of the Annual Budgets for such years
("Performance Cure Payment"). In order for Owner to terminate pursuant to this section, Owner must
provide an irrevocable notice of termination ("Performance Termination Notice") within ()
days after receipt by Owner of certified financial statements for a Fiscal Year showing the actual GOP
and the reasonable availability to Owner of reports showing the annualized RevPAR for the Competitive
Set. The Performance Termination Notice shall specify a termination date not less than ()
days nor more than () days after the giving of the Performance Termination Notice. In
the event of Owner's delivery of a Performance Termination Notice, Operator shall have the right, within
() days following its receipt of the Performance Termination Notice, to make the
Performance Cure Payment, and if such Performance Cure Payment is timely made, the Performance
Termination Notice shall be deemed withdrawn and Owner shall not thereafter be entitled to deliver a
new Performance Termination Notice until and unless a new failure under the Performance Test shall
have occurred. In addition, the Basic Fee and the Incentive Fee shall be equitably adjusted upward to
reflect the additional GOP being paid to Owner through the Performance Cure Payment.

ARTICLE XVII. TRANSFERS

17.1 Restrictions on Transfers

Except as otherwise provided in this Article 17, the Owner may not effect a Transfer without the prior written consent of the Operator, and the Operator may not effect a Transfer without the prior written consent of the Owner, which consent in each case may be granted or withheld by the applicable Party in

its absolute discretion. The consent of a Party to a Transfer on any occasion shall not be deemed to be a consent to any other Transfer on any future occasion.

17.2 Permitted Transfers by the Operator

Notwithstanding any other provision in this Agreement, the Operator may at any time and from time to time effect a Transfer to an Affiliate, if such Affiliate remains an Affiliate of the Operator, or to any successor or assignee of the Operator which may result from any merger, consolidation, transfer or reorganization, or to another Person which acquires all or substantially all of the assets of the Operator or which, concurrently with the Transfer, becomes an Affiliate of the Operator, provided that the transferee (i) expressly assumes by covenant in favor of the Owner all the obligations of the Operator under this Agreement and Operator remains expressly liable therefore, (ii) covenants with the Owner to keep and perform or cause to be kept and performed all the covenants and conditions contained in this Agreement on the part of the Operator to be kept and to be performed, and (iii) the Owner has consented to such Transfer, which consent shall not be unreasonably withheld if such transferee operates other Operator Hotels, and has sufficient employees, expertise and other resources to enable it to perform all of the duties of the Operator hereunder and operate the Hotel in accordance with the Standard, and the transferee will obtain the benefit of the Operator's Centralized Services and Global Reservations System. The Operator specifically acknowledges that pledges or assignments of the Operator's rights under this Agreement are within the definition of Transfers prohibited under Section 17.1, provided that the Operator may at any time and from time to time effect Transfers limited to Transfers of the Operator's rights to receive fees and reimbursables under this Agreement.

17.3 Permitted Transfers by the Owner

So long as no Material Default attributable to the Owner has occurred and remains uncured, the Owner shall have the right to effect any Transfers so long as following the Transfer: (i) the Owner remains an Affiliate of the pre-Transfer Owner or (ii) no change of Control of Owner results therefrom. In addition, the Owner shall have the right to Transfer its entire interest in this Agreement, together with (but not independent of) the direct or indirect transfer of all or substantially all of its ownership interest in the Hotel to an assignee/transferee that is a Qualified Person in accordance with the provisions of Section 17.4, provided that in any Transfer of the Owner's interest under this Agreement the transferee expressly assumes by written covenant in favor of the Operator all of the obligations of the Owner under this Agreement and covenants with the Operator to keep and perform or cause to be kept and performed all the covenants and conditions contained in this Agreement on the part of the Owner. For the purposes of this Section 17.3, a transferee shall be deemed an Affiliate of the Owner so long as Control of the transferee is vested in any one or more of the following, provided that each of the foregoing or the entity controlled by them is otherwise a Qualified Person (but without regard to the requirement that such Qualified Person be Creditworthy), (A) any revocable, inter vivos trust for the benefit of the transferor and such transferor's spouse, (B) a limited partnership of which (1) such transferor, either directly or indirectly through a trust of which such transferor is, or with such transferor's spouse is, the sole managing general partner, and (2) the remaining partners consist of one or more of such transferor's spouse, siblings, lineal descendants or trusts for the benefit of one or more of the foregoing, (C) an irrevocable trust for the benefit of one or more of such transferor's spouse or lineal descendants, (D) any combination of any of the foregoing, or (E) any entity in which a majority of ownership interests are owned, directly and indirectly, by the same Persons that own the Owner. The Owner or any partner or other constituent member of the Owner desiring to effect a Transfer of all or any part of its interest in the Hotel, Agreement, or Owner, as applicable, shall give the Operator not less than ___ (___) days advance written notice of its intention, which notice shall identify in reasonable detail the owners of the proposed transferee and shall be accompanied by the latest available audited and unaudited financial statements of the proposed transferee and its beneficial owners. Nothing herein shall permit any

Owner to Transfer directly or indirectly any portion of its interest in the Hotel or this Agreement that would have the effect of further dividing the ownership of Hotel. Furthermore, Operator agrees and acknowledges that the transactions contemplated in the Sale Escrow Agreement and the subsequent conveyance of the portion of the Hotel to the Owner by the Trustee as described in Recital A of this Agreement are permitted Transfers hereunder.

