

PRIVILEGED & CONFIDENTIAL

LEASE AGREEMENT

DATED AS OF [•], 2019

BY AND BETWEEN

LANDLORD

AND

TENANT

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LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of [•], by and between SSD HOLDINGS, LLC, a Delaware limited liability company ("Landlord"), and SSD OPERATING CO., LLC., a Delaware limited liability company ("Tenant").

W I T N E S S E T H:

WHEREAS, Landlord is the holder of a leasehold interest in certain real property described in Schedule A hereof (the "Land") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and other improvements now or hereafter located thereon, which Land and improvements are part of the Leased Property (as defined herein); and

WHEREAS, Landlord has agreed to lease the Leased Property to Tenant and Tenant has agreed to lease the Leased Property from Landlord, all subject to and upon the terms and conditions herein set forth.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE 1

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (a) the terms defined in this Article shall have the meanings assigned to them in this Article and include the plural as well as the singular, (b) all accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with GAAP, (c) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement, and (d) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

"Accounting Period" shall mean each of 12 calendar months occurring each Fiscal Year.

"Accounting Period Statement" shall have the meaning given such term in Section 17.2.

"Additional Charges" shall have the meaning given such term in Section 3.3.

"Affiliate" shall mean, with respect to any Person, any other Person which, directly or indirectly, controls, is under common control with, or is controlled by such specified Person. For purposes of this definition, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

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“Agreement” shall mean this Lease Agreement, including all Schedules hereto, as it and they may be amended from time to time as herein provided.

“Applicable Expected Life” shall have the meaning given such term in Paragraph 3(a) of Schedule B.

“Applicable Laws” shall mean all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits and orders, from time to time in existence, of all courts of competent jurisdiction and Government Agencies, and all applicable judicial and administrative and regulatory decrees, judgments and orders, including common law rulings and determinations, relating to injury to, or the protection of, real or personal property or human health (except those requirements which, by definition, are solely the responsibility of employers) or the Environment, including, without limitation, all valid and lawful requirements of courts and other Government Agencies pertaining to reporting, licensing, permitting, investigation, remediation and removal of underground improvements (including, without limitation, treatment or storage tanks, or water, gas or oil wells), or emissions, discharges, releases or threatened releases of hazardous substances, chemical substances, pesticides, petroleum or petroleum products, pollutants, contaminants or hazardous or toxic substances, materials or wastes whether solid, liquid or gaseous in nature, into the Environment, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous substances, underground improvements (including, without limitation, treatment or storage tanks, or water, gas or oil wells), or pollutants, contaminants or hazardous or toxic substances, materials or wastes, whether solid, liquid or gaseous in nature.

“Award” shall mean all compensation, sums or other value awarded, paid or received by virtue of a total or partial Condemnation of the Leased Property (after deduction of all reasonable legal fees and other reasonable costs and expenses, including, without limitation, expert witness fees, incurred by Landlord, in connection with obtaining any such award).

“Building Estimate” shall have the meaning given such term in Section 5.3(a).

“Business Day” shall mean any day other than Saturday, Sunday, or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

“Capital Expenditure” shall mean the expenses necessary for non-routine, major repairs, alterations, improvements, renewals, replacements, and additions to the Hotel including, without limitation, to the structure, the exterior facade (excluding painting) and all of the mechanical, electrical, heating, ventilating, air conditioning, plumbing or vertical transportation elements of the Hotel buildings, together with all other expenditures which are classified as “capital expenditures” under generally-accepted accounting principles. Capital Expenditures shall not include Routine Capital Expenditures.

“Capital Reserve Budget” shall have the meaning given such term in Section 5.2(a).

“Claim” shall have the meaning given such term in Article 8.

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“Code” shall mean the Internal Revenue Code of 1986 and, to the extent applicable, the Treasury Regulations promulgated thereunder, each as amended from time to time.

“Commencement Date” shall mean the date of this Agreement.

“Condemnation” shall mean (a) the exercise of any governmental power with respect to the Leased Property, whether by legal proceedings or otherwise, by a Condemnor of its power of condemnation, (b) a voluntary sale or transfer of the Leased Property by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending, or (c) a taking or voluntary conveyance of all or part of the Leased Property, or any interest therein, or right accruing thereto or use thereof, as the result or in settlement of any Condemnation or other eminent domain proceeding affecting the Leased Property, whether or not the same shall have actually been commenced.

“Condemnor” shall mean any public or quasi-public authority, or Person having the power of Condemnation.

“Controlling Interest” shall mean (a) as to a corporation, the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of the Entity (through ownership of such shares or by contract), and (b) as to an Entity that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Entity.

“CC&Rs” shall have the meaning given such term in Section 11.2.

“Date of Taking” shall mean the date the Condemnor has the right to possession of the Leased Property, or any portion thereof, in connection with a Condemnation.

“Default” shall mean any event or condition existing which with the giving of notice and/or lapse of time would ripen into an Event of Default.

“Emergency Requirements” shall mean any of the following events or circumstances: (a) an emergency threatening imminent damage to the Hotel, or the life or property of its guests, invitees or employees; or (b) a Legal Requirement, the violation (or continued violation) of which would subject Tenant and/or Manager to the imminent threat of civil or criminal liability.

“Entity” shall mean any corporation, general or limited partnership, limited liability company, limited liability partnership, stock company or association, joint venture, association, company, trust, bank, trust company, land trust, business trust, cooperative, any government or agency or political subdivision thereof or any other association or entity.

“Environment” shall mean soil, surface waters, ground waters, land, streams, sediments, surface or subsurface strata and ambient air.

“Event of Default” shall have the meaning given such term in Section 12.1.

“Excess FF&E” shall have the meaning given such term in Paragraph 2 of Schedule B.

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“Excess FF&E FMV” shall have the meaning given such term in Paragraph 3(c) of Schedule B.

“Excess FF&E Notice” shall have the meaning given such term in Paragraph 2 of Schedule B.

“Excess FF&E Reimbursement Amount” shall have the meaning given such term in Paragraph 5 of Schedule B.

“Excess FF&E Repurchase” shall have the meaning given such term in Paragraph 4 of Schedule B.

“Excess FF&E Repurchase Price” shall have the meaning given such term in Paragraph 4 of Schedule B.

“Excess FF&E Value” shall have the meaning given such term in Paragraph 3(c) of Schedule B.

“FF&E” shall mean furniture, furnishings, fixtures, soft goods, signage, equipment and other personal property located at or used in connection with the operation of the Hotel.

“FF&E Adjustment” shall have the meaning given such term in Paragraph 3 of Schedule B.

“FF&E Limitation” shall have the meaning given such term in Paragraph 1 of Schedule B.

“Final Installment” shall have the meaning given such term in Section 3.1(b)(iii).

“First Year FF&E Adjustment” shall have the meaning given such term in Paragraph 3(a) of Schedule B.

“Fiscal Year” shall mean each calendar year during the Term.

“Fixed Term” shall have the meaning given such term in Section 2.3.

“Fixtures” shall have the meaning given such term in Section 2.1(d).

“GAAP” shall mean generally accepted accounting principles consistently applied.

“GDP Deflator” shall mean the “Gross Domestic Product Implicit Price Deflator” issued from time to time by the United States Bureau of Economic Analysis of the Department of Commerce, or if the aforesaid GDP Deflator is not at such time so prepared and published, any comparable index selected by Landlord and reasonably satisfactory to Tenant (a “Substitute Index”) then prepared and published by an agency of the Government of the United States, appropriately adjusted for changes in the manner in which such index is prepared and/or year upon which such index is based. Except as otherwise expressly stated herein, whenever a number or amount is required to be “adjusted by the GDP Deflator,” or similar terminology, such

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adjustment shall be equal to the percentage increase or decrease in the GDP Deflator which is issued for the month in which such adjustment is to be made (or, if the GDP Deflator for such month is not yet publicly available, the GDP Deflator for the most recent month for which the GDP Deflator is publicly available) as compared to the GDP Deflator which was issued for the month in which the Commencement Date occurred.

“Government Agencies” shall mean any court, agency, authority, board (including, without limitation, environmental protection, planning and zoning), bureau, commission, department, office or instrumentality of any nature whatsoever of any governmental or quasi-governmental unit of the United States or the State of California or any county or any political subdivision thereof, whether now or hereafter in existence, having jurisdiction over Tenant or the Leased Property or any portion thereof or the Hotel operated thereon.

“Gross Revenues” shall mean all revenues and receipts of every kind derived from operating the Hotel and all departments and parts thereof, including, but not limited to: income (from both cash and credit transactions) from rental of guest rooms, telephone charges, stores, offices, exhibit or sales space of every kind; license, lease and concession fees and rentals (not including gross receipts of licensees, lessees and concessionaires) income from vending machines; income from parking; wholesale and retail sales of merchandise; service charges; items constituting “Allowances” under the Uniform Systems of Accounts; and proceeds, if any, from business interruption or other loss of income insurance; provided, however, that Gross Revenues shall not include the following: gratuities to employees of the Hotel; federal, state or municipal excise, sales or use taxes or any other taxes collected directly from patrons or guests or included as part of the sales price of any goods or services; proceeds from the sale of furniture, fixtures and equipment; interest received or accrued with respect to the funds any operating accounts of the Hotel; any refunds, rebates, discounts and credits of a similar nature, given, paid or returned in the course of obtaining Gross Revenues or components thereof; insurance proceeds (other than proceeds from business interruption or other loss of income insurance); condemnation proceeds (other than for a temporary taking); or any proceeds from any sale of the Hotel or from the refinancing of any debt encumbering the Hotel. Notwithstanding the foregoing, in the event of any inconsistency between the foregoing definition and the definition of “Gross Revenues” set out in the Management Agreement, the definition set out in the Management Agreement shall prevail and, provided, further, the definition of Gross Revenues hereunder shall include all items contained in the definition of “Operating Income” under the applicable Loan Documents.

“Ground Leases” shall mean, collectively, each of those leases described in Schedule C (as the same may be amended, restated, supplemented, or modified from time to time).

“Hotel” shall mean the hotel and associated businesses, being operated on the Leased Property.

“Impositions” shall mean collectively, all taxes (including, without limitation, all ad valorem, sales and use, single business, gross receipts, transaction privilege, rent or similar taxes as the same relate to or are imposed upon Tenant or the business conducted upon the Leased Property, including all personal property taxes on Tenant’s Personal Property, together with all replacements, modifications, alterations and additions thereto), assessments (including, without

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limitation, all assessments for public improvements or benefit, whether or not commenced or completed prior to the date hereof), water, sewer or other rents and charges, excises, tax levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Property or the business conducted thereon by Tenant (including all interest and penalties thereon due to any failure in payment by Tenant), which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon (a) Landlord's interest in the Leased Property, (b) the Leased Property or any part thereof or any rent therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Leased Property or the leasing or use of the Leased Property or any part thereof by Tenant; provided, however, that nothing contained herein shall be construed to require Tenant to pay (i) any tax based on net income, net worth or capital imposed on Landlord, (ii) any net revenue tax of Landlord, (iii) any transfer fee or other tax imposed with respect to the sale, exchange or other disposition by Landlord of any Leased Property or the proceeds thereof, (iv) any single business, gross receipts tax (from any source other than the rent received by Landlord from Tenant), or similar taxes as the same relate to or are imposed upon Landlord, except to the extent that any tax, assessment, tax levy or charge that would otherwise be an Imposition under this definition which is in effect at any time during the Term hereof is totally or partially repealed, and a tax, assessment, tax levy or charge set forth in clause (i) or (ii) preceding is levied, assessed or imposed expressly in lieu thereof, (v) any interest or penalties imposed on Landlord as a result of the failure of Landlord to file any return or report timely and in the form prescribed by law or to pay any tax or imposition, except to the extent such failure is a result of a breach by Tenant of its obligations pursuant to Section 3.4, (vi) any Impositions imposed on Landlord that are a result of Landlord not being considered a "United States person" as defined in Section 7701(a)(30) of the Code, (vii) any Impositions that are enacted or adopted by their express terms as a substitute for any tax that would not have been payable by Tenant pursuant to the terms of this Agreement or (viii) any Impositions imposed as a result of a breach of covenant or representation by Landlord in any agreement entered into by Landlord governing Landlord's conduct or operation or as a result of the negligence or willful misconduct of Landlord.

"Improvements" shall have the meaning given such term in Section 2.1(b) of this Agreement.

"Indebtedness" shall mean all obligations, contingent or otherwise, which in accordance with GAAP should be reflected on the obligor's balance sheet as liabilities.

"Index" shall mean the Consumer Price Index for All Urban Consumers, All Items, for the market area that includes the Leased Property, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency, as mutually acceptable to Landlord and Tenant. Whenever a number or amount is required to be adjusted by changes in the Index or similar terminology, such adjustment shall be equal to the percentage increase or decrease in the Index which is issued for the month in which such adjustment is to be made (or if the Index for such month is not yet publicly available, the Index

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for the most recent month for which the Index is publicly available) as compared to the Index which was issued for the month in which the Commencement Date occurred.

“Insurance Requirements” shall mean all terms of any insurance policy required by this Agreement and all requirements of the issuer of any such policy and all orders, rules and regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon Landlord, Tenant or the Leased Property.

“Intangible Property” shall mean (a) governmental permits, including licenses and authorizations, required for the ownership and operation of the permits, signage permits, site use approvals, zoning certificates, environmental and land use permits and any and all necessary approvals from state or local authorities (hereinafter defined as “Permits”) and other approvals granted by any public body or by any private party pursuant to a recorded instrument and (b) certificates, licenses, warranties and guarantees other than such permits, operating permits, certificates, licenses and approvals which are to be held by, or transferred to, the Tenant in order to permit the Tenant to operate the Leased Property properly in accordance with the terms of the Agreement.

“Interest Rate” shall mean an annual rate of interest equal to, as of the date of determination, the per annum rate for 10 year U.S. Treasury Obligations as published in the Wall Street Journal, plus 200 basis points.

“Inventories” shall mean “Inventories” as defined in the Uniform System of Accounts, including, but not limited to, provisions in storerooms, refrigerators, pantries and kitchens, beverages in wine cellars and bars, other merchandise intended for sale, fuel, mechanical supplies, stationery, and other expenses, supplies and similar items.

“Land” shall have the meaning given such term in the recitals of this Agreement.

“Landlord” shall have the meaning given such term in the preamble of this Agreement.

“Landlord Default” shall have the meaning given such term in Section 14.2(a).