- (b) The Owner may at any time and from time to time mortgage, charge or otherwise encumber all or any part of its right, title and interest in the Hotel or in the equity interests of the Owner to a Qualified Person provided that: (i) the mortgage, charge or encumbrance (hereinafter referred to as a "Mortgage") contains a covenant on the part of the party in whose favor it is given (hereinafter referred to as the "Mortgagee") not to take any step to enforce its rights against the Hotel resulting from any default under such Mortgage unless the Mortgagee has given notice of such default to the Operator and the Operator has failed to remedy such default within the period of ____ (___) days after the receipt of such notice or such longer period after receipt of such notice as shall be required to remedy such default with due diligence provided that if any such longer period shall be required to remedy such default, the Operator has notified such Mortgagee within such period of _____(___) days that it intends to remedy such default with due diligence; (ii) such Mortgage provides that the effect of any provision for acceleration of the payment of the principal sum or any part thereof in the event of such default shall be nullified if the Operator remedies such default as if no such default had occurred, provided, however, that, subject to the foregoing, such nullification shall in no way extend to or be taken in any manner whatever to affect any subsequent default or the rights resulting therefrom; and (iii) the Mortgagee enters into an agreement with the Operator whereby such Mortgagee shall (A) extend to the Operator the benefit of the covenants referred to in paragraphs (i) and (ii) of this Section 17.3(b), and (B) otherwise covenant and agree to be bound by all the obligations of the Owner under this Agreement in the event that such Mortgagee shall foreclose or otherwise take possession of the Hotel pursuant to its Mortgage, if and so long as such possession is taken and retained by such Mortgagee, and that if it shall exercise any power of sale under its Mortgage or similar remedy it shall require the purchaser to assume the obligations of the Owner under this Agreement and to keep and to perform or cause to be kept and performed all the covenants and conditions contained in this Agreement to be kept and performed by the Owner. The Operator acknowledges that an agreement substantially consistent with the form attached to this Agreement as Schedule 17.3(b) (the "SNDA Agreement") shall satisfy the requirements of clause (iii) above. Notwithstanding any other provision of this Agreement, if as a result of a foreclosure of a Mortgage or similar remedy, the Person in possession of any portion of the Hotel is not a Qualified Person, such Person shall be considered to have committed a Material Default (and all cure periods in Section 16.2 shall be considered waived), and the Operator, in addition to any other remedies specifically provided for herein, shall be entitled to terminate this Agreement pursuant to Section 16.2
- (c) Concurrently with the execution of this Agreement, the Owner shall (i) have each mortgagee to any presently existing mortgage, as such mortgagees are listed on **Schedule 17.3(c)** attached hereto, execute and record an agreement substantially in the form as the SNDA Agreement.

17.4 Right of First Offer; Right to Match Third Party Offer

The Owner shall not solicit or accept any offer from a bona fide, Qualified Person-third party purchaser for the purchase of all or any part of its ownership interest in the Hotel except as otherwise expressly provided in this Agreement. The Owner may solicit or accept an offer for the purchase of *all* of its ownership interest in the Hotel, and only *all* of its ownership interest, if assumption of this Agreement is required and, in addition thereto, the Owner has first complied with the following procedures, provided that the rights and obligations in this Section 17.4 shall: (i) only apply for as long as the named Operator, Operator Parent, or an Affiliate of either of them, is the Operator under this Agreement, and (ii) not apply

to any transaction contemplated in the Sale Escrow Agreement or to the conveyance of the applicable portion of the Hotel to the Owner by the Trustee:

- Right of First Offer. The Owner shall, prior to offering its ownership interest in the Hotel to any other potential purchaser, provide the Operator with written notice, including the Owner's proposal containing all material terms and conditions on which it agrees to sell its ownership interests in the Hotel on an "all cash" purchase price basis (the "ROFO Offering Notice"). The Operator shall have days from the date of receipt of the ROFO Offering Notice to inform the Owner as to whether the Operator desires to purchase such ownership interests in the Hotel on the terms set forth in the ROFO Offering Notice. If the Operator does not elect to purchase such interests on the basis of such ROFO Offering Notice, or fails to respond to Owner during the period described above (i) the Owner is free to sell its ownership interests in the Hotel to any unaffiliated Qualified Person subject to other applicable provisions of this Agreement (other than the provisions of Section 17.4(b) hereof which shall not be applicable), at a gross "all cash" purchase price equal to not less than that price set forth in the ROFO Offering Notice and otherwise on the substantially similar terms and conditions as those contained in the ROFO Offering Notice, and subject, in all instances, to assumption of this Agreement by such unaffiliated Qualified Person; and (ii) the rights of the Operator under this Section, with respect to such ROFO Offering Notice only, shall be deemed void and of no further force or effect; provided, however, that if the Owner has not executed a binding agreement or purchase and sale with a third party ("Third Party Purchase Contract") as of the date ____ (___) days after the date that the Operator is deemed to have elected to decline the ROFO Offering Notice, or the Third Party Purchase Contract fails to close and is thereafter terminated, the Owner shall re-offer its ownership interests in the Hotel to the Operator in accordance with this Section 17.4(a) in the event it elects to continue to pursue such sale or any new purchase proposal.
- Right of First Refusal. The Owner shall, prior to accepting an offer to purchase its ownership interests in the Hotel or Owner's direct or indirect interest therein from any potential purchaser ("Offeror") other than as permitted in Section 17.4(a), provide the Operator with written notice, including the Offeror's proposal containing all material terms and conditions on which it agrees to sell its ownership interests in the Hotel on an "all cash" purchase price basis (the "ROFR Offering Notice"). The Operator shall have ____ (__) days from the date of receipt of the ROFR Offering Notice to inform the Owner as to whether the Operator desires to purchase such interests in the Hotel on the terms set forth in the ROFR Offering Notice. If the Operator does not elect to purchase such interests in the Hotel on the basis of such ROFR Offering Notice, or fails to respond to Owner during the period described above (i) the Owner is free to sell its ownership interests in the Hotel to any unaffiliated Qualified Person subject to other applicable provisions of this Agreement, at a gross "all cash" purchase price equal to not less than that price set forth in the ROFR Offering Notice and otherwise on the substantially similar terms and conditions as those contained in the ROFR Offering Notice, and subject, in all instances, to assumption of this Agreement by such Offeror; and (ii) the rights of the Operator under this Section, with respect to such ROFR Offering Notice only, shall be deemed void and of no further force or effect; provided, however, that if the Owner has not executed a binding agreement or purchase and sale contract and closed the transaction with the Offeror as of the date ____ (___) days after the date that the Operator is deemed to have elected to decline the Offering Notice, or the Third Party Purchase Contract fails to close and is thereafter terminated, the Owner shall re-offer its ownership interests in the Hotel to the Operator in accordance with this Section 17.4(b) in the event it elects to continue to pursue such sale or any new purchase proposal.
- (c) <u>Applicability</u>. Notwithstanding any provision of this Agreement otherwise, if the Owner sells or transfers its ownership interests in the Hotel in accordance with this Section 17.4, the buyer or transferee, as applicable, shall assume this Agreement pursuant to the terms hereof, and the provisions of Section 17.4(a) and Section 17.4(b) shall be applicable to such buyer or transferee as though the Operator

never was deemed to have declined a ROFO or ROFR Offering Notice hereunder. The Operator shall continue to enjoy the rights granted in this Section 17.4 for so long as this Agreement remains in full force and effect. If in any such instance the Operator elects not to exercise its rights hereunder or to waive such rights, such election shall not constitute a waiver of the Operator's right to a subsequent ROFO or ROFR Offering Notice, as applicable. Notwithstanding any other provision of this Agreement, if Operator makes an all-cash counter-offer on substantially similar terms to any ROFO or ROFR Offering Notice, as applicable, within _____ (____) days of Operator's receipt thereof, Owner shall not sell its ownership interests in the Hotel for any amount less than _____ percent (____%) of Operator's all-cash counter-offer price.

(d) <u>Violation.</u> Any sale of the Hotel, or Owner's direct or indirect interest therein, in violation of this Section 17.4 shall be void unless subsequently approved in writing by Operator.

ARTICLE XVIII. INDEMNIFICATION

18.1 Indemnities

- (a) The Owner shall indemnify and hold the Operator and its Affiliates and any of their respective directors, officers, employees, consultants, agents and representatives (collectively, the "Operator Indemnified Parties") harmless from and against any and all liabilities, fines, suits, claims, obligations, damages, penalties, demands, actions, costs and expenses of any kind or nature (including, without limitation, legal fees) arising out of any action or omission or course of action on the part of the Owner in the performance of its obligations under this Agreement or otherwise in connection with any obligation incurred by or instrument executed by an Operator Indemnified Party alone, an Operator Indemnified Party together with the Owner or by the Owner alone, whether or not an Operator Indemnified Party shall be the signatory or one of its signatories on behalf of the Owner and whether incurred or executed on behalf of the Owner; provided that this indemnity shall not apply to any liabilities, fines, suits, claims, obligations, damages, penalties, demands, actions, costs and expenses resulting from the willful misconduct, gross negligence or bad faith of the Operator Indemnified Party or the willful breach by an Operator Indemnified Party of the terms and provisions of this Agreement.
- (b) The Operator shall indemnify and hold the Owner and any of its directors, officers, employees, consultants, agents and representatives (collectively, the "Owner Indemnified Parties") harmless from and against any and all liabilities, fines, suits, claims, obligations, damages, penalties, demands, action, costs and expenses of any kind or nature (including, without limitation legal fees) arising out of or caused by the willful misconduct, gross negligence or bad faith of the Operator or the willful breach by the Operator of the terms and provisions of this Agreement.
- (c) Consistent with Section 5.1, Hotel employees and consultants engaged for the benefit of the Hotel are not employees or consultants of the Operator and shall not be deemed agents or representatives of the Operator for the purposes of subsection 18.1(b) above. The Operator shall bear responsibility for the conduct of Hotel employees or such consultants only in the event that the Operator has performed with gross negligence or willful misconduct in the hiring, engaging, supervision, or training of such employees or consultants.
- (d) Notwithstanding the provisions of this Section 18.1, either the Owner or the Operator shall be entitled to take any of the actions contemplated in Section 16.3 upon the occurrence of any Material Default pursuant to Section 16.2 and the expiration of any applicable grace, notice or cure period.

18.2 Survival

The provisions of this Article 18 shall survive the termination of this Agreement.

ARTICLE XIX. DISPUTES

19.1 Dispute Resolution

Unless otherwise specifically provided for in this Agreement, all disputes, controversies, claim or disagreements arising out of or relating to this Agreement (singularly, a "Dispute," and collectively "Disputes") shall be resolved in the following manner:
(a) first, within () days after the receipt of notice of a Dispute by one Party to the others, the Parties shall negotiate in good faith for a period of () days in an effort to resolve the Dispute;
(b) second, if the Parties are unable to resolve the Dispute within such day period, and Party may then submit the Dispute to non-binding mediation under the then applicable rules and jurisdiction of the American Arbitration Association. Within () days after such Dispute has so been submitted for mediation, if such Dispute is not then resolved, the Parties shall proceed to the third step set forth below. The fees and costs of such mediation shall be borne equally by the Parties involved in such Dispute;
(c) third, if the Parties are still unable to resolve the Dispute within such () day period, the Parties shall resort to the arbitration procedures set forth in Section 19.2; and
(d) fourth, any Party to the Dispute shall be entitled to join any Dispute proceeding arising out of this Agreement with any other Dispute proceeding arising out of this Agreement.
19.2 Arbitration
19.2 Arbitration Except as otherwise provided in Sections 4.1, 19.1 and this Section 19.2, any Dispute arising out of or relating to this Agreement shall be settled by arbitration as follows:
Except as otherwise provided in Sections 4.1, 19.1 and this Section 19.2, any Dispute arising ou