“Landlord Liens” shall mean liens on or against the Leased Property or any payment of Rent (a) which result from any act of, or any claim against, Landlord or any owner (other than Tenant) of a direct or indirect interest in the Leased Property, or which result from any violation by Landlord of any terms of this Agreement, or (b) which result from liens in favor of any taxing authority by reason of any tax owed by Landlord or any fee owner of a direct or indirect interest in the Leased Property; provided, however, that “Landlord Lien” shall not include any lien resulting from any tax for which Tenant is obligated to pay or indemnify Landlord against until such time as Tenant shall have already paid to or on behalf of Landlord the tax or the required indemnity with respect to the same.

“Lease Year” shall mean any Fiscal Year during the Term and any partial Fiscal Year at the beginning or end of the Term.

“Leased Property” shall have the meaning given such term in Section 2.1.

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“Legal Requirements” shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Leased Property or the maintenance, construction, alteration or operation thereof, whether now or hereafter enacted or in existence, including, without limitation, (a) all permits, licenses, authorizations, certificates and regulations necessary to operate the Leased Property for its Permitted Use, and (b) all covenants, agreements, declarations, restrictions and encumbrances contained in any instruments at any time in force affecting the Leased Property as of the date hereof, or to which Tenant has consented or required to be granted pursuant to Applicable Laws, including those which may (i) require material repairs, modifications or alterations in or to the Leased Property or (ii) in any way materially and adversely affect the use and enjoyment thereof, but excluding any requirements arising as a result of Landlord’s or any Affiliate of Landlord’s status as a real estate investment trust.

“Lender” shall mean any lender holding an interest in a Loan, and any successor lender by way of refinancing or assignment, and such other lender, or lenders, as may be designated by Landlord from time to time, and their successors and assigns.

“Lien” shall mean any mortgage, security interest, pledge, collateral assignment, or other encumbrance, lien or charge of any kind, or any transfer of property or assets for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to payment of its general creditors.

“Loan” shall mean any loan secured, directly or indirectly, by Landlord’s and/or Tenant’s interest in the Leased Property or ownership interests in Landlord and/or Tenant.

“Loan Agreement” shall mean one or more loan agreements or similar instruments evidencing all or any portion of a Loan.

“Loan Documents” shall mean, collectively, the Loan Agreement, the Mortgage, and all other documentation evidencing such Loan, including, but not limited to, security agreements, promissory notes and other collateral documents.

“Lockbox Account” shall mean any account subject to a Lockbox Agreement.

“Lockbox Agreement” shall mean any deposit account control agreement executed by Landlord and/or Tenant and Lender in connection with a Loan.

“Management Agreement” shall mean any agreement entered into by Tenant and Manager with respect to the management and operation of the Leased Property, as the same may be amended from time to time. As of the date of this Agreement, the Management Agreement shall mean that certain Management Agreement dated as of the date hereof, by and between SSD Management, LLC, a Delaware limited liability company, and Tenant.

“Manager” shall have the same meaning as defined in the Management Agreement.

“Manager’s System” shall mean all hotels and resorts in the United States that are managed by Manager.

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“Market Leasing Factor” shall have the meaning given such term in Paragraph 3 of Schedule B.

“Minimum Rent” shall have the meaning given such term in Section 3.1(a).

“Minor Casualty” shall mean any fire or other casualty which results in damage to the Hotel and/or its contents, to the extent that the total cost (in Tenant’s reasonable judgment) of repairing and/or replacing of the damaged portion of the Hotel to the same condition as existed previously does not exceed the dollar amount of One Million Dollars (\$1,000,000), said dollar amount to be adjusted by the GDP Deflator.

“Mortgage” shall mean the mortgage, deed of trust, deed to secure debt, or other security documents encumbering the Hotel or related to the ownership or operation of the Hotel and given as security, in part, for a Loan.

“Mortgagee” shall mean the holder of any Mortgage.

“Notice” shall mean a notice given in accordance with Section 20.10.

“Officer’s Certificate” shall have the meaning given such term in Section 3.1(b)(vi).

“Parent” shall mean, with respect to any Person, any Person which directly, or indirectly through one or more Subsidiaries or Affiliates, (a) owns 51% or more of the voting or beneficial interest in, or (b) otherwise has the right or power (whether by contract, through ownership of securities or otherwise) to control, such Person.

“Percentage Rent” shall have the meaning given such term in Section 3.1(b)(i).

“Percentage Rent Amount” shall have the meaning given such term in Section 3.1(b)(ii).

“Permitted Encumbrances” shall mean all rights, restrictions, and easements of record set forth in Schedule B of any Owner’s title insurance policy issued to Landlord on the date hereof (with respect to the Hotel), plus any other such encumbrances as may have been consented to in writing by Landlord from time to time.

“Permitted Use” shall mean any use of the Leased Property permitted pursuant to Section 4.1(a).

“Person” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

“Progress Installments” shall have the meaning given such term in Section 3.1(b)(iii).

“Real Estate Taxes” shall mean all real estate taxes owed by Landlord, including general and special assessments, if any, which are imposed upon the Land, and any improvements thereon.

“Renewal Terms” shall have the meaning given such term in Section 2.4.

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“Renovation Period” shall mean the period commencing from the start of material construction at the Property of that certain planned renovation of a material number of rooms, the lobby and a substantial number of the amenity spaces and ending upon conclusion of material construction of such renovations.

“Rent” shall mean, collectively, the Minimum Rent, Percentage Rent and Additional Charges.

“Routine Capital Expenditures” shall mean certain routine, non-major expenditures which are classified as “capital expenditures” under generally-accepted accounting principles, but which will be funded from funds provided by Landlord (pursuant to Section 5.2), rather than pursuant to the provisions of Section 5.3. Routine Capital Expenditures consist of the following types of expenditures: exterior and interior repainting; resurfacing building walls and floors; resurfacing parking areas; replacing folding walls; and miscellaneous similar expenditures (all such types of expenditures to be in accordance with Manager’s policies as then generally implemented throughout the Manager’s System).

“Subsidiary” shall mean, with respect to any Person, any Entity in which such Person directly, or indirectly through one or more Subsidiaries or Affiliates, (a) owns 50% or more of the voting or beneficial interest or (b) which such Person otherwise has the right or power to control (whether by contract, through ownership of securities or otherwise).

“Tenant” shall have the meaning given such term in the Introduction of this Agreement.

“Tenant’s Personal Property” shall mean all motor vehicles, Inventories, FF&E and any other tangible personal property and intangible property of Tenant acquired by Tenant at its election and with its own funds, on and after the date hereof, and located at the Leased Property or used in Tenant’s business at the Leased Property and all modifications, replacements, alterations and additions to such personal property installed at the expense of Tenant.

“Term” shall mean, collectively, the Fixed Term and the Renewal Terms, to the extent properly exercised pursuant to the provisions of Section 2.4, unless sooner terminated pursuant to the provisions of this Agreement.

“Total Casualty” shall mean any fire or other casualty which results in damage to the Hotel and its contents to the extent that the total cost of repairing and/or replacing the damaged portion of the Hotel to the same condition as existed previously would be 30% or more of the then total replacement cost of the Hotel.

“Uniform System of Accounts” shall mean Uniform System of Accounts for the Lodging Industry, Eleventh Revised Edition, 2014, as published by the American Hotel & Lodging Association, as the same may be further revised from time to time.

“Working Capital” shall mean funds that are used in the day-to-day operation of the business of the Hotel, including, without limitation, amounts sufficient for the maintenance of change and petty cash funds, amounts deposited in operating bank accounts, receivables, amounts deposited in payroll accounts, prepaid expenses and funds required to maintain Inventories, less accounts payable and accrued current liabilities.

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ARTICLE 2

LEASED PROPERTY AND TERM

2.1 Leased Property. Upon and subject to the terms and conditions hereinafter set forth, Landlord leases to Tenant and Tenant leases from Landlord all of Landlord's right, title and interest in and to all of the following (collectively, the "Leased Property"):

- (a) the Land;
- (b) all buildings, structures, other improvements and appurtenances of every kind including, but not limited to, the Hotel, the alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site), parking garage and parking areas and roadways appurtenant to such buildings and structures presently situated upon the Land (collectively, the "Improvements");
- (c) all easements, rights and appurtenances relating to the Land and the Improvements;
- (d) all equipment, machinery, fixtures, and other items of property, now or hereafter permanently affixed to or incorporated into the Improvements, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air-conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, all of which, to the maximum extent permitted by law, are hereby deemed by the parties hereto to constitute real estate, together with all replacements, modifications, alterations and additions thereto, but specifically excluding all items included within the category of Tenant's Personal Property (collectively, the "Fixtures");
- (e) all of the Intangible Property;
- (f) all FF&E owned by Landlord located in or on the Hotel as of the date hereof and any and all replacements, modifications, alterations and additions to the FF&E, but specifically excluding Tenant's Personal Property; and
- (g) any and all leases of space (including any security deposits held by Landlord pursuant thereto) in the Leased Improvements to tenants thereof.

2.2 Condition of Leased Property. Tenant acknowledges receipt and delivery of possession of the Leased Property and Tenant accepts and will accept the Leased Property in its "as is" condition, subject to the rights of parties in possession, the existing state of title, including all covenants, conditions, restrictions, reservations, mineral leases, easements and other matters of record or that are visible or apparent on the Leased Property, all applicable Legal Requirements, the lien of any financing instruments, mortgages permitted by the terms of this Agreement, and such other matters which would be disclosed by an inspection of the Leased Property and the record title thereto or by an accurate survey thereof. TENANT REPRESENTS THAT IT HAS INSPECTED THE LEASED PROPERTY AND ALL OF THE FOREGOING AND HAS FOUND THE CONDITION THEREOF SATISFACTORY AND IS NOT

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RELYING ON ANY REPRESENTATION OR WARRANTY OF LANDLORD OR LANDLORD'S AGENTS OR EMPLOYEES WITH RESPECT THERETO, EXCEPT AS EXPRESSLY SET FORTH HEREIN, AND TENANT WAIVES ANY CLAIM OR ACTION AGAINST LANDLORD IN RESPECT OF THE CONDITION OF THE LEASED PROPERTY. LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PROPERTY OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY TENANT. To the maximum extent permitted by law, however, Landlord hereby assigns to Tenant all of Landlord's rights to proceed against any predecessor in title, contractors and materialmen for breaches of warranties or representations or for latent defects in the Leased Property. Landlord shall fully cooperate with Tenant in the prosecution of any such claims, in Landlord's or Tenant's name, all at Tenant's sole cost and expense. Tenant shall indemnify, defend, and hold harmless Landlord from and against any loss, cost, damage or liability (including reasonable attorneys' fees) incurred by Landlord in connection with such cooperation.

2.3 Fixed Term. The initial term of this Agreement (the "Fixed Term") shall commence on the Commencement Date and shall expire on the last day of the month immediately prior to the fifth (5th) anniversary of the Commencement Date unless sooner terminated in accordance with the provisions hereof.

2.4 Renewal Term.

(a) Provided that no Event of Default shall have occurred and be continuing, this Agreement shall automatically extend for two renewal terms of five years each (each such renewal a "Renewal Term" and collectively, the "Renewal Terms") unless Tenant elects, by providing Notice to Landlord no later than 30 months prior to the scheduled expiration of the Term of this Agreement or the previous Renewal Term, as applicable, to terminate this Agreement upon the expiration of the then current Term; provided, that, if required by the Loan Agreement, no such Notice shall be effective unless a copy of such Notice has been delivered to Lender in the manner provided in Section 20.10. Any such Notice to terminate shall, if given, be irrevocable, but Tenant's failure to terminate shall not preclude Landlord from exercising any of its rights to terminate this Agreement in accordance with the terms hereof.

(b) Each Renewal Term shall commence on the day succeeding the expiration of the Fixed Term or the preceding Renewal Term, as the case may be. All of the terms, covenants and provisions of this Agreement shall apply to each such Renewal Term; provided, that the annual Rent hereunder shall be the greater of (i) fair market value rent on the date of the commencement of the Renewal Term and (ii) the amount of Rent payable hereunder for the year prior to the Renewal Term. Tenant shall have no right to extend the Term beyond the expiration of the last Renewal Term. If Tenant does not give Notice that it elects to terminate this Agreement in accordance with this Section 2.4, this Agreement shall automatically renew at the end of the Term then in effect as provided in the preceding paragraph.

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ARTICLE 3

RENT

3.1 Rent. Tenant shall pay or cause Manager to pay to Landlord, by wire transfer of immediately available federal funds or by other means acceptable to Landlord in its sole discretion, in lawful money of the United States of America which shall be legal tender for the payment of public and private debts, without notice, offset, abatement, demand or deduction (unless otherwise expressly provided in Sections 10.1(b), 10.2(a) or 20.6(b) or elsewhere in this Agreement), Rent during the Term as follows:

(a) Minimum Rent: For each Fiscal Year during the Term, Tenant shall pay minimum rent ("Minimum Rent") in the amounts calculated as provided in Schedule D; and

(b) Percentage Rent:

(i) For each Fiscal Year during the Term, Tenant shall pay percentage rent ("Percentage Rent") in an amount equal to the Percentage Rent Amount.

(ii) For purposes of this Section 3.1, "Percentage Rent Amount" shall mean an amount calculated as provided in Schedule E.

(iii) Percentage Rent, if any, for each Fiscal Year shall be payable, in arrears, in 12 monthly installments (the first 11 such installments for any Fiscal Year being referred to in this Agreement as the "Progress Installments"; the last such installment for any Fiscal Year being referred to in this Agreement as the "Final Installment"; provided, however, that in the case of the first Fiscal Year and the last Fiscal Year, the number of such installments shall equal the number of months (or partial calendar months) included within such Fiscal Year. Each of the Progress Installments shall be payable within 20 days after the calendar month (or partial calendar month) then most recently ended. The Final Installment shall be payable within 30 days after Landlord's receipt of the annual financial statements and other reports required to be delivered to Landlord pursuant to Section 17.2(b) for such Fiscal Year. Appropriate provision shall be made in the case of the final calendar month (or partial calendar month) of the Term.

(iv) Each of the Progress Installments shall be based on actual operations to date for such Fiscal Year. The first Progress Installment for any Fiscal Year shall equal 1/12th of the total Percentage Rent payment that would be payable for such Fiscal Year if the actual Gross Revenues for such Fiscal Year were to equal the Gross Revenues received to date and annualized. Each subsequent Progress Installment for any Fiscal Year shall equal (A) the proportionate share (e.g. the second Progress Installment will equal 2/12th of the total Percentage Rent that would be payable for such Fiscal Year if the actual Gross Revenues for such Fiscal Year were to equal the Gross Revenues received to date and annualized) minus (B) the aggregate amount of the Progress Installments, if any, theretofore paid in respect of Percentage Rent for such Fiscal Year. The Final Installment shall equal the portion of the Percentage Rent for such Fiscal Year, if any, remaining unpaid after payment of all Progress Installments in respect thereof.