writing and signed by it shall be final, conclusive and binding upon the Parties to the Dispute, and may be enforced in any court having jurisdiction; the arbitration shall be held in _____, ____ and, except for those procedures specifically set forth in this Section 19.2, including, without limitation, the application of the internal laws of the State of (without regard to conflict of laws principles), shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date thereof; the arbitrator shall be directed to establish (i) a schedule for the conduct of the arbitration which shall yield a conclusion within ____ (___) days following the appointment of the arbitrator and (ii) economic or procedural sanctions (which may include default judgment) for any Party the arbitrator determines has intentionally delayed the conduct of the proceedings; and the arbitrator shall determine the proportions of the expenses of such arbitration which each party shall bear; provided, however, that each Party shall be responsible for its own legal fees. Notwithstanding anything contained in this Section 19.2, (i) either the Owner or the Operator shall be entitled to (A) commence legal proceedings seeking such mandatory, declaratory or injunctive relief as may be necessary to define or protect the rights and enforce the obligations contained herein pending the settlement of a Dispute in accordance with the arbitration procedures set forth in this Section 19.2, (B) commence legal proceedings involving the enforcement of an arbitration decision or award arising out of this Agreement, or (C) join any arbitration proceeding arising out of this Agreement with any other arbitration proceeding arising out of this Agreement and (ii) no Party shall be entitled to any default remedy or remedies until the conclusion of the arbitration process. ARTICLE XX. **MISCELLANEOUS** 20.1 **Number, Gender and Headings** Grammatical variations of terms defined in this Agreement shall have the same meaning as such terms, words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders. The division of this Agreement into separate Articles and Sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. 20.2 **Severability** If any covenant, obligation or provision of this Agreement, or the application thereof to any Person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (other than such covenant, obligation or provision) and the application of such covenant, obligation or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each covenant, obligation and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law, if the essential provisions of this Agreement for each party remain valid, binding, and enforceable. 20.3 **Governing Law**

and construed in accordance with the internal laws of the State of , without giving effect to its

This Agreement, and all matters arising under to relating to this Agreement, shall be governed by

choice of laws principles, subject to Section 16.9, and shall be treated in all respects as a contract entered into and to be fully performed in the State of ______.

20.4 Legislation

References to legislation in this Agreement are to such legislation as constituted at the date hereof, in each case as the same may be amended or re-enacted from time to time.

20.5 Freedom of Action

Except as restricted by Section 20.20, the Parties and their respective Affiliates shall be free to engage in and/or possess an interest in other business ventures of every nature and description, independently or with other Persons, including but not limited to the ownership, financing, leasing, operation, management, brokerage and development of real property, which may be competitive with the Hotel. The other Parties shall not have any right by virtue of this Agreement in and to such other business venture or to the income or profits derived from such activities.

20.6 Time of the Essence

Time shall be of the essence in the performance of the obligations of the Parties under this Agreement. If, however, performance of any obligation by a Party under this Agreement (except relating to an obligation to pay or fund money or as otherwise expressly set forth), is subject to delay caused by any Force Majeure Event and not within the reasonable control of such Party to avoid, the time for performance shall be extended for a period equal to the period for which such Force Majeure Event operates to prevent performance. The Party obligated to do or perform the obligation shall not be deemed to be in default until the expiration of the period so extended. Each Party shall promptly notify the other Parties of the occurrence of any Force Majeure Event which might prevent or delay the performance of any obligation.

20.7 Expiration on Business Day

If the expiration of any period provided for in this Agreement falls on a day other than a Business Day, the period shall be extended to the next following Business Day.

20.8 Approvals

Where by a provision of this Agreement an approval, consent or agreement of a Party (individually or collectively, an "Approval") is required, the request for such Approval shall be in writing, shall be accompanied by reasonable detail if the circumstances require and shall refer to the Section pursuant to which such approval is requested, and, unless a different standard for approval or time period in which to respond is expressly provided, (i) the Party whose Approval is requested shall, within ____ (___) days after receipt of a request for approval, notify the requesting Party in writing either that it grants or that it withholds its Approval, setting forth in reasonable detail its reasons for withholding its approval, (ii) if the notification referred to in (i) is not given within the applicable period of time, the Party whose Approval is requested shall be deemed conclusively to have given its approval in writing, (iii) an Approval may not be unreasonably withheld, except to the extent that this Agreement expressly provides for another standard to apply, in which event such other standard shall apply, and (iv) a dispute as to whether or not an approval has been unreasonably withheld shall be resolved by arbitration as provided in Section 19.2.

20.9 Accounting Principles

All calculations made or referred to in this Agreement shall be made in accordance with the Accounting Principles, except where otherwise indicated in this Agreement.