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(v) At the end of each Fiscal Year, in connection with the submission of annual financial statements and other reports pursuant to Section 17.2(b) and the completion of any audit pursuant to Section 3.2, the Percentage Rent for such Fiscal Year shall be determined. If such determination reveals any underpayments or overpayments in respects of the Percentage Rent for such Fiscal Year, then an adjustment in the amount of the Percentage Rent for such Fiscal Year shall be made, and all sums determined to be owing to either Landlord or Tenant as a result of such adjustment shall be paid immediately.

(vi) Tenant shall deliver to Landlord a certificate from an officer of Tenant or Manager (an "Officer's Certificate") with each Percentage Rent payment setting forth the calculation of the Percentage Rent payment for the most recently completed month of each Fiscal Year in the Term and Percentage Rent year to date through such recently completed month. Percentage Rent shall be subject to confirmation and adjustment, if applicable, as set forth in Section 3.2.

(c) The obligation to pay Rent shall survive the expiration or earlier termination of the Term, and a final reconciliation, taking into account, among other relevant adjustments, any adjustments which are accrued after such expiration or termination date but which related to Rent accrued prior to such termination date, shall be made not later than 30 days after such expiration or termination date.

(d) Notwithstanding anything in this Agreement to the contrary, in the event that cash available from Gross Revenues after payment by Tenant of all expenses due and payable by Tenant under this Agreement is insufficient to pay the aggregate amount of Percentage Rent due for such month, then the amount of such deficiency shall be deferred and added to and paid in connection with the next monthly Percentage Rent payment or payments hereunder; provided, however, that any Percentage Rent deferred as herein provided shall in any event be due and payable and paid prior to the end of the Fiscal Year in which such deferral occurred.

3.2 Confirmation of Percentage Rent. Tenant shall utilize, or cause to be utilized, an accounting system for the Leased Property in accordance with its usual and customary practices, and in accordance with GAAP and the Uniform System of Accounts, that will accurately record all data necessary to compute Percentage Rent, and Tenant shall retain, for at least five years after the expiration of each Lease Year, reasonably adequate records conforming to such accounting system showing all data necessary to conduct Landlord's audit and to compute Percentage Rent for the applicable Lease Year. Landlord shall have the right, for a period of two years following each Lease Year, from time to time, by its accountants or representatives, to audit such information in connection with Landlord's audit, and to examine all Tenant's records (including supporting data and sales and excise tax returns) reasonably required to complete Landlord's audit and to verify Percentage Rent, subject to any prohibitions or limitations on disclosure of any such data under Legal Requirements. If any Landlord's audit discloses a deficiency in the payment of Percentage Rent, and either Tenant agrees with the results of Landlord's audit or the matter is otherwise determined or compromised, Tenant shall forthwith pay to Landlord the amount of the deficiency, as finally agreed or determined, together with interest at the Interest Rate from the date when said payment should have been made to the date of payment thereof. If any Landlord's audit discloses a deficiency in the determination or

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reporting of Gross Revenue, which, as finally agreed or determined, exceeds five percent, Tenant shall pay the costs of the portion of Landlord's audit allocable to the determination of such Revenues (the "Revenue Audit"). Any proprietary information obtained by Landlord pursuant to the provisions of this Section 3.2 shall be treated as confidential, except that such information may be used, subject to appropriate confidentiality safeguards, in any litigation or arbitration between the parties and except further that Landlord may disclose such information to prospective lenders, investors and underwriters and to any other persons to whom disclosure is necessary to comply with applicable laws, regulations and government requirements. The obligations of Tenant contained in this Section 3.2 shall survive the expiration or earlier termination of this Agreement. Any dispute as to the existence or amount of any deficiency in the payment of Percentage Rent as disclosed by Landlord's audit shall, if not otherwise settled by the parties, be submitted to arbitration.

3.3 Additional Charges. In addition to the Minimum Rent or Percentage Rent payable under Section 3.1 of this Agreement, (a) Tenant also will pay and discharge as and when due and payable all other amounts, liabilities, obligations and Impositions that Tenant assumes or agrees to pay under this Agreement, and (b) in the event of any failure on the part of Tenant to pay any of those items referred to in clause (a) of this Section 3.3, Tenant also will promptly pay and discharge every fine, penalty, interest and cost that may be added for non-payment or late payment of such items (the items referred to in clauses (a) and (b) of this Section 3.3 being additional rent hereunder and being referred to herein collectively as the "Additional Charges"), and Landlord shall have all legal, equitable and contractual rights, powers and remedies provided either in this Agreement or by statute or otherwise in the case of non-payment of the Additional Charges as in the case of non-payment of the Minimum Rent or Percentage Rent. If any installment of Minimum Rent, Percentage Rent or Additional Charges (but only as to those Additional Charges that are payable directly to Landlord) shall not be paid on its due date, Tenant will pay Landlord within 10 days of demand, as Additional Charges, an amount equal to the interest computed at the Interest Rate on the amount of such installment, from the due date of such installment to the date of payment thereof. To the extent that Tenant pays any Additional Charges to Landlord pursuant to the requirements of this Agreement, Tenant shall be relieved of its obligation to pay such Additional Charges to the entity to which they would otherwise be due and Landlord shall pay the same from monies received from Tenant.

3.4 Payment of Impositions.

(a) Subject to Article 8 relating to permitted contests, Tenant shall pay, or cause to be paid, all Impositions (other than Real Estate Taxes which shall be paid by Landlord) before any fine, penalty, interest or cost (other than any opportunity cost as a result of a failure to take advantage of any discount for early payment) may be added for non-payment, such payments to be made directly to the taxing authorities where feasible, and shall promptly, upon request, furnish to Landlord copies of official receipts or other reasonably satisfactory proof evidencing such payments. If any such Imposition may, at the option of the taxpayer, lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments during the Term as the same become due and before any fine, penalty, premium, further interest or cost may be added thereto. Landlord, at its expense, shall, to the extent required or permitted

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by Applicable Law, prepare and file all tax returns and pay all taxes due in respect of Landlord's net income, gross receipts (from any source other than the Rent received by Landlord from Tenant), sales and use, single business, ad valorem, franchise taxes, Real Estate Taxes and taxes on its capital stock, and Tenant, at its expense, shall, to the extent required or permitted by Applicable Laws, prepare and file all other tax returns and reports in respect of any Imposition as may be required by Government Agencies. If any refund shall be due from any taxing authority in respect of any Imposition paid by Tenant, the same shall be paid over to or retained by Tenant if no Event of Default shall have occurred hereunder and be continuing. If an Event of Default shall have been declared by Landlord and be continuing, any such refund shall be paid over to or retained by Landlord. Landlord and Tenant shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Property as may be necessary to prepare any required returns and reports. In the event Government Agencies classify any property covered by this Agreement as personal property, Tenant shall file or cause to be filed by Manager on behalf of Landlord, all personal property tax returns in such jurisdictions where it may legally so file. Each party shall, to the extent it possesses the same, provide the other, upon request, with cost and depreciation records necessary for filing returns for any property so classified as personal property. Where Landlord is legally required to file personal property tax returns for property covered by this Agreement and/or gross receipts tax returns for Rent received by Landlord from Tenant, Landlord shall file the same with reasonable cooperation from Tenant. Landlord shall provide Tenant with copies of assessment notices in sufficient time for Tenant to prepare a protest which Landlord shall file. Landlord may, upon notice to Tenant, at Landlord's option and at Landlord's sole expense, appeal, protest, or institute such other proceedings (in its or Tenant's name) as Landlord may deem appropriate to effect a reduction of real estate assessments and Tenant shall fully cooperate with Landlord in such protest, appeal or other action.

Landlord shall give prompt Notice to Tenant of all Impositions payable by Tenant hereunder of which Landlord at any time has knowledge; provided, however, that Landlord's failure to give any such notice shall in no way diminish Tenant's obligation hereunder to pay such Impositions (except that Landlord shall be responsible for any interest or penalties incurred as a result of Landlord's failure promptly to forward the same).

In addition, Tenant shall pay the following:

(i) Utility Charges. Tenant shall pay or cause to be paid all charges for electricity, power, gas, oil, water and other utilities used in connection with the Leased Property.

(ii) Insurance Premiums. Tenant shall pay or cause to be paid all premiums for the insurance coverage required to be maintained by Tenant pursuant to Article 9.

(iii) Other Charges. Tenant shall pay or cause to be paid all other amounts, liabilities and obligations arising in connection with the Leased Property except those obligations expressly assumed by Landlord pursuant to the provisions of this Agreement or expressly stated not to be an obligation of Tenant pursuant to this Agreement.

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(b) Reimbursement for Additional Charges. If Tenant pays or causes to be paid property taxes or similar or other Additional Charges attributable to periods after the end of the Term, whether upon expiration or sooner termination of this Agreement, Tenant may, within a reasonable time after the end of the Term, provide Notice to Landlord of its estimate of such amounts. Landlord shall promptly reimburse Tenant for all payments of such taxes and other similar Additional Charges that are attributable to any period after the Term of this Agreement.

3.5 Late Payment of Rent, Etc.

(a) If any installment of Minimum Rent, Percentage Rent or Additional Charges shall not be paid within five Business Days after its due date, Tenant shall pay Landlord, within five days after Landlord's written demand therefor, as Additional Charges, a late charge (to the extent permitted by law) computed at the Interest Rate on the amount of such installment, from the due date of such installment to the date of payment thereof. To the extent that Tenant pays any Additional Charges directly to Landlord or any Mortgagee pursuant to any requirement of this Agreement, Tenant shall be relieved of its obligation to pay such Additional Charges to the Entity to which they would otherwise be due and Landlord shall pay when due, or cause the applicable Mortgagee to pay when due, such Additional Charges to the Entity to which they are due. If any payment due from Landlord to Tenant shall not be paid within 30 days after its due date, Landlord shall pay to Tenant, on demand, a late charge (to the extent permitted by law) computed at the Interest Rate on the amount of such installment from the due date of such installment to the date of payment thereof.

(b) In the event of any failure by Tenant to pay any Additional Charges when due, except as expressly provided in Section 3.3 with respect to permitted contests pursuant to Article 8, Tenant shall promptly pay (unless payment thereof is in good faith being contested and enforcement thereof is stayed) and discharge, as Additional Charges, every fine, penalty, interest and cost which may be added for non-payment or late payment of such items. Landlord shall have all legal, equitable and contractual rights, powers and remedies provided either in this Agreement or by statute or otherwise in the case of non-payment of the Additional Charges as in the case of non-payment of the Minimum Rent and Percentage Rent.

3.6 Net Lease. The Rent shall be absolutely net to Landlord so that this Agreement shall yield to Landlord the full amount of the installments or amounts of the Rent throughout the Term, subject to any other provisions of this Agreement which expressly provide otherwise (including, without limitation, (a) Landlord's obligations to pay Real Estate Taxes pursuant to Section 3.4, (b) Landlord's obligation to maintain Insurance pursuant to Article 9, and (c) those provisions for adjustment, refunding or abatement of such Rent and for the funding of Landlord's obligations pursuant to Section 14.3). This Agreement is a net lease and, except to the extent otherwise expressly specified in this Agreement, it is agreed and intended that Rent payable hereunder by Tenant shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction and that Tenant's obligation to pay all such amounts, throughout the Term and all applicable Renewal Terms is absolute and unconditional and, except to the extent otherwise expressly specified in this Agreement, the respective obligations and liabilities of Tenant and Landlord hereunder shall in no way be released, discharged or otherwise affected for any reason, including without limitation: (i) any defect in the condition, merchantability, design, quality or fitness for

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use of the Leased Property or any part thereof, or the failure of the Leased Property to comply with all Applicable Laws, including any inability to occupy or use the Leased Property by reason of such noncompliance; (ii) any damage to, removal, abandonment, salvage, loss, condemnation, theft, scrapping or destruction of or any requisition or taking of the Leased Property or any part thereof, or any environmental conditions on the Leased Property or any property in the vicinity of the Leased Property; (iii) any restriction, prevention or curtailment of or interference with any use of the Leased Property or any part thereof including eviction; (iv) any defect in title to or rights to the Leased Property or any lien on such title or rights to the Leased Property; (v) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by any Person; (vi) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Tenant or any other Person, or any action taken with respect to this Agreement by any trustee or receiver of Tenant or any other Person, or by any court, in any such proceeding; (vii) any right or claim that Tenant has or might have against any Person, including without limitation Landlord (other than a monetary default) or any vendor, manufacturer, contractor of or for the Leased Property; (viii) any failure on the part of Landlord or any other Person to perform or comply with any of the terms of this Agreement, or of any other agreement; (ix) any invalidity, unenforceability, rejection or disaffirmance of this Agreement by operation of law or otherwise against or by Tenant or any provision hereof; (x) the impossibility of performance by Tenant or Landlord, or both; (xi) any action by any court, administrative agency or other Government Agencies; (xii) any interference, interruption or cessation in the use, possession or quiet enjoyment of the Leased Property or otherwise; or (xiii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether foreseeable or unforeseeable, and whether or not Tenant shall have notice or knowledge of any of the foregoing; provided, however, that the foregoing shall not apply or be construed to restrict Tenant's rights in the event of any act or omission by Landlord constituting gross negligence or willful misconduct. Except as specifically set forth in this Agreement, this Agreement shall be non-cancellable by Tenant for any reason whatsoever and, except as expressly provided in this Agreement, Tenant, to the extent now or hereafter permitted by Applicable Laws, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Agreement or to any diminution, abatement or reduction of Rent payable hereunder. Except as specifically set forth in this Agreement, under no circumstances or conditions shall Landlord be expected or required to make any payment of any kind hereunder or have any obligations with respect to the use, possession, control, maintenance, alteration, rebuilding, replacing, repair, restoration or operation of all or any part of the Leased Property, so long as the Leased Property or any part thereof is subject to this Agreement, and Tenant expressly waives the right to perform any such action at the expense of Landlord pursuant to any law.