20.10 Waiver of Jury Trial

TO THE EXTENT PERMITTED BY LAW, EACH OF OPERATOR AND OWNER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT WHICH ANY OF THE UNDERSIGNED MAY HAVE TO A TRIAL BY JURY AND THE RIGHT TO CLAIM OR RECEIVE CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES WITH RESPECT TO ANY LITIGATION BETWEEN THE PARTIES, INCLUDING, BUT NOT LIMITED TO, WITH RESPECT TO ANY AND ALL CAUSE OR CAUSES OF ACTION, DEFENSES, COUNTERCLAIMS, CROSS-CLAIMS, THIRD PARTY CLAIMS, AND INTERVENOR'S CLAIMS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, EQUITY OR OTHERWISE, REGARDLESS OF THE CAUSE OR CAUSES OF ACTION, DEFENSES OR COUNTERCLAIMS ALLEGED OR THE RELIEF SOUGHT BY ANY PARTY, AND 'REGARDLESS OF WHETHER SUCH CAUSES OF ACTION, DEFENSES OR COUNTERCLAIMS ARE BASED ON, OR ARISE OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, OUT OF ANY ALLEGED CONDUCT OR COURSE OF CONDUCT, DEALING OR COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR OTHERWISE. ANY PARTY HERETO MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY AND THE RIGHT TO CLAIM OR RECEIVE CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES.

IN FURTHER EVIDENCE OF THEIR SPECIFIC INTENTION, AFTER CAREFUL REVIEW, CONSIDERATION, AND RECEIPT OF ADVICE OF COUNSEL, TO WAIVE TRIAL BY JURY IN ACCORDANCE WITH THIS PROVISION, OPERATOR AND OWNER, THROUGH THEIR DULY AUTHORIZED REPRESENTATIVES, HAVE AFFIXED THEIR INITIALS BELOW:

OPERATOR:	OWNER:	

20.11 Currency

All transactions referred to in this Agreement shall be made in lawful money of the United States in immediately available funds. Any references to payments in this Agreement shall include payment by cash, check, wire or electronic funds transfer or other method of payment commonly in use from time to time in the United States.

20.12 Interest

All payments which are required or permitted to be made by one Party to another Party pursuant to this Agreement (except as otherwise provided herein) and which are not made on the due date of payment shall, unless this Agreement indicates otherwise, bear interest at the Prime Rate plus _____ percent (___%) per annum from the due date of payment to the date that payment is made. Whenever such interest is to be calculated over a period of one or more years, it shall be compounded semi-annually.

20.13 Right to Inspect

The Owner or the Owner's agent shall have the continuing right during the term of this Agreement upon reasonable prior notice and at reasonable times to inspect the Hotel.

20.14 Further Assurances

The Parties shall execute and deliver all such agreements and other instruments and shall take such action as may be necessary to make this Agreement legally effective, binding and enforceable as between them and as against third parties.

20.15 Waivers

The failure of any Party to insist upon the strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. The acceptance by the Operator of any fees or any moneys payable to the Operator hereunder with knowledge of the breach of any term or provision hereof shall not be deemed a waiver of such breach and no waiver by any Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

20.16 Estoppel Certificates

Each Party shall, upon not less than _____(___) days prior request by any other Party, execute and deliver a certificate stating to the best of its knowledge, information and belief whether this Agreement is modified or unmodified (and if modified, stating the modifications), whether this Agreement is in full force and effect, and whether the Party giving such certificate knows of any default by any other Party.

20.17 Entire Agreement

This Agreement constitutes the entire agreement among the Parties relating to the subject matter hereof, superseding all prior agreements or undertakings oral or written, and may be amended only by an agreement in writing signed by the Parties that identifies itself as an amendment to this Agreement. No Party shall be bound by any representations, warranties, promises, agreements or inducements not embodied herein, and no warranties of any Party not expressed herein are to be implied.

20.18 Inurement

This Agreement, which is expressly intended to be integral to and binding upon title to the Hotel, shall inure to the benefit of and be binding upon each of the Parties and their respective successors and assigns and, in light of its fundamental relationship to the Hotel, shall survive any mortgage, hypothecation or other encumbrance of, or sale, assignment, Transfer or other disposition of, all or any part of the interest of the Owner to any Person and shall be binding upon such Person with respect to such interest.

20.19 Notices

Except as may otherwise be provided in this Agreement, all notices, demands, statements requests, consents, approvals and other communications (collectively, "Notices") required or permitted to be given under this Agreement shall be in writing, duly executed by an authorized officer or agent of the Party so giving such Notice, and either personally delivered to any duly authorized representative of the Party receiving such Notice or sent by facsimile transmission, registered or certified mail, or by courier service, return receipt requested, addressed:

if to the Operator to:	

	Facsimile No.: ()	
	Attn.: and	
2.1		
with a copy to:		
	Facsimile No.: ()	
	Attn:	
if to the Owner to:		
it to the Owner to.		_
		_
	Facsimile No.: ()	_
	Attn:	
with a copy to:		
1.7		
	Facsimile No.: ()	
	Attn:	
transmission, shall be effective be followed by hard copy sent be effective on the date of deli-	for all purposes upon personal delivery the on the date of transmission duly shown on the overnight delivery service), or, if sent by very shown on the return receipt. Any Party by providing a Notice in the manner set for	the confirmation slip (and shall y mail or courier service, shall ty may at any time change the
20.20 Restricted Area		
	ating Term, except for	
	perator and its Affiliates shall, within the F	
	e directly participate in, have any direct in	
	el or similar project that's average daily rate	
(%) of the ratio reported	to for the	notel market (collectively, a
	utually approved in writing by Owner and (
	ts shall not be considered a Competing Proj	
and (ii) a gity centre hetal le	cated in Notwithstanding the	area with less than keys,
	(y) manage an additional hotel	
within the Pastricted Area but	t not within, if the Owne	ar or an Affiliate thereof does
[not] commence construction a	nd diligently pursue construction, of	hotel to be managed by
Operator ass	sociated with the Hotel within () y	years from the Commencement
Date, and (z) own purchase m	nanage, or otherwise participate in certain C	Competing Projects if Operator
	a portfolio of hotels or resorts, which inclu	
•	hotel management agreements acquired in	1 0
	ing the foregoing, Owner and its Affiliate	

purchase, manage, or otherwise participate in certain Competing Projects if Owner, or an Affiliate

thereof, acquires a portfolio of hotels or resorts, which includes such Competing Projects, where the number of assets or hotel management agreements acquired in the portfolio is _____ (____) or greater.