ARTICLE 4**USE OF THE LEASED PROPERTY****4.1 Permitted Use.**

(a) Permitted Use. Tenant shall, and shall cause Manager to, at all times during the Term and at any other time that Tenant and Manager shall be in possession of the Leased Property, continuously use and operate the Leased Property as a hotel facility, with

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ancillary uses, including restaurant and retail purposes, in a manner consistent with the Management Agreement and shall use reasonable good faith efforts to seek to maximize Gross Revenues. Subject to Section 16.3, Tenant shall not, and Tenant shall ensure that Manager shall not, use the Leased Property or any portion thereof for any other use without the prior written consent of Landlord. No use shall be made or permitted to be made of the Leased Property and no acts shall be done thereon which will cause the cancellation of any insurance policy covering the Leased Property or any part thereof (unless another adequate policy is available), and Tenant shall not, and shall ensure that Manager shall not, sell or otherwise provide or permit to be kept, used or sold in or about the Leased Property any article which may be prohibited by law or by the standard form of fire insurance policies, or any other insurance policies required to be carried hereunder, or fire underwriter's regulations. Tenant shall, at its sole cost, comply with all Insurance Requirements. Further, Tenant shall not, and Tenant shall ensure that Manager shall not, take or omit to take any action, the taking or omission of which materially impairs the value or the usefulness of the Leased Property or any part thereof for its Permitted Use. Tenant, in its reasonable discretion subject to the terms of the Loan Documents, the Management Agreement, and this Agreement may (i) enter into any concession or other agreement for the provision of food and beverages at the Hotel or leasing to tenants or (ii) upon the expiration or other termination of the Management Agreement, engage a replacement manager for the Hotel.

(b) Necessary Approvals. Tenant shall proceed with all due diligence and exercise commercially reasonable efforts to obtain and maintain all approvals necessary to, or to cause Manager to, use and operate, for its Permitted Use, the Leased Property and the Hotel located thereon under applicable law. Landlord shall cooperate with Tenant in this regard, including executing all applications and consents required to be signed by Landlord in order for Tenant to obtain and maintain such approvals.

(c) Lawful Use, Etc. Tenant shall not, and Tenant shall ensure that Manager shall not, use or suffer or permit the use of the Leased Property or Tenant's Personal Property, if any, for any unlawful purpose. Tenant shall not, and Tenant shall ensure that Manager shall not, (i) commit or suffer to be committed any waste on the Leased Property, or in the Hotel, or cause or permit any unlawful nuisance thereon or therein, or (ii) permit the Leased Property, or any portion thereof, to be used in such a manner as (A) might reasonably impair Landlord's title thereto or to any portion thereof, or (B) may reasonably allow a claim or claims for adverse usage of adverse possession by the public, as such, or of implied dedication of the Leased Property or any portion thereof.

4.2 Compliance with Legal/Insurance Requirements, Etc. Subject to the provisions of Article 8, Tenant, at its sole expense, shall, or shall cause Manager to, (a) comply with Legal Requirements and Insurance Requirements in respect of the use, operation, maintenance, repair, alteration and restoration of the Leased Property, and (b) comply with all appropriate licenses, and other authorizations and agreements required for any use of the Leased Property and Tenant's Personal Property, if any, then being made and which are material to the operation of the Leased Property for the uses permitted hereunder, and for the proper operation and maintenance of the Leased Property or any part thereof.

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ARTICLE 5

REPAIRS, MAINTENANCE AND REPLACEMENTS

5.1 Repairs and Maintenance Costs Which Are Expensed. Tenant shall, and shall cause Manager to, (a) maintain the Leased Property and all buildings and improvements located thereon (including, but not limited to, the interior and exterior, structural, plumbing, HVAC and otherwise) in good repair and working condition and shall make or cause to be made such routine maintenance, repairs and minor alterations as it determines are necessary for such purposes, (b) not commit waste or permit impairment or deterioration of the Leased Property (normal wear and tear excepted); (c) not abandon the Leased Property; (d) comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Leased Property; (e) provide prompt written notification to Landlord of any material adverse change to the Leased Property, such as material changes to any environmental condition, including, without limitation, the presence of biocontaminants, such as mold; (f) promptly undertake appropriate assessment, remedial and preventative actions sufficient to meet any guidelines established by Landlord or guidelines or regulations adopted by applicable authoritative bodies or regulatory agencies in connection with a determination of any material adverse change, and, in any event with respect to mold contamination, Tenant shall undertake (i) removal of the mold, (ii) abatement of the underlying cause of mold (including water intrusion), and (iii) repair of any leaks and associated water damage at the Leased Property; and (g) return the Leased Property and all buildings and improvements thereon at the expiration of the Term in as reasonably a good condition as when received, ordinary wear and tear excepted and shall make or cause to be made such routine maintenance, repairs and minor alterations as it determines are necessary for such purposes. The phrase “routine maintenance, repairs, and minor alterations” as used in this Section 5.1 shall include only those which are normally expensed under generally accepted accounting principles. All costs and expenses incurred in connection with such maintenance, repairs and alterations shall be borne by Tenant.

5.2 Routine Capital Expenditures and FF&E.

(a) In accordance with the Management Agreement, Tenant shall, or Tenant shall cause Manager to, prepare an annual estimate (the “Capital Reserve Budget”) of the expenditures necessary for (i) replacements, renewals and additions to the FF&E, and (ii) Routine Capital Expenditures, during the ensuing Fiscal Year and shall deliver the Capital Reserve Budget to Landlord for its review, comment and approval on or before each November 1 during the Term (or at such other time as Landlord and Tenant shall agree). The Capital Reserve Budget shall also indicate the estimated time schedule for making such replacements, renewals, and additions, a reasonable description of items required to be replaced, the number of units to be replaced, unit costs and costs in the aggregate, together with such additional information as Landlord shall reasonably request, to the extent then known by Manager.

(b) Tenant shall, or Tenant shall cause Manager to, (in compliance with the applicable Capital Reserve Budget, unless there has been a change in circumstances) from time to time make such (i) replacements, renewals and additions to the FF&E, and (ii) Routine Capital Expenditures, as Tenant deems necessary. Notwithstanding the foregoing, no expenditures shall be made in excess of the amounts set forth in the then-applicable Capital Reserve Budget without

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the approval of Landlord; provided, however, that Tenant or Manager shall be authorized to take appropriate remedial action (including making any necessary expenditures above the total aggregate amount set forth in the then-applicable Capital Reserve Budget), without receiving Landlord's prior approval, to remedy or respond to any of the Emergency Requirements (provided further that Tenant shall notify Landlord of any such remedial action that requires more than a de minimis expenditure of funds).

(c) All costs and expenses incurred in connection with the replacements, renewals and additions to the FF&E and the Routine Capital Expenditures required under this Section 5.2 shall be paid by Tenant from amounts otherwise provided by Landlord to Tenant for such purposes.

5.3 Capital Expenditures.

(a) Tenant, or Manager on behalf of Tenant, shall prepare an annual estimate (the "Building Estimate") of all Capital Expenditures, which Building Estimate shall include such detail as is reasonably required to allow Landlord to review and analyze the Capital Expenditures described therein. Tenant shall, or Tenant shall cause Manager to, submit the Building Estimate to Landlord for its approval at least 30 days prior to the beginning of each Fiscal Year (or at such other time as Landlord and Tenant shall agree). Tenant shall not, and Tenant shall ensure that Manager shall not, make any Capital Expenditures without the prior written approval of Landlord, except as otherwise permitted herein.

(b) Notwithstanding the provisions of Section 5.3(a), Tenant shall be authorized to take appropriate remedial action (including making any necessary Capital Expenditures) without receiving Landlord's prior approval, to remedy or respond to any of the Emergency Requirements; provided, that Tenant shall notify Landlord of any such remedial action that requires a Capital Expenditure that is not de minimis. Tenant and Manager shall cooperate with Landlord in the pursuit of any such action and shall have the right to participate therein. Landlord shall, upon written request by Tenant, or Manager on behalf of Tenant, promptly reimburse all expenditures made by Tenant or Manager pursuant to this Section 5.3(b).

(c) The cost of all Capital Expenditures (including the expenses incurred by Landlord or Tenant or Manager in connection with any civil or criminal proceeding described above) shall be borne solely by Landlord, and shall not be paid from Gross Revenues.

5.4 Ownership of Replacements. All Capital Expenditures and, subject to the rights of Manager under the Management Agreement, all repairs, alterations, improvements, renewals or replacements made pursuant to this Article 5, shall be the property of Landlord.

5.5 Tenant's Personal Property. At the expiration or sooner termination of the Term, Landlord may, in its sole and absolute discretion, elect either (a) to give Tenant Notice that Tenant shall be required, within 10 Business Days after such expiration or termination, to remove all, Tenant's Personal Property from the Leased Property or (b) to buy Tenant's Personal Property by paying Tenant the book value of such property. Failure of Landlord to make such election shall be deemed an election to proceed in accordance with clause (b) preceding.

PRIVILEGED & CONFIDENTIAL**5.6 Yield Up.**

(a) Upon the expiration or sooner termination of this Agreement, Tenant shall vacate and surrender the Leased Property to Landlord in substantially the same condition the Leased Property was in on the Commencement Date, except as repaired, replaced, rebuilt, restored, altered or added to as permitted or required by the provisions of this Agreement, reasonable wear and tear and Condemnation (and casualty damage, in the event that this Agreement is terminated following a casualty in accordance with Article 10) excepted, or as contemplated by any plan for renovation being managed by Manager.

(b) In addition, as of the expiration or earlier termination of this Agreement, Tenant shall cooperate in good faith with Landlord to effect an orderly transition of the management or lease of the Facility and Tenant shall, at Landlord's sole cost and expense, use its good faith, commercially reasonable efforts to transfer to and cooperate with Landlord or Landlord's nominee in connection with the processing of all applications for licenses, operating permits and other governmental authorizations and all contracts entered into by Tenant, including contracts with governmental or quasi-governmental Entities which may be necessary for the use and operation of the Hotel as then operated, but excluding (a) utility deposits and (b) telephone numbers. Landlord shall indemnify and hold Tenant harmless for all claims, costs and expenses (including reasonable attorneys' fees) arising from acts or omissions by Landlord under such contracts subsequent to the date of transfer thereof to Landlord, and Tenant shall indemnify and hold Landlord harmless for all claims, costs and expenses (including reasonable attorney's fees) arising from acts or omission by Tenant under such contracts prior to the date of transfer thereof to Landlord.

5.7 Management Agreement. Except as otherwise provided below, Tenant shall not amend or modify the Management Agreement or replace Manager without Landlord's prior written consent, which consent may be given or withheld by Landlord in its sole and absolute discretion. The Management Agreement shall expressly provide that, Manager shall at all times be an "eligible independent contractor" as defined in Section 856(d) of the Code. The terms of the Management Agreement (a) shall not, in Landlord's and its counsel's reasonable opinion, cause the Rent to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, and (b) shall expressly provide that if Landlord and its counsel reasonably conclude that the terms of the Management Agreement will have such an effect, then the terms of the Management Agreement will be modified so that the Management Agreement, in the reasonable opinion of Landlord and its counsel, does not cause the Rent to be so characterized under the Code; provided, however, no such modifications shall affect the amount of Management Fees (as defined in the Management Agreement) or the practical realization of the rights and benefits of the Manager thereunder.

ARTICLE 6**IMPROVEMENTS, ETC.**

6.1 Improvements to the Leased Property. Tenant shall not finance the cost of any construction by the granting of a lien on or security interest in the Leased Property, or Tenant's interest therein, without the prior written consent of Landlord, which consent may be withheld by

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Landlord in Landlord's sole discretion. Any such improvements shall, upon the expiration or sooner termination of this Agreement, remain or pass to and become the property of Landlord, free and clear of all encumbrances other than Permitted Encumbrances.

6.2 Equipment Leases. Landlord shall enter into such leases of equipment and personal property as Tenant may reasonably request from time to time, provided that the form and substance thereof shall be reasonably satisfactory to Landlord. Tenant shall prepare and deliver to Landlord all such lease documents for which Landlord's execution is necessary and Landlord shall promptly, upon approval thereof, execute and deliver such documents to Tenant. Tenant shall, throughout the Term, be responsible for performing all of Landlord's obligations under all such documents and agreements.

ARTICLE 7

LIENS

Subject to Article 8, Tenant shall not, and Tenant shall ensure that Manager does not, directly or indirectly, create or allow to remain, and each shall promptly discharge, at its expense, any lien, encumbrance, attachment, title retention agreement or claim upon the Leased Property or Tenant's leasehold interest therein or any attachment, levy, claim or encumbrance in respect of the Rent, other than (a) Permitted Encumbrances, (b) restrictions, liens and other encumbrances which are consented to in writing by Landlord, (c) liens for those taxes of Landlord which Tenant is not required to pay hereunder, (d) subleases permitted by Article 16, (e) liens for Impositions or for sums resulting from noncompliance with Legal Requirements so long as the same (i) are not yet due and payable, or (ii) are being contested in accordance with Article 8, (f) liens of mechanics, laborers, materialmen, suppliers or vendors incurred in the ordinary course of business that are not yet due and payable (but will be paid in full by Tenant or Manager) or are for sums that are being contested in accordance with Article 8, (g) any Mortgage or other liens which are the responsibility of Landlord, and (h) Landlord's Liens.

ARTICLE 8

PERMITTED CONTESTS

Tenant, or Manager at Tenant's direction, shall have the right to contest the amount or validity of any Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy, encumbrance, charge or claim (collectively, "Claims") as to the Leased Property, by appropriate legal proceedings, conducted in good faith and with due diligence; provided, however, that (a) the foregoing shall in no way be construed as relieving, modifying or extending Tenant's obligation to pay any Claims required hereunder to be paid by Tenant as finally determined, (b) such contest shall not cause Landlord or Tenant to be in default under any mortgage, deed of trust or other agreement encumbering the Leased Property or any part thereof (Landlord agreeing that any such mortgage, deed of trust or other agreement shall permit Tenant to exercise the rights granted pursuant to this Article 8) or any interest therein or result in a lien attaching to the Leased Property, unless such lien is fully bonded or is otherwise secured to the reasonable satisfaction of Landlord, (c) no part of the Leased Property nor any Rent therefrom shall be in any immediate danger of sale, forfeiture, attachment or loss, and (d) Tenant hereby indemnifies

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and holds harmless Landlord from and against any cost, claim, damage, penalty or reasonable expense, including reasonable attorneys' fees, incurred by Landlord in connection therewith or as a result thereof. Landlord agrees to join in any such proceedings if required legally to prosecute such contest; provided, however, that Landlord shall not thereby be subjected to any liability therefor (including, without limitation, for the payment of any costs or expenses in connection therewith) unless Tenant agrees to assume and indemnify Landlord with respect to the same. Tenant or Manager, as applicable, shall be entitled to any refund of any Claims and such charges and penalties or interest thereon which have been paid by Tenant or paid by Landlord to the extent that Landlord has been reimbursed by Tenant. If Tenant shall fail to pay or cause to be paid any Claims when finally determined, to provide reasonable security therefor, or to prosecute or cause to be prosecuted any such contest diligently and in good faith, Landlord may, upon Notice to Tenant, pay such charges, together with interest and penalties due with respect thereto, and Tenant shall reimburse Landlord therefor, upon demand, as Additional Charges.