20.21 Owner Obligations

For the period that the Trustee holds title to any portion of the Hotel, excluding the _____l Premises, as further described in Recital A of this Agreement, Owner hereby agrees, as the sole beneficiary of the Land Trust, to cause the Trustee to be bound by and perform the Owner's obligations under this Agreement.

20.22 Owner' Election to Upgrade Brand

In the event that Operator or Operator's Parent creates or acquires a brand that is categorized by the hospitality rating agencies to be higher than a Full Service Luxury Hotel ("Upgraded Brand"), then Owner shall be entitled to elect to upgrade the Hotel in order to be licensed and operated as such Upgraded Brand, provided, however, that Owner must agree in writing to cause the Hotel to be upgraded, altered, enhanced, and otherwise modified so as to fully comply in every respect with the brand standards of such Upgraded Brand. In addition thereto, as a condition of such upgrade, this Agreement shall be amended so as to cause the obligations of the Owner and Operator to conform to the more stringent requirements and higher of the fee structures as between the standard management and license agreements for such Upgraded Brand and this Agreement. The conversion to the Upgraded Brand will not be effective until all physical improvements and FF&E are in conformance with all requirements of the Upgraded Brand standard. In order to ensure compliance with the standards of the Upgraded Brand, Owner shall enter into the standard technical services agreement for such Upgraded Brand. The obligations of the Operator under this Section shall not require the Operator, by virtue of any reductions in the number of guest rooms or other facilities, to suffer any adverse economic impact with respect to the Management Fees or other fees due to Operator under this Agreement. The Performance Test shall be deemed satisfied during any Fiscal Year during which the Hotel is being modified to accomplish the requirements of the conversion to the Upgraded Brand. No conversion to the Upgraded Brand shall operate to reduce the operating Terms of this Agreement.

ARTICLE XXI. PROJECTS

21.1 Special Capital Improvements Project

As part of the consideration for Operator's execution of this Agreement, the Owner has agreed to fund and complete the Special Capital Improvements Project in accordance with the specifications and project schedule contained within **Schedule 21.1** (the "Special Capital Improvements Project Schedule and Specifications"). Any failure on the part of the Owner to fund and complete the Special Capital Improvements Project in accordance with the Special Capital Improvements Project Schedule and Specifications, subject to the Force Majeure Event provisions provided in Section 20.6, shall constitute a Material Default by Owner, and in addition to any other remedies provided to Operator under this Agreement in the event of a Material Default by Owner, Operator may, but is not obligated to, undertake such work at the cost of the Owner, and the Owner shall reimburse Operator therefor on demand, together with interest thereon at the lesser of the Prime Rate plus ____ percent (__%) per annum or the highest rate permitted by law, compounded monthly, and calculated on the basis of a ____ (___) day year.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above stated.

OWN	NER:	
	, a	
	limited partnership	
By:	a	
•	limited liability company, and its	
	general partner	
	By:	
	Name:	
	Title: Authorized Signatory	
OPEI	RATOR:	
	a	limited
liabil	ity company	
By:		
Name	e:	
Title:		

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	United States Banking Corporation, as Trustee under the
provisions of that certain Trust Agreement nu	mbered, by the
	the act and deed of the Bank, and for good and valuable
consideration, the receipt of which is hereby ac	knowledged, hereby joins in and consents to the terms of
this Agreement for the period the Trustee holds	title to any portion of the Hotel, and agrees to be bound
by and subject to the terms of this Agreement	applicable to the Owner for such period. The Trustee
further acknowledges and agrees that in mana	aging and operating the Hotel during such period that
Operator is entitled to rely on the decisions	and approvals of the Owner as provided for in this
Agreement.	
	TRUSTEE:
	of a United States
	of, a United States Banking Corporation, as Trustee under the
	provisions of that certain Trust Agreement
	provisions of that certain frust Agreement
	numbered and dated
	numbered, and dated
	numbered, and dated
	By:
	By: Name: Title:
	By: Name: Title: CUTES THIS INSTRUMENT SOLELY AS TRUSTEE
UNDER LAND TRUST NO	By: Name: Title: CUTES THIS INSTRUMENT SOLELY AS TRUSTEE AND NOT INDIVIDUALLY AND NO PERSONAL
UNDER LAND TRUST NO	By: Name: Title: CUTES THIS INSTRUMENT SOLELY AS TRUSTEE AND NOT INDIVIDUALLY AND NO PERSONAL BE SOUGHT OR OBTAINED AGAINST THE SAID

By its signature below, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Operator's Parent hereby guarantees Operator's performance of its obligations under this Agreement in accordance with its terms, and acknowledges and consents to the restrictions contained in Section 20.20 of this Agreement.