ARTICLE 9**INSURANCE****9.1 General Insurance Requirements.**

(a) Coverages by Landlord. During the Term, Landlord shall at its sole expense, without reimbursement from Tenant, at all times keep the Leased Property insured with the kinds and amounts of insurance required under the Ground Leases and, if applicable and only for so long as the applicable Loan remains outstanding, any Loan Agreement (except to the extent such insurance is required to be kept by the Tenant pursuant to Section 9.1(b) below). The policies must include Landlord as a named insured, and Tenant and, if applicable and required by the Loan Agreement, Lender as an additional insured and loss payee to the extent its interest may appear.

(b) Coverages by Tenant. During the Term, Tenant shall at its expense keep the insurance described below. This insurance shall be written by companies authorized to issue insurance in the State and otherwise acceptable to Landlord. If required by Landlord, the policies must include Landlord as a named insured and, if applicable and required by the Loan Agreement, Lender as an additional insured and loss payee to the extent its interest may appear.

(i) Commercial Crime or Fidelity Bonds with limits and deductibles as may be reasonably requested by Landlord, covering Tenant's employees in job classifications normally bonded under prudent hotel management practices in the United States or otherwise required by law;

(ii) Workers' compensation benefits and employers' liability insurance for all persons employed by Tenant on the Leased Property to the extent necessary to protect Landlord and the Leased Property against Tenant's worker's compensation claims;

(iii) Vehicle liability insurance for owned, non-owned, and hired vehicles, including rented and leased vehicles containing minimum limits per occurrence of \$1,000,000; and

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(iv) Such other insurance relating to the operation of the Hotel business as Landlord may reasonably request, provided, that such other insurance is customary for facilities such as the Leased Property and the operation thereof.

9.2 Waiver of Subrogation. All insurance policies carried by Landlord or Tenant covering the Leased Property, the FF&E, the Hotel or Tenant's Personal Property, including, without limitation, contents, fire and casualty insurance, shall expressly waive any right of subrogation on the part of the insurer against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement so long as the same are obtainable without extra cost, and in the event of such an extra charge the other party, at its election, may pay the same, but shall not be obligated to do so. Each party agrees to seek recovery from any applicable insurance coverage prior to seeking recovery against the other.

9.3 Form Satisfactory, Etc. All of the policies of insurance referred to in this Article 9 shall be written in a form, with deductibles and by insurance companies reasonably satisfactory to Landlord and also shall meet and satisfy the requirements of any lender or manager having any interest in the Leased Property. Tenant shall deliver to Landlord policies or certificates of the insurance required under Section 9.1(b) above as of their effective date (and, with respect to any renewal policy, 30 days prior to the expiration of the existing policy), and in the event of the failure of Tenant either to obtain such insurance as herein called for or to pay the premiums therefor, or to deliver such policies or certificates thereof to Landlord at the times required, Landlord shall be entitled, but shall have no obligation, to obtain such insurance and pay the premiums therefor, and Tenant shall reimburse Landlord for any premium or premiums paid by Landlord for the coverages required under this Section upon written demand therefor, and repay the same within 30 days after Notice of such failure from Landlord shall constitute an Event of Default. Each insurer mentioned in this Article 9 shall agree, by endorsement to the policy or policies issued by it, or by independent instrument furnished to Landlord, to provide 30 days' written notice before Landlord, the policy or policies in question shall be materially altered, allowed to expire or canceled.

9.4 Blanket Policy. Notwithstanding anything to the contrary contained in this Article 9, Tenant or Landlord may bring the insurance provided for herein within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant or Landlord, provided, however, that the coverage afforded to Landlord and Tenant will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Agreement by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Article 9 are otherwise satisfied.

9.5 Separate Insurance. Tenant shall not on Tenant's own or pursuant to the request or requirement of any third party, take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article 9 to be furnished, or increase the amount of any then existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Landlord, are each included therein as an additional insured, and the loss is payable under such additional separate insurance in the same manner as losses are payable under this Agreement. Tenant shall immediately provide Notice to Landlord that Tenant has obtained any such separate insurance or of the increasing of any of the amounts of the then existing insurance.

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9.6 Reports on Insurance Claims. Tenant shall promptly investigate and make a complete and timely written report to the appropriate insurance company as to all accidents, claims for damage relating to the ownership, operation, and maintenance of the Hotel, any damage or destruction to the Hotel and the estimated cost of repair thereof and shall prepare any and all reports required by any insurance company in connection therewith. All such reports shall be timely filed with the insurance company as required under the terms of the insurance policy involved, and a final copy of such report shall be furnished to Landlord.

9.7 Indemnification. Except as expressly provided herein, Tenant shall protect, indemnify and hold harmless Landlord for, from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and reasonable expenses (including, without limitation, reasonable attorneys' fees), to the maximum extent permitted by law, imposed upon or incurred by or asserted against Landlord by reason of: (a) any accident, injury to or death of persons or loss of or damage to property of third parties occurring during the Term on or about the Leased Property or adjoining sidewalks or rights of way under Tenant's control, and (b) any use, misuse, condition, management, maintenance or repair by Tenant or anyone claiming under Tenant of the Leased Property or Tenant's Personal Property during the Term or any litigation, proceeding or claim by governmental entities to which Landlord is made a party or participant relating to such use, misuse, condition, management, maintenance, or repair thereof to which Landlord is made a party; provided, however, that Tenant's obligations hereunder shall not apply to any liability, obligation, claim, damage, penalty, cause of action, cost or expense arising from any gross negligence or willful misconduct of Landlord, its employees, agents, contractors or invitees. Tenant, at its expense, shall defend any such claim, action or proceeding asserted or instituted against Landlord covered under this indemnity (and shall not be responsible for any duplicative attorneys' fees incurred by Landlord) or may compromise or otherwise dispose of the same. The obligations of Tenant under this Section 9.7 shall survive the termination of this Agreement for a period of one year.

(b) Landlord covenants and agrees to indemnify, defend and hold harmless Tenant from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and reasonable expenses (including, without limitation, reasonable attorneys' fees) which Tenant may pay or incur by reason of (i) any willful act or omission or gross negligence of Landlord or (ii) any material breach or default by Landlord in the performance of Landlord's obligations under this Agreement.

ARTICLE 10

DAMAGE, REPAIR AND CONDEMNATION

10.1 Damage and Repair.

(a) If, during the Term, the Hotel is damaged by a Minor Casualty, Tenant shall, or Tenant shall cause Manager to, with all reasonable diligence, proceed to process the claim with the applicable insurance carriers, including settling such claim, and to make the necessary arrangements with appropriate contractors and suppliers to repair and/or replace the damaged portion of the Hotel. Landlord's consent shall not be needed for Tenant or Manager to perform any of the foregoing, all of which shall be performed in accordance with Tenant's

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reasonable judgment; provided, however, that all such work shall be undertaken (i) in a workmanlike manner and (ii) in accordance with plans and specifications approved by Landlord (which approval or disapproval shall be made within 10 Business Days after Landlord receives the applicable plans or specifications and, if applicable, within 10 Business Days after Landlord receives any modifications of said plans or specifications to accommodate Landlord's comments); and provided, further, that the parties agree that the standard for such repair and/or replacement shall be to repair and/or replace the damaged portion of the Hotel to levels of quality and quantity that are equal to those that existed with respect to such portion of the Hotel prior to the occurrence of the damage at issue. Landlord agrees to sign promptly any documents which are necessary to process and/or adjust the claim with the insurance carriers, as well as any contracts with such contractors and/or suppliers.

(b) If, during the Term, the Hotel suffers a Total Casualty, Landlord shall, at its cost and expense and with all reasonable diligence, repair and/or replace the damaged portion of the Hotel to the same condition as existed previously. Such damage or destruction shall not terminate this Agreement but Rent due hereunder shall be equitably abated. Notwithstanding any provisions of this Article 10 to the contrary, if the Hotel suffers a Total Casualty during the last 24 months of the Term, then either party shall have the right to terminate this Agreement by giving Notice to the other within 30 days after the date of damage or destruction, whereupon all accrued Rent shall be paid immediately, this Agreement shall automatically terminate five days after the date of such Notice and, upon such termination, Minimum Rent and Percentage Rent payable hereunder shall be reduced to zero.

(c) If, during the Term, the Hotel is damaged by fire, or wind casualty or other cause to a greater extent than a Minor Casualty, but not to the extent of a Total Casualty, Landlord shall, at its cost and expense and with all reasonable diligence, repair and/or replace the damaged portion of the Hotel to the same condition as existed previously. Tenant shall have the right to discontinue operating the Hotel to the extent Tenant deems necessary to comply with applicable Legal Requirements or as necessary for the safe and orderly operation of the Hotel and Rent due hereunder shall be equitably abated to the extent that Tenant cannot operate the Hotel. To the extent available, proceeds from the insurance described in Section 9.1 of this Agreement shall be applied to such repairs and/or replacements. The parties agree that Landlord's obligations to repair and/or replace pursuant to the provisions of this Section 10.1(c) shall be limited to the extent of available insurance proceeds (plus the amount of any applicable deductibles). The parties further agree that if Landlord is obligated to utilize such available insurance proceeds to repay any obligations pursuant to any Mortgage, then Landlord shall be entitled to an equitable extension of time (in which Landlord has to fulfill its obligations pursuant to the provisions of this Section 10.1(c)) that is sufficient to allow Landlord to obtain the necessary funding to replace such spent insurance proceeds and to make the repairs and/or replacements required hereunder. The parties further agree that Landlord's obligations to repair and/or replace pursuant to the provisions of this Section 10.1(c) shall be subject to Landlord's ability to obtain such entitlements and/or other governmental approvals as may be necessary to undertake such repair and/or replacement; provided that Landlord shall undertake good faith efforts to obtain such entitlements and/or approvals.

(d) Subject to the terms of the Loan Documents and Management Agreement, all insurance proceeds payable by reason of any loss of or damage to any of Tenant's Personal

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Property shall be paid to Tenant and, to the extent necessary to repair or replace Tenant's Personal Property in accordance with this Section 10.1(d) below, Tenant shall hold such proceeds to pay the cost of repairing or replacing damaged Tenant's Personal Property and, if this Agreement terminates, pay the same over to Landlord. If Landlord undertakes to restore the Leased Property as hereinabove provided, Tenant shall either (a) restore all of Tenant's Personal Property, if any, or (b) replace Tenant's Personal Property, if any, with items of the same or better quality and utility to the operation of the Leased Property.

10.2 Condemnation.

(a) In the event all or substantially all of the Hotel shall be taken in any eminent domain, condemnation, compulsory acquisition, or similar proceeding by any competent authority for any public or quasi-public use or purpose, or in the event a portion of the Hotel shall be so taken, but the result is that it is unreasonable to continue to operate the Hotel in accordance with the standards required by this Agreement, this Agreement shall terminate as of the date of the taking and, upon such termination, Minimum Rent and Percentage Rent payable hereunder shall be reduced to zero. Landlord and Tenant shall each have the right to initiate such proceedings as they deem advisable to recover any compensation to which they may be entitled.

(b) In the event a portion of the Hotel shall be taken by the events described in Section 10.2(a), or the entire Hotel is affected but on a temporary basis, and the result is not to make it unreasonable to continue to operate the Hotel, this Agreement shall not terminate, but Rent due hereunder shall be equitably abated taking into consideration, among other relevant factors, the number of useable rooms, the amount of square footage, or revenues affected or taken by such events. However, so much of any award for any such partial taking or condemnation as shall be necessary to render the Hotel equivalent to its condition prior to such event shall be used for such purpose and Tenant shall have the right to discontinue operating the Hotel or portion of the Hotel to the extent it deems necessary for the safe and orderly operation of the Hotel.

10.3 Disbursement of Award. For so long as a Loan remains outstanding and subject to the terms hereof, Landlord, Tenant and any Mortgagee shall transfer any part of the Award received by them, respectively, together with severance and other damages awarded for the taken Leased Improvements and any deficiency Landlord or Tenant has agreed to pay to Mortgagee, or any Person designated by Mortgagee, and such amounts shall be disbursed in accordance with terms of the Loan Documents.

ARTICLE 11**SUBORDINATION, ETC.**

11.1 Subordination. If requested by a Lender, Tenant agrees to execute any subordination and nondisturbance agreement reasonably requested by Landlord in favor of such Lender. Notwithstanding the foregoing, without the need for further consent or action by Tenant, Tenant hereby agrees that all of its right, title and interest under this Agreement is subject and unconditionally subordinate to Lender's Mortgage, if any.

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11.2 No Covenants, Conditions or Restrictions.

(a) Landlord covenants that after the Commencement Date and during the Term, there will not be (unless Tenant and Manager have given their prior consent thereto) any covenants, conditions or restrictions, including reciprocal easement agreements or cost-sharing arrangements (individually or collectively referred to as “CC&R(s)”) affecting the Leased Property (i) which would prohibit Tenant’s operation or Manager’s operation on Tenant’s behalf of the Hotel in accordance with the terms of this Agreement and the Management Agreement, including related amenities proposed for the Hotel; (ii) which would allow the Hotel’s facilities (for example, parking spaces) to be used by persons other than guests, invitees or employees of the Hotel; (iii) which would allow the Hotel’s facilities to be used for specified charges or rates which have not been approved by Manager; or (iv) which would subject the Hotel to exclusive arrangements regarding food and beverage operation or retail merchandise.

(b) Tenant shall cause Manager to manage and operate the Hotel in compliance with all obligations imposed on Landlord or the Hotel pursuant to any CC&Rs to the extent (i) such obligations are known to Manager (ii) such CC&Rs relate to the management and operation of the Hotel and (iii) the CC&Rs are not inconsistent with the Management Agreement.

11.3 Amendments Requested by Mortgagee. If requested by any Mortgagee or prospective Mortgagee, Tenant agrees to execute and deliver any amendment of this Agreement that is reasonably required by such Mortgagee or prospective Mortgagee; provided, that Tenant shall be under no obligation to amend this Agreement if the result of such amendment would be to materially and adversely increase Tenant’s obligations or to materially and adversely affect Tenant’s rights under this Agreement or to amend Section 5. Any such amendment shall be in effect only for the period of time in which such Mortgage is outstanding.

11.4 Lockbox. If required by any applicable Loan Documents, Landlord shall direct Tenant and Tenant acknowledges and agrees, pursuant to the terms of the Lockbox Agreement and the Loan Documents, to deposit or cause to be deposited, and to cause Manager to deposit, all Rents payable into the Lockbox Account so long as any amounts under the Loan are outstanding.

ARTICLE 12

DEFAULTS AND REMEDIES

12.1 Events of Default. The occurrence of any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) should Tenant fail to make any payment of Minimum Rent or Percentage Rent within five Business Days after Notice thereof, or fail to make payment of any other Rent or any other sum, payable hereunder when due and such failure shall continue for a period of 30 days after Notice thereof;

(b) should Tenant fail to maintain the insurance coverages required under Article 9 and such failure shall continue for 10 Business Days after Notice thereof;

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(c) subject to Article 8 relating to permitted contests, should Tenant default in the due observance or performance of any of the terms, covenants or agreements contained herein to be performed or observed by it (other than as specified in clauses (a) and (b) above) and such default shall continue for a period of 30 days after Notice thereof from Landlord to Tenant; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with due diligence within such period of time and if, in addition, Tenant commences to cure or cause to be cured such default within 30 days after Notice thereof from Landlord and thereafter prosecutes the curing of such default with all due diligence, such period of time shall be extended to such period of time (not to exceed 90 days) as may be necessary to cure such default with all due diligence;

(d) should Tenant generally not be paying its debts as they become due or should Tenant make a general assignment for the benefit of creditors;

(e) should any petition be filed by or against Tenant under the Federal bankruptcy laws, or should any other proceeding be instituted by or against Tenant seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for Tenant or for any substantial part of the property of Tenant and such proceeding is not dismissed within 60 days after institution thereof, or should Tenant take any action to authorize any of the actions set forth above in this paragraph;

(f) should Tenant cause or institute any proceeding for its dissolution or termination;

(g) unless Tenant shall be contesting such lien or attachment in good faith in accordance with Article 8, should the estate or interest of Tenant in the Leased Property or any part thereof be levied upon or attached in any proceeding and the same shall not be vacated, discharged or fully bonded or otherwise secured to the reasonable satisfaction of Landlord within the later of (i) 60 days after such attachment or levy, unless the amount in dispute is less than \$250,000.00 (as adjusted each year by increases or decreases in the Index), in which case Tenant shall give notice to Landlord of the dispute but Tenant may defend in any suitable way, and (ii) 30 days after receipt by Tenant of Notice thereof from Landlord; it being understood and agreed that Tenant may commence a contest of such matter pursuant to Article 8 above following such Notice from Landlord; or

(h) should Tenant be in default under the Management Agreement beyond any applicable cure period, then, and in any such event, Landlord, in addition to all other remedies available to it, may terminate this Agreement by giving Notice thereof to Tenant and upon the expiration of the time fixed in such Notice, this Agreement shall terminate and all rights of Tenant under this Agreement shall cease. Landlord shall have and may exercise all rights and remedies available at law and in equity to Landlord as a result of Tenant's breach of this Agreement, including without limitation the right of re-entry upon the Leased Property upon and at any time after the occurrence of an Event of Default.

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12.2 Damages. Neither the termination of this Agreement, the repossession of the Leased Property, the failure of Landlord to relet the Leased Property, nor the reletting of all or any portion thereof, shall relieve Tenant of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting to the maximum extent permitted by law. In the event of any such termination, Tenant shall forthwith pay to Landlord all Rent due and payable with respect to the Leased Property to and including the date of such termination. In addition, Tenant shall forthwith pay to Landlord, at Landlord's option, as and for liquidated and agreed current damages for Tenant's default, either:

(a) Without termination of Tenant's rights to possession of the Leased Property, each installment of Rent (including Default Rent as determined below) and other sums payable to Landlord by Tenant under this Agreement as the same becomes due and payable, which Rent and other sums shall bear interest at the Interest Rate from the date due until paid or otherwise discharged, and Landlord may enforce, by action or otherwise, any other term or covenant of this Agreement; or

(b) the sum of:

(i) the unpaid Rent which had been earned at the time of termination, repossession or reletting, and

(ii) the worth at the time of termination, repossession or reletting of the amount by which the unpaid Rent for the balance of the Term after the time of termination, repossession or reletting, exceeds the amount of such rental loss that Tenant proves could be reasonably avoided and as reduced for rentals received after the time of termination, repossession or reletting, if and to the extent required by applicable law, and

(iii) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement or which in the ordinary course of things, would be likely to result therefrom. The worth at the time of termination, repossession or reletting of the amount referred to in subparagraph (ii) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of New York at the time of award plus 1%.

Default Rent for the purposes of this Section 12.2(b) shall be a sum equal to (i) the average of the annual amounts of the Percentage Rent for the three Fiscal Years immediately preceding the Fiscal Year in which the termination, re-entry or repossession takes place, or (ii) if three Fiscal Years shall not have elapsed, the average of the Percentage Rent during the preceding Fiscal Years during which this Agreement was in effect, or (iii) if on Fiscal Year has not elapsed, the amount derived by annualizing the Percentage Rent from the Commencement Date of this Agreement.

12.3 Waiver of Jury Trial. Landlord and Tenant hereby waive, to the maximum extent permitted by Applicable Laws, trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other or in respect of any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of Landlord and Tenant hereunder, Tenant's occupancy of the Leased Property, and/or any claim for injury or damage.

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12.4 Application of Funds. Any payments received by Landlord under any of the provisions of this Agreement during the existence or continuance of any Event of Default (and any payment made to Landlord rather than Tenant due to the existence of any Event of Default) shall be applied to Tenant's current and past due obligations under this Agreement in such order as Landlord may determine or as may be required by Applicable Laws.

12.5 Landlord's Right to Cure Tenant's Default. If an Event of Default shall have occurred and be continuing, Landlord, after Notice to Tenant with a courtesy copy to Manager, (which Notice shall not be required if Landlord shall reasonably determine immediate action is necessary to protect person or property), without waiving or releasing any obligation of Tenant and without waiving or releasing any Event of Default, may (but shall not be obligated to), at any time thereafter, make such payment or perform such act for the account and at the expense of Tenant, and may, to the maximum extent permitted by law, enter upon the Leased Property or any portion thereof for such purpose and take all such action thereon as, in Landlord's sole and absolute discretion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Tenant. All reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection therewith, together with interest thereon (to the extent permitted by law) at the Interest Rate from the date such sums are paid by Landlord until repaid, shall be paid by Tenant to Landlord, on demand.

12.6 Good Faith Dispute. If Tenant shall in good faith dispute the occurrence of any Default and Tenant, before the expiration of the applicable cure period, shall give Notice thereof to Landlord, setting forth, in reasonable detail, the basis therefor and, provided Tenant shall escrow disputed amounts, if any, pursuant to an escrow arrangement reasonably acceptable to Landlord and Tenant, no Event of Default shall be deemed to have occurred; provided, however, that in the event of any eventual adverse determination, Tenant shall pay to Landlord interest on any disputed funds at the Interest Rate, from the date demand for such funds was made by Landlord until the date of final adverse determination and, thereafter, at the Interest Rate until paid.

ARTICLE 13

HOLDING OVER

Any holding over by Tenant after the expiration or sooner termination of this Agreement shall be treated as a daily tenancy at sufferance at a rate equal to twice the Rent and other charges herein provided (prorated on a daily basis). Tenant shall also pay to Landlord all damages (direct or indirect) sustained by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Agreement, to the extent applicable. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the expiration or earlier termination of this Agreement.

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ARTICLE 14

LANDLORD'S NOTICE OBLIGATIONS; LANDLORD DEFAULT

14.1 Landlord Notice Obligation. Landlord shall give prompt Notice to Tenant and the Manager of any materially adverse matters affecting the Leased Property of which Landlord receives written notice or has actual, conscious, present knowledge and, to the extent Tenant and/or Manager otherwise has no notice or actual knowledge thereof, Landlord shall be liable for any liabilities, costs, damages or claims (including reasonable attorneys' fees) arising from the failure to deliver such Notice to Tenant.

14.2 Landlord's Default.

(a) It shall be a breach of this Agreement if Landlord fails to observe or perform any term, covenant or condition of this Agreement on its part to be performed and such failure continues for a period of 30 days after Notice thereof from Tenant, unless such failure cannot with due diligence be cured within a period of 30 days, in which case such failure shall not be deemed a breach if Landlord proceeds within such 30 day period, with due diligence, to commence to cure the failure and thereafter diligently completes the curing thereof. The time within which Landlord shall be obligated to cure any such failure also shall be subject to extension of time due to the occurrence of any Unavoidable Delay. If Landlord does not cure any such failure within the applicable time period as aforesaid, Tenant may declare the existence of a "Landlord Default" by a second Notice to Landlord. Thereafter, Tenant may forthwith cure the same. Tenant shall have no right to terminate this Agreement for any Landlord Default and no right, for any such Landlord Default, to offset or counterclaim against any Rent or other charges due hereunder.

(b) If Landlord shall in good faith dispute the occurrence of a Landlord Default and Landlord, before the expiration of the applicable cure period, shall give Notice thereof to Tenant, setting forth, in reasonable detail, the basis therefor, no Landlord Default shall be deemed to have occurred and Landlord shall have no obligation with respect thereto until final adverse determination thereof, whether through arbitration or otherwise; provided, however, that in the event of any such adverse determination, Landlord shall pay to Tenant interest on any disputed funds at the Interest Rate, from the date demand of such funds was made by Tenant until the date of final adverse determination and, thereafter, at the Interest Rate until paid. If Tenant and Landlord shall fail, in good faith, to resolve any such dispute within 30 days after Landlord's Notice of dispute, either may submit the matter for determination by arbitration, but only if such matter is required to be submitted to arbitration pursuant to any provision of this Agreement, or otherwise by a court of competent jurisdiction.

(c) If required by the Loan Documents and for so long as the applicable Loan remains outstanding, Tenant shall provide prompt Notice to Lender of any Landlord Default.

14.3 Tenant's Right to Cure. Subject to the provisions of Section 14.2, if Landlord breaches any covenant to be performed by it under this Agreement, Tenant after Notice to and demand upon Landlord as provided in Section 14.2, without waiving or releasing any obligation hereunder, may (but shall be under no obligation at any time thereafter to) make such payment or

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perform such act for the account and at the expense of Landlord. All sums so paid by Tenant and all costs and expenses (including, without limitation, reasonable attorneys' fees) so incurred, together with interest thereon at the Interest Rate from the date on which such sums or expenses are paid or incurred by Tenant, shall be paid by Landlord to Tenant, on demand. The rights of Tenant hereunder to cure and to secure payment from Landlord in accordance with this Section 14.3 shall survive the termination of this Agreement with respect to the Leased Property.

ARTICLE 15

TRANSFERS BY LANDLORD

15.1 Transfer of Leased Property. Tenant acknowledges and agrees that Landlord may enter into the Loan and executed and/or delivered the Loan Documents to Lender and Landlord has the unrestricted right to mortgage, cumber, convey and assign its interest in the Leased Property to the mortgagee under the Mortgage and the other Loan Documents. If such a Loan is entered into and Landlord conveys the Leased Property in accordance with the terms hereof to the mortgagee under the Mortgage, or to a grantee or transferee that expressly assumes in writing all obligations of Landlord hereunder arising or accruing from and after the date of such conveyance or transfer, Landlord shall thereupon be released from all future liabilities and obligations of Landlord under this Agreement arising or accruing from and after the date of such conveyance or other transfer as to the Leased Property and all such future liabilities and obligations shall thereupon be binding upon the new owner.

ARTICLE 16

SUBLETTING AND ASSIGNMENT16.1 Subletting and Assignment.

(a) Except as provided in Section 16.3 and in this Section 16.1, Tenant shall not after the date hereof, without Landlord's prior written consent (which may be given or withheld by Landlord in its sole discretion), assign, mortgage, pledge, hypothecate, encumber or otherwise transfer this Agreement or sublease (which term shall be deemed to include the granting of concessions, licenses and the like) all or any part of the Leased Property or suffer or permit this Agreement or the leasehold estate created hereby or any other rights arising under this Agreement to be assigned, transferred, mortgaged, pledged, hypothecated or encumbered, in whole or in part, whether voluntarily, involuntarily or by operation of law, or permit the use or operation of the Leased Property by anyone other than Tenant, or the Leased Property to be offered or advertised for assignment or subletting. For purposes of this Section 16.1, an assignment of this Agreement shall be deemed to include the following: without Landlord's consent, any direct or indirect transfer of any interest in Tenant or any transaction pursuant to which Tenant is merged or consolidated with another Entity or pursuant to which all or substantially all of Tenant's assets are transferred to any other Entity, as if such change in control or transaction were an assignment of this Agreement but shall not include any involuntary liens or attachments contested by Tenant in good faith in accordance with Article 8. This Section 16.1 shall not affect any leases existing on the date hereof.

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(b) If this Agreement is assigned or if the Leased Property or any part thereof is sublet (or occupied by anybody other than Tenant hereunder) Landlord may collect the rents from such assignee, subtenant or occupant, as the case may be, and apply the net amount collected to the Rent herein reserved, but no such collection shall be deemed a waiver of the provisions set forth in Section 16.1(a), the acceptance by Landlord of such assignee, subtenant or occupant, as the case may be, as a tenant, or a release of Tenant from the future performance by Tenant of its covenants, agreements or obligations contained in this Agreement.

(c) No subletting or assignment shall in any way impair the continuing primary liability of Tenant hereunder (unless Landlord and Tenant expressly otherwise agree that Tenant shall be released from all obligations hereunder), and no consent to any subletting or assignment in a particular instance shall be deemed to be a waiver of the prohibition set forth in this Section 16.1. No assignment, subletting or occupancy shall affect any Permitted Use. Any subletting, assignment or other transfer of Tenant's interest under this Agreement in contravention of this Section 16.1 shall be voidable at Landlord's option.