OPERATOR PA	RENT:
a	corporation
By: Name:	
Name: Title:	

SCHEDULE 1.1(a)

Competitive Set

SCHEDULE 1.1(b)(i)

Legal Description of the Lands

SCHEDULE 1.1(b)(ii)

Legal Description of _____

SCHEDULE 1.1(b)(iii)

Legal Description of Resort Area

SCHEDULE 1.1(c)

Permitted Encumbrances

SCHEDULE 5.11

Gratuitous Use of Hotel by Owner

SCHEDULE 7.4

Working Capital

\$

SCHEDULE 17.3(b)

SNDA Agreement

OPERATOR-LENDER NON-DISTURBANCE AGREEMENT

and entered into as of, 20_, by and between, a limited liability		
company formed under the laws of (the "Operator"), and [Name of Lender], a [type of		
entity] [licensed] under the laws of [Name of Jurisdiction] ("Lender").		
RECITALS		
A. [Name of the Owner], a [type of entity] organized and existing under the laws of [Name of Jurisdiction] ("Owner"), is the Owner in [type of ownership interest, e.g. fee simple] of certain improved real property situated at [Mailing Address], commonly known as the "[Name of Hotel]" and more precisely described on Exhibit A to this Agreement (the "Hotel");		
B. The Lender has agreed to make a loan to the Owner in the original principal amount of [amount of loan in numbers and in words] (the "Loan") secured, inter alia, by a mortgage, assignment of leases and rents, and financing statement and related security instruments, each dated as of the date hereof (collectively, the "Mortgage"), and encumbering the Hotel;		
C. The Owner and the Operator have executed and entered into that certain Hotel Management Agreement dated as of (the "Hotel Management Agreement") under the terms of which the Operator has agreed to operate and manage the Hotel;		
D. Pursuant to Section 17.3 of the Hotel Management Agreement, the Owner has agreed to provide the Operator with a nondisturbance agreement from Lender; and		
E. The parties have agreed to execute, deliver and file or record in the office of the real property records of this required nondisturbance agreement.		
AGREEMENT		
NOW, THEREFORE, in consideration of the agreements set forth in this Agreement, Lender and		

1. <u>Subordination and Non-Disturbance</u>. The Hotel Management Agreement and the rights of the Operator thereunder are and shall at all times be subordinate to the lien of the Mortgage, subject to the terms and conditions set forth in this Agreement. Lender acknowledges and agrees, however, that (a) no default under the Mortgage or other documents evidencing or securing the Loan, (b) so long as the Owner is not entitled to terminate the Hotel Management Agreement pursuant to the terms thereof as of the date of such event, no foreclosure or conveyance in lieu of foreclosure and (c) no exercise of any other of the Lender's remedies under the Mortgage or any other document relating to the Loan, will disturb the Operator's right to manage the Hotel pursuant to the Hotel Management Agreement or affect any other right of the Operator thereunder (including Operator's authority and rights relating to use of funds in Hotel Bank Accounts), and (b) subject to paragraph 2, below, the Hotel Management Agreement shall

the Operator do hereby covenant and agree as follows:

continue in full force and effect and the Lender, its successors and assigns, or any party (the "Purchaser") acquiring the Hotel or any interest or right therein upon any foreclosure or by deed in lieu thereof (in either case, a "Foreclosure"), as the case may be, shall automatically recognize the Hotel Management Agreement and the Operator's rights thereunder for the balance of the term of the Hotel Management Agreement, including any extensions and renewals thereof.

- 2. <u>Attornment.</u> Subject to Section 17.3 of the Hotel Management Agreement, if the interests of the Owner under the Hotel Management Agreement shall be transferred by reason of a Foreclosure, the Operator shall attorn and be bound to the Purchaser under all of the terms, covenants and conditions of the Hotel Management Agreement for the balance of the term with the same force and effect as if the Purchaser were the "Owner" under the Hotel Management Agreement. No Foreclosure shall transfer title to any party that is not a "Qualified Person" under the Hotel Management Agreement.
- 3. Lender's Succession. Upon the recognition and attornment described above, and effective in the event of a Foreclosure, the Purchaser shall succeed to the position, rights and obligations of the "Owner" under the Hotel Management Agreement, provided, however, that the Purchaser shall in no event be: (a) subject to any offsets, counterclaims, claims or defenses which the Operator might have against the Owner (or any predecessor to the Owner) under the Hotel Management Agreement; (b) bound by any amendment or modification of the Hotel Management Agreement made without the Lender's prior written consent; or (c) liable to the Operator (and the Operator shall not make any assertion or claim against the Purchaser for) any loss, expense or damages arising out of the prior acts or omissions of the Owner (or any predecessor to the Owner). The foregoing proviso shall not constitute a waiver by the Operator of (i) the Purchaser's obligation to perform the obligations of the "Owner" under the Hotel Management Agreement continuing or accruing following the Foreclosure, (ii) any right that the Operator may have under the Hotel Management Agreement to terminate such agreements for defaults occurring prior to the Foreclosure which are not cured in accordance with the terms of the Hotel Management Agreement (provided, however, the Operator may not terminate the Hotel Management Agreement following the Foreclosure on account of any event of default thereunder that is personal to the Owner and not susceptible of cure by the Lender), (iii) any right that the Operator may have to pursue the Owner personally for its failure to perform obligations under the Hotel Management Agreement, or (iv) any express right the Operator may have under the Hotel Management Agreement to collect prior accrued fees and such other amounts to which the Operator is entitled under the terms of the Hotel Management Agreement from cash derived from the Hotel or upon termination of the Hotel Management Agreement to the extent such funds are available in the Hotel Bank Accounts.
- Cure of Management Agreement Default. The Operator shall not terminate the Hotel Management Agreement by reason of any event of default under the Hotel Management Agreement until the Operator shall have given written notice of such event to the Lender, and a period equal to the period for cure given to the Owner under the Hotel Management Agreement shall have elapsed following the giving of such notice, during which period the Lender shall have the right, but shall not be obligated, to remedy any such event of default. As to any defaults other than a failure by the Owner to make a payment required under the Hotel Management Agreement, if it is necessary for the Lender to foreclose the Mortgage or to take possession of the Hotel in order to remedy such default, the period of time referred to in the preceding sentence shall be extended to include the time reasonably required to foreclose or take possession of the Hotel, provided the Lender commences to foreclose or take possession within such period, proceeds with such process at all times with due diligence and dispatch, and otherwise satisfactorily cures all defaults that are susceptible of cure by the Lender, and which do not so require possession of the Hotel. Notwithstanding the foregoing, however, if, in the Operator's reasonable business judgment, the event of default materially and adversely affects the operation of the Hotel or the business or reputation of the Operator, or places the Operator materially at risk of civil or criminal liability, the Operator shall have the right, at any time prior to completion of Foreclosure or the taking of

possession by the Lender, to elect by written notice to the Lender to terminate the Hotel Management Agreement in accordance with the terms of the Hotel Management Agreement; provided, however, the Operator shall cooperate with the Lender in an orderly transition to a new operator of the Hotel.