16.2 Required Sublease Provisions. Any sublease of any portion of the Leased Property entered into on or after the date hereof shall provide (a) that it is subject and subordinate to this Agreement and to the matters to which this Agreement is or shall be subject or subordinate; (b) that in the event of termination of this Agreement or reentry or dispossession of Tenant by Landlord under this Agreement, Landlord may, at its option, terminate such sublease or take over all of the right, title and interest of Tenant, as sublessor under such sublease, and, except as provided below, such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that neither Landlord nor any Mortgagee, as holder of a mortgage or as Landlord under this Agreement, if such Mortgagee succeeds to that position, shall (i) be liable for any act or omission of Tenant under such sublease, (ii) be subject to any credit, counterclaim, offset or defense which theretofore accrued to such subtenant against Tenant, (iii) be bound by any previous prepayment of more than one Accounting Period, (iv) be bound by any covenant of Tenant to undertake or complete any construction of the Leased Property or any portion thereof, (v) be required to account for any security deposit of the subtenant other than any security deposit actually delivered to Landlord by Tenant, (vi) be bound by any obligation to make any payment to such subtenant or grant any credits, except for services, repairs, maintenance and restoration provided for under the sublease that are performed after the date of such attornment, (vii) be responsible for any monies owing by Tenant to the credit of such subtenant, or (viii) be required to remove any Person occupying any portion of the Leased Property; and (c) that in the event that such subtenant receives a written Notice from Landlord or any Mortgagee stating that an Event of Default has occurred and is continuing, such subtenant shall thereafter be obligated to pay all rentals accruing under such sublease directly to the party giving such Notice or as such party may direct. All rentals received from such subtenant by Landlord or the Mortgagee, as the case may be, shall be credited against the amounts owing by Tenant under this Agreement and such sublease shall provide that the subtenant thereunder shall, at the request of Landlord, execute a suitable instrument in confirmation of such agreement to attorn. An original counterpart of each such sublease duly executed by Tenant and such subtenant shall be delivered promptly to Landlord and Tenant shall remain liable for the payment of the Rent and for the performance and observance of all of the covenants and conditions to be performed by Tenant hereunder. The provisions of this Section 16.2 shall not be deemed a waiver of the provisions set forth in Section

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16.1(a). No subtenant that is an Affiliate of Tenant shall be required to attorn to Landlord as set forth above in this Section 16.2.

16.3 Permitted Sublease and Assignment. Notwithstanding the foregoing, but subject to the provisions of Section 16.4 and any other express conditions or limitations set forth herein, Tenant may, without Landlord's consent, sublease space at the Leased Property for any such ancillary uses, so long as (i) such subleases do not demise, in excess of 5,000 square feet (exclusive of any parking garage subleases) and (ii) such subleases will not violate or affect any Legal Requirement or Insurance Requirement.

16.4 Sublease Limitation. For so long as Landlord or any Affiliate of Landlord or any member of Landlord or any member thereof shall seek to qualify as a real estate investment trust, anything contained in this Agreement to the contrary notwithstanding, Tenant shall not sublet the Leased Property on any basis such that the rental to be paid by any sublessee thereunder would be based, in whole or in part, on either (a) the income or profits derived by the business activities of such sublessee, or (b) any other formula such that any portion of such sublease rental would fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto.

ARTICLE 17

ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS

17.1 Estoppel Certificates. At any time and from time to time, upon not less than 10 Business Days prior Notice by either party, the party receiving such Notice shall furnish to the other a certificate certifying that this Agreement is unmodified and in full force and effect (or that this Agreement is in full force and effect as modified and setting forth the modifications), the date to which the Rent has been paid, that to its knowledge no Default or an Event of Default by the other party has occurred and is continuing or, if a Default or an Event of Default shall exist, specifying in reasonable detail the nature thereof, and the steps being taken to remedy the same, and such additional information as the requesting party may reasonably request. If such additional information reasonably requires more than 10 Business Days to provide, the party furnishing such information shall be entitled to such additional period to respond to such request as may be reasonably required under the circumstances. Any such certificate furnished pursuant to this Section 17.1 may be relied upon by the requesting party, its lenders and any prospective purchaser or mortgagee of the Leased Property or the leasehold estate created hereby.

17.2 Accounting and Annual Reconciliation.

(a) Within three business days after the close of each Accounting Period, Manager shall deliver a flash report to Tenant as further described in the Management Agreement. Within 10 days after the close of each Accounting Period (or such earlier time period as required under the Management Agreement), Tenant shall cause Manager to deliver an interim accounting (the "Accounting Period Statement") to Landlord showing Gross Revenues, and applications and distributions thereof for the preceding Accounting Period. Tenant shall cause Manager to transfer to Tenant, with each Accounting Period Statement, any interim

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amounts due Tenant, subject to Working Capital needs, and shall retain any interim amounts due Manager.

(b) Calculations and payments of the Management Fees due Manager, and distributions to Tenant made with respect to each Accounting Period within a Fiscal Year shall be accounted for cumulatively. Within 60 days after the end of each Fiscal Year, Tenant shall cause Manager to deliver to Tenant and Landlord a statement (the “Annual Operating Statement”) in reasonable detail summarizing the operations of the Hotel for the immediately preceding Fiscal Year, audited and certified by a nationally recognized firm of certified public accountants having hotel accounting experience as described in the Management Agreement. The parties shall promptly after Landlord’s receipt of such Annual Operating Statement, make any adjustments, by cash payment, in the amounts paid or retained for such Fiscal Year as are needed because of the final figures set forth in such Annual Operating Statement. Such Annual Operating Statement shall be controlling over the preceding Accounting Period Statements.

17.3 Books and Records. Books of control and account pertaining to operations at the Hotel shall be kept on the accrual basis and in all material respects in accordance with the Uniform System of Accounts and generally accepted accounting principles consistently applied. Tenant, upon Landlord’s reasonable request and at reasonable intervals during Manager’s normal business hours shall examine such records.

ARTICLE 18

LANDLORD’S RIGHT TO INSPECT

The parties acknowledge that Landlord is a direct or indirect controlled subsidiary of an entity (the “Parent”) that is intended to qualify as a “real estate operating company” (a “REOC”) within the meaning of the U.S. Department of Labor plan assets regulation (Section 2510.3-101, Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations) and that it is intended that Landlord will have the rights, pursuant to this Agreement, as would be reasonably necessary to result in the qualification of Parent as a REOC. Without limiting the generality of the foregoing, notwithstanding any other provision of this Agreement, without prejudice to the other rights provided to Landlord under this Agreement, Tenant agrees to: (a) permit Landlord to visit and inspect the Leased Property, to make such repairs as Landlord is permitted or required to make pursuant to the terms of this Agreement, and inspect and copy the books and records of Tenant, at such times as Landlord shall reasonably request, provided that any inspection or repair by Landlord or its representatives will not unreasonably interfere with Tenant’s use and operation of the Leased Property; (b) periodically (at least quarterly) provide Landlord with information and reports regarding Tenant’s operation and management of the Leased Property and the performance of its duties under this Agreement and with respect to renovations, alterations, general maintenance, repairs and development activities that Tenant has engaged in or intends to engage in with respect to the Leased Property and its surroundings; (c) periodically (at least quarterly) consult with Landlord with respect to the operation and management of the Leased Property and the performance of Tenant’s duties under this Agreement including, without limitation, with respect to matters relating to renovations, alterations, general maintenance, repairs and development activities with respect to the Leased Property and its surroundings; and (d) to provide Landlord with such other rights as may reasonably be determined by Landlord to

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be necessary to enable Parent to qualify as a REOC, provided such additional rights do not materially adversely affect Tenant's ability to perform its duties under this Agreement or the economic benefits enjoyed by Tenant under this Agreement. Tenant agrees to consider, in good faith, the recommendations of Landlord in connection with the matters on which it is consulted as described above.

ARTICLE 19**LIMITATIONS**

19.1 REIT Compliance. Landlord is an indirect wholly owned subsidiary of SSD Holdings Trust, a Maryland statutory trust ("SSD Trust"). Tenant acknowledges that SSD Trust intends to qualify as a real estate investment trust under the Code. Tenant agrees that it will not knowingly or intentionally take or omit to take any action, or permit any status or condition to exist at the Leased Property, which Tenant actually knows (acting in good faith) would or could result in (i) the Rent payable under this Agreement not qualifying as "rents from real property" as defined in Section 856(d) of the Code or (ii) SSD Trust being disqualified from treatment as a real estate investment trust under the Code as the provisions exist on the date hereof; provided, however, that notwithstanding anything herein to the contrary, (A) Tenant shall not be responsible for any act or omission of Landlord or Manager (unless Manager's action was with the express written consent or at the direction of Tenant), and (B) any action by Tenant taken in compliance with the express terms of this Agreement or the Management Agreement shall not be deemed to create a Default or Event of Default under this Section 19.1. Tenant shall jointly elect with SSD Trust that Tenant shall be treated as a "taxable REIT subsidiary" under Section 856(l)(1)(B) of the Code.

19.2 FF&E Limitation.

This Section 19.2 is intended to insure that all of the rent payable under this Agreement qualifies as "rents from real property" within the meaning of Section 856(d) of the Code or any similar or successor provisions thereto. In furtherance of such purpose, the parties have agreed to the terms set forth in Schedule B.

ARTICLE 20**MISCELLANEOUS**

20.1 No Waiver.

No failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. To the maximum extent permitted by law, no waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

20.2 Remedies Cumulative.

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To the maximum extent permitted by law, each legal, equitable or contractual right, power and remedy of Landlord or Tenant, now or hereafter provided either in this Agreement or by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Landlord or Tenant (as applicable) of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Landlord of any or all of such other rights, powers and remedies.

20.3 Severability. Any clause, sentence, paragraph, section or provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but rather the effect thereof shall be confined to the clause, sentence, paragraph, section or provision so held to be invalid, illegal or ineffective, and this Agreement shall be construed as if such invalid, illegal or ineffective provisions had never been contained herein.

20.4 Acceptance of Surrender. No surrender to Landlord of this Agreement or of the Leased Property or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Landlord and no act by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, shall constitute an acceptance of any such surrender.

20.5 No Merger of Title. It is expressly acknowledged and agreed that it is the intent of the parties that there shall be no merger of this Agreement or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly this Agreement or the leasehold estate created hereby and the fee estate in the Leased Property.

20.6 Conveyance by Landlord.

(a) If Landlord or any successor owner of the Leased Property shall convey the Leased Property in accordance with the terms of this Agreement other than as security for a debt, and the grantee or transferee of the Leased Property shall expressly assume all obligations of Landlord hereunder arising or accruing from and after the date of such conveyance or transfer, Landlord or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Landlord under this Agreement with respect to the Leased Property arising or accruing from and after the date of such conveyance or other transfer and all such future liabilities and obligations shall thereupon be binding upon the new owner.

(b) If Landlord or any successor owner of the Leased Property shall convey the Hotel in accordance with the terms of this Agreement other than as security for a debt, Landlord or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Landlord under this Agreement arising or accruing from and after the date of such conveyance or transfer and, upon such conveyance or transfer, Minimum Rent and Percentage Rent payable hereunder shall be reduced to zero.

20.7 Quiet Enjoyment. Provided that no Event of Default shall have occurred and be continuing, Tenant shall peaceably and quietly have, hold and enjoy the Leased Property for the Term, free of hindrance or molestation by Landlord or anyone claiming by, through or under

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Landlord, but subject to (a) any Encumbrance permitted to be created by Landlord hereunder, (b) all Permitted Encumbrances, (c) liens as to obligations of Landlord that are either not yet due or which are being contested in good faith and by proper proceedings, provided the same do not materially interfere with Tenant's ability to operate the Hotel and (d) liens that have been consented to in writing by Tenant. Except as otherwise provided in this Agreement, no failure by Landlord to comply with the foregoing covenant shall give Tenant the right to cancel or terminate this Agreement or abate, reduce or make a deduction from or offset against the Rent or any other sum payable under this Agreement, or to fail to perform any other obligation of Tenant hereunder.

20.8 Memorandum of Lease. Neither Landlord nor Tenant shall record this Agreement. However, Landlord and Tenant shall promptly, upon the request of the other, enter into a short form memorandum of this Agreement, in form suitable for recording under the laws of the State of California, in which reference to this Agreement, and all options contained herein, shall be made. The parties shall share equally all costs and expenses of recording such memorandum.

20.9 True Lease. The parties hereto intend that this Agreement shall be treated as a true lease for federal tax purposes.

20.10 Notices.

(a) Any and all notices, demands, consents, approvals, offers, elections and other communications required or permitted under this Agreement shall be deemed adequately given if in writing and the same shall be delivered either in hand, or by mail or Federal Express or similar expedited commercial carrier, addressed to the recipient of the notice, postpaid and registered or certified with return receipt requested (if by mail), or with all freight charges prepaid (if by Federal Express or similar carrier).

(b) All notices required or permitted to be sent hereunder shall be deemed to have been given for all purposes of this Agreement upon the date of receipt or refusal, except that whenever under this Agreement a notice is either received on a day which is not a Business Day or is required to be delivered on or before a specific day which is not a Business Day, the day of receipt or required delivery shall automatically be extended to the next Business Day.

(c) All such notices shall be addressed,

If to Landlord to:

c/o KSL Capital Partners, LLC
100 St. Paul Street, Suite 800
Denver, CO 80206
Attn: Steven S. Siegel

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with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attn: Krista Miniutti

if to Tenant to:

c/o KSL Capital Partners, LLC
100 St. Paul Street, Suite 800
Denver, CO 80206
Attn: Steven S. Siegel

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attn: Krista Miniutti

(d) By notice given as herein provided, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses effective upon receipt by the other parties of such notice and each shall have the right to specify as its address any other address within the United States of America. If required by the Loan Documents and for so long as the applicable Loan remains outstanding, Landlord and Tenant shall deliver a copy of each notice sent to the other party to Lender at an address provided by Lender to Landlord and Tenant.

20.11 Construction; Nonrecourse. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated except by an instrument in writing signed by all the parties thereto. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Each term or provision of this Agreement to be performed by Tenant shall be construed as an independent covenant and condition. Time is of the essence with respect to the exercise of any rights of Tenant or Landlord under this Agreement. In the event of any dispute between the parties concerning this Agreement, Landlord shall be entitled to an award of attorney's fees and costs in connection with such dispute, including in connection with any suit, action, arbitration or other proceeding concerning such dispute; provided, however, that Tenant shall be entitled to an award of attorney's fees in connection with any such dispute that results from the failure of Landlord to pay any amounts required to be paid hereunder by Landlord. Except as otherwise set forth in this Agreement, any obligations arising prior to the expiration or sooner termination of this Agreement of Tenant (including without limitation, any monetary, repair and indemnification obligations) and Landlord shall survive the expiration or sooner termination of this Agreement; provided, however, that each party shall be required to give the other Notice of any such surviving and unsatisfied obligations within one year after the expiration or sooner

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termination of this Agreement. Nothing contained in this Agreement shall be construed to create or impose any liabilities or obligations and no such liabilities or obligations shall be imposed on any of the shareholders, beneficial owners, direct or indirect, officers, directors, trustees, employees or agents of Landlord or Tenant for the payment or performance of the obligations or liabilities of Landlord or Tenant hereunder. Further, in the event Landlord shall be in default under this Agreement, and if as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment against the right, title and interest of Landlord in the Leased Property.