- 5. <u>Cure of Mortgage Defaults</u>. The Lender shall provide the Operator with copies of any notice of default under the Mortgage or related instruments delivered to the Owner, at the time of or promptly following delivery to the Owner.
- Limitation of Liability. Anything herein or in the Hotel Management Agreement to the contrary notwithstanding, in the event that the Lender shall acquire title to the Hotel, the Lender shall have no obligation, nor incur any liability, beyond the Lender's then interest, if any, in the Hotel and the Operator shall look exclusively to such interest of the Lender, if any, in the Hotel for the payment and discharge of any obligations imposed upon the Lender hereunder or under the Hotel Management Agreement. The Operator agrees that with respect to any money judgment which may be obtained or secured by the Operator against the Lender, the Operator shall look solely to the estate or interest owned by the Lender in the Hotel or any portion thereof or interest therein and the Operator will not collect or attempt to collect any such judgment out of any other assets of the Lender. Further, the Lender and the Operator hereby agree that nothing in this Agreement, prior to the Lender's acquisition of the Owner's interest in and possession of the Hotel through Foreclosure, shall operate to give rise to or create any responsibility or liability for the control, care, management or repair of the Hotel upon the Lender, or impose responsibility for the carrying out by the Lender of any of the covenants, terms and conditions of the Hotel Management Agreement, nor shall said instruments operate to make the Lender responsible or liable for any waste committed at the Hotel by any party whatsoever, or for dangerous or defective condition of the Hotel, or for any negligence in the management, upkeep, repair or control of said Hotel resulting in loss, injury or death to any licensee, invitee, guest, employee, agent or stranger. Subject to paragraph 3, above, the Lender, its successors and assigns or a Purchaser under the terms of the Mortgage, shall be responsible for performance of only those covenants and obligations of the Hotel Management Agreement accruing after the Lender's acquisition of the Owner's interest in and possession of the Hotel.
- 7. <u>Bankruptcy</u>. The nondisturbance and attornment provisions of this Agreement shall apply with equal force in the event the Hotel Management Agreement is terminated or rejected under applicable bankruptcy, insolvency or other laws affecting creditors' rights and Lender or any successor or assign should thereafter acquire the Hotel in or through such proceedings. In any such event, Lender shall, or shall cause a Purchaser to, enter into a new management agreement with Operator and Operator agrees to execute and deliver the same on its behalf and thereby attorn to Purchaser as Owner under the new management agreement upon the same terms and conditions contained in the Management Agreement except that the term thereof would be the remaining term under the new management agreement from the date of the execution of such new agreement, subject, however, to any then unexercised extension or renewal rights; provided that Operator shall not be obligated to enter into a new management agreement nor attorn to Purchaser as Owner under the new management agreement unless (A) all outstanding sums owed to Operator under the Hotel Management Agreement are paid and Lender or such Purchaser undertakes to cure any other default under the Management Agreement unless such defaults are not reasonably susceptible of cure by Lender or such Purchasers (in which event such defaults shall be deemed waived by Operator) and (B) Operator is compensated for managing the Hotel during the interim period from the date of the termination of the Hotel Management Agreement to the date of the execution of the new management agreement as if the Hotel Management Agreement were in effect during such interim period.
- 8. <u>No Modification</u>. No modification, amendment, waiver or release of any provision of this Agreement or any right, obligation, claim or cause of action arising hereunder shall be valid or

binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

- 9. <u>Counterparts.</u> This instrument may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties hereto had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument, but in making proof, it shall only be necessary to produce one such counterpart. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.
- 10. <u>Notices.</u> Any notices hereunder shall be effective upon mailing by certified mail, return receipt requested, addressed as follows:

	
	Attn:
	Facsimile: ()
	1 desimile. ()
with a convetor	
with a copy to:	
	Attn:
	Facsimile: () -
	1 desimile. ()
If to Lender:	
If to Lender:	
[Lender's conta	ct information]
with copies to:	
_	
[Contact inform	nation for the Lender's counsel]
	ess or to such other addresses as the party to be served with notice may have the party seeking or desiring to service notice as a place for the service of notice.
	- · · · · · · · · · · · · · · · · · · ·

remain limited by any pertinent provisions of the Management Agreement.

11.

12.

thereunder.

To the Operator:

hereto, and their respective successors and assigns; provided, however, that rights of assignment shall

laws and decisions of the State of ______, without giving effect to the conflicts of law principles

Governing Law. This Agreement has been delivered in and shall be governed by the

Successors. This Agreement shall inure to the benefit of and be binding upon the parties

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

[Name of Lender]	
By:	
Print Name:	
Its:	
	_
By:	
Its:	
[Add SNDA Acknowledgments]	

SCHEDULE 17.3(c)

Mortgagees

Hotel Management Agreement WDC 372878905v2

SCHEDULE 21.1

Special Capital Improvements Project