20.12 Counterparts; Headings. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but which, when taken together, shall constitute but one instrument and shall become effective as of the date hereof when copies hereof, which, when taken together, bear the signatures of each of the parties hereto shall have been signed. Headings in this Agreement are for purposes of reference only and shall not limit or affect the meaning of the provisions hereof.

20.13 Applicable Law. This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of the State of Delaware; provided, however, that the provisions for the enforcement of Landlord's rights and remedies hereunder shall be governed by the laws of the State of California to the extent necessary for the validity and enforcement thereof.

20.14 Right to Make Agreement. Each party warrants, with respect to itself, that neither the execution of this Agreement, nor the consummation of any transaction contemplated hereby, shall violate any provision of any law, or any judgment, writ, injunction, order or decree of any court or governmental authority having jurisdiction over it; nor result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; nor require any consent, vote or approval which has not been given or taken, or at the time of the transaction involved shall not have been given or taken. Each party covenants that it has and will continue to have throughout the term of this Agreement and any extensions thereof, the full right to enter into this Agreement and perform its obligations hereunder.

20.15 Disclosure of Information.

(a) The parties hereto agree that the matters set forth in this Agreement and any revenue, expense, net profit, room rate and occupancy information provided on a hotel by hotel basis are strictly confidential and each party will make every effort to ensure that the information is not disclosed to any Person that is not an Affiliate of any party (including the press) without the prior written consent of the other party, except as may be required by law and as may be reasonably necessary to obtain licenses, permits and other public approvals necessary for the refurbishment or operation of the Hotel, or, in connection with a Landlord financing, a sale of the Hotel, or a sale of a Controlling Interest in Landlord, or Tenant.

(b) Notwithstanding anything to the contrary in the foregoing provisions of this Section 20.15 or elsewhere in this Agreement, any party (and any employee, representative

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or other agent of any party) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to any party relating to such tax treatment and tax structure; provided, however, that any such information and materials shall be kept confidential to the extent necessary to comply with any applicable securities laws. For purposes of the preceding sentence, the tax treatment and tax structure of the transactions contemplated by this Agreement shall not be deemed to include the identity of the parties, the location of the Leased Property or the amount of Rent payable by Tenant hereunder. The foregoing authorization of disclosure is retroactively effective immediately upon commencement of the first discussions among the parties regarding the transactions contemplated hereby, and the parties aver and affirm that this tax disclosure authorization has been given on a date which is no later than 30 days from the first day that any party (or any employee, representative, or other agent of a party) first made or provided a statement as to the potential federal income tax consequences that may result from the transactions contemplated hereby.

(c) The obligations of Tenant and Landlord contained in this Section 20.15 shall survive the expiration or earlier termination of this Agreement.

20.16 Operating Lease. The parties hereto intend that this Agreement shall be deemed for all purposes to be an operating lease and not a capital lease.

20.17 Ground Leases. It is understood and agreed that Landlord holds a leasehold interest in the Land pursuant to the Ground Lease. Landlord and Tenant acknowledge and agree that this Agreement is a sublease with respect to the Land which shall, at all times during the Term, be subject and subordinate to the Ground Lease. Tenant hereby expressly assumes and agrees to comply with, be bound by and operate the Hotel in accordance with, for the benefit of Landlord, all of the covenants, agreements, terms and obligations of the Ground Lease, and all such covenants, agreements, terms and obligations of the Ground Lease are made a part of and incorporated into this Agreement as if recited herein in full. Landlord and Tenant further agree not to take any action or perform any act or fail to perform any act which would result in the violation or breach of any of the covenants, agreements, terms or obligations under the Ground Lease on the part of the Landlord as lessee thereunder. As between Landlord and Tenant only, in the event of a conflict between the terms of the Ground Leases and the terms of this Agreement, the terms of the Ground Leases shall control.

20.18 No Joint Venture or Partnership. Landlord and Tenant intend that the relationship created hereunder be solely that of landlord and tenant. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between Landlord and Tenant.

20.19 Tax Allocation. Landlord and Tenant hereby agree that Minimum Rent and Percentage Rent allocated for tax purposes each taxable year shall equal the cash amounts of Minimum Rent and Percentage Rent paid during such year.

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[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date above first written.

“LANDLORD”

**SSD HOLDINGS, LLC,
a Delaware limited liability company**

By: _____
Name:
Title:

“TENANT”

**SSD OPERATING CO., LLC.,
a Delaware limited liability company**

By: _____
Name:
Title:

PRIVILEGED & CONFIDENTIAL**SCHEDULE A****LAND*****Bay Tower***

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED "SDUPD-005" AS SHOWN ON RECORD OF SURVEY MAP NO. 16668, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON JULY 25, 2000; THENCE ALONG A TIE-LINE NORTH 52°15'20" EAST A DISTANCE OF 127.33 FEET (CALCULATED) TO THE TRUE POINT OF BEGINNING OF PARCEL NO. 1; SAID POINT ALSO BEING ON A 18,922.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY, A RADIAL BEARING TO SAID POINT BEARS NORTH 03°00'00" WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°04'34" A DISTANCE OF 1015.90 FEET; THENCE LEAVING SAID CURVE NORTHERLY ALONG A RADIAL BEARING OF NORTH 00°04'34" EAST A DISTANCE OF 228.00 FEET TO A POINT ON A 19,150.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY; THENCE WESTERLY AND CONCENTRIC WITH LAST SAID 18,922.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 03°04'34" A DISTANCE OF 1028.15 FEET; THENCE LEAVING SAID CURVE SOUTH 03°00'00" EAST A DISTANCE OF 228.00 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL NO. 1; CONTAINING 233,022 SQUARE FEET OR 5.35 ACRES OF TIDELAND AREA.

PARCEL NO. 2

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED "SDUPD-005" AS SHOWN ON RECORD OF SURVEY MAP NO. 16668, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON JULY 25, 2000; THENCE ALONG A TIE-LINE NORTH 52°15'20" EAST A DISTANCE OF 127.33 FEET (CALCULATED) TO A POINT ON A 18,922.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY, A RADIAL BEARING TO SAID POINT BEARS NORTH 03°00'00" WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°04'34" A DISTANCE OF

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1015.90 FEET; THENCE LEAVING SAID CURVE ALONG A RADIAL BEARING OF NORTH 00°04'34" EAST A DISTANCE OF 228.00 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL NO. 2, SAID POINT BEING ON A 19,150.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY; THENCE WESTERLY AND CONCENTRIC WITH LAST SAID 18,922.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 03°04'34" A DISTANCE OF 1028.15 FEET; THENCE LEAVING SAID CURVE ALONG A RADIAL BEARING OF NORTH 03°00'00" WEST A DISTANCE OF 100.00 FEET TO THE BEGINNING OF A 19,250.00 FOOT RADIUS CURVE; THENCE EASTERLY AND CONCENTRIC WITH LAST SAID 19,150.00 FOOT RADIUS CURVE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°04'34" A DISTANCE OF 1033.52 FEET; THENCE LEAVING SAID CURVE ALONG A RADIAL BEARING OF SOUTH 00°04'34" WEST A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL NO. 2, CONTAINING 103,083 SQUARE FEET OR 2.37 ACRES OF TIDELAND AREA.

THE ABOVE DESCRIBED TIDELANDS AREAS ARE DELINEATED ON THE SAN DIEGO UNIFIED PORT DISTRICT DRAWING NO. 006-001, DATED OCTOBER 2012 AND MADE A PART OF THIS AGREEMENT.

ALL BEARINGS AND DISTANCES IN THE ABOVE LEGAL DESCRIPTION ARE GRID, AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6, N.A.D. 83, EPOCH 1991.35.

APN: 760-010-09-00

PRIVILEGED & CONFIDENTIAL**MARINA TOWER**

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1

COMMENCING AT A 3 INCH DIAMETER BRASS DISK MONUMENT STAMPED "SDUPD-036" AS SHOWN ON RECORD OF SURVEY 17055, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON JULY 29, 2001; THENCE ALONG A TIE-LINE SOUTH 37°59'06" EAST A DISTANCE OF 333.59 FEET (CALCULATED) TO THE TRUE POINT OF BEGINNING OF PARCEL NO. 1, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT 313.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH, TO WHICH A RADIAL BEARS SOUTH 00°59'10" WEST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°47'17" AN ARC DISTANCE OF 108.10 FEET TO THE BEGINNING OF A 587.00 FOOT RADIUS REVERSE CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL BEARS NORTH 18°48'07" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°10'44" AN ARC DISTANCE OF 186.24 FEET TO THE BEGINNING OF A 387.00 FOOT RADIUS COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, TO WHICH A COMMON RADIAL BEARS NORTH 00°37'23" WEST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°34'20" AN ARC DISTANCE OF 132.20 FEET TO A POINT HEREAFTER KNOWN AS POINT NO. 2; THENCE CONTINUING ALONG THE ARC OF SAID CURVE SOUTHEASTERLY THROUGH A CENTRAL ANGLE OF 28°34'19" AN ARC DISTANCE OF 192.99 FEET TO A POINT OF TANGENCY; THENCE SOUTH 42°28'44" EAST A DISTANCE OF 307.17 FEET; THENCE SOUTH 03°49'15" WEST A DISTANCE OF 173.05 FEET; THENCE SOUTH 13°05'58" EAST A DISTANCE OF 70.77 FEET; THENCE SOUTH 08°29'24" WEST A DISTANCE OF 187.52 FEET TO THE BEGINNING OF A TANGENT 395.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°50'51" AN ARC DISTANCE OF 129.93 FEET TO A POINT HEREAFTER KNOWN AS POINT NO. 3; THENCE CONTINUING ALONG SAID CURVE SOUTHWESTERLY THROUGH A CENTRAL ANGLE OF 21°22'39" AN ARC DISTANCE OF 147.38 FEET; THENCE SOUTH 48°42'54" WEST A DISTANCE OF 271.68 FEET TO THE BEGINNING OF A TANGENT 295.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID

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CURVE THROUGH A CENTRAL ANGLE OF 43°44'53" AN ARC DISTANCE OF 225.25 FEET TO THE BEGINNING OF A 18,922.00 FOOT RADIUS REVERSE CURVE, CONCAVE TO THE SOUTH, TO WHICH A RADIAL BEARS NORTH 02°27'47" EAST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 00°45'22" AN ARC DISTANCE OF 249.71 FEET TO A POINT WHICH BEARS NORTH 01°42'25" EAST FROM THE CENTER OF SAID CURVE; THENCE NORTH 01°42'25" EAST A DISTANCE OF 228.00 FEET TO THE BEGINNING OF A NON-TANGENT 200.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST, A RADIAL TO SAID POINT BEARS SOUTH 01°42'25" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 61°29'25" AN ARC DISTANCE OF 214.64 FEET TO THE BEGINNING OF A 750.00 FOOT RADIUS COMPOUND CURVE, CONCAVE TO THE WEST, TO WHICH A COMMON RADIAL BEARS SOUTH 59°47'00" EAST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°15'15" AN ARC DISTANCE OF 409.12 FEET TO THE BEGINNING OF A 545.00 FOOT RADIUS COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, TO WHICH A COMMON RADIAL BEARS NORTH 88°57'45" EAST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 59°26'55" AN ARC DISTANCE OF 565.48 FEET TO A POINT OF NON-TANGENCY WHICH BEARS NORTH 29°30'51" EAST FROM THE CENTER OF SAID CURVE SAID POINT HEREAFTER KNOWN AS POINT NO. 4; THENCE NORTH 29°23'05" EAST A DISTANCE OF 34.91 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL NO. 1, CONTAINING 658,316 SQUARE FEET OR 15.11 ACRES OF TIDELANDS AREA.

PARCEL NO. 2

BEGINNING AT SAID POINT NO. 4 MENTIONED ABOVE, SAID POINT ALSO IS THE BEGINNING OF A NON-TANGENT 545.00 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST, TO WHICH A RADIAL BEARS NORTH 29°30'51" EAST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 59°26'55" AN ARC DISTANCE OF 565.48 FEET TO THE BEGINNING OF A 750.00 FOOT RADIUS COMPOUND CURVE, CONCAVE TO THE WEST, TO WHICH A COMMON RADIAL BEARS NORTH 88°57'45" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°15'15" AN ARC DISTANCE OF 409.12 FEET TO THE BEGINNING OF A 200.00 FOOT RADIUS COMPOUND CURVE, CONCAVE TO THE NORTHWEST, TO WHICH A COMMON RADIAL BEARS SOUTH 59°47'00" EAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 61°29'25" AN ARC DISTANCE OF 214.64 FEET TO A POINT OF NON-TANGENCY; THENCE NORTH 01°42'25" EAST A DISTANCE OF 21.05 FEET; THENCE NORTH 90°00'00" EAST A DISTANCE OF 45.95 FEET TO THE BEGINNING OF A TANGENT 104.85 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 58°43'56" AN ARC DISTANCE OF 107.48 FEET; THENCE NORTH 31°16'04" EAST A DISTANCE OF 113.09 FEET TO THE BEGINNING OF A TANGENT 410.95 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°16'04" AN ARC DISTANCE OF 224.27

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FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 201.35 FEET; THENCE NORTH 89°29'09" WEST A DISTANCE OF 543.74 FEET TO A POINT OF INTERSECTION WITH THE U.S. PIERHEAD LINE, AS SAID U.S. PIERHEAD LINE IS NOW ESTABLISHED FOR THE BAY OF SAN DIEGO, AND DELINEATED ON MAP ENTITLED "HARBOR LINES, SAN DIEGO BAY, CALIFORNIA, FILE NO. (D.O. SERIES) 426", APPROVED BY THE SECRETARY OF THE ARMY, APRIL 29, 1963, FILED IN THE OFFICE OF THE DISTRICT ENGINEER, LOS ANGELES, CALIFORNIA; THENCE ALONG SAID U.S. PIERHEAD LINE NORTH 00°30'51" EAST A DISTANCE OF 252.00 FEET TO U.S. PIERHEAD LINE ANGLE POINT STATION 459-D; THENCE LEAVING SAID U.S. PIERHEAD LINE NORTH 68°25'45" EAST A DISTANCE OF 312.94 FEET TO THE POINT OF BEGINNING OF PARCEL NO. 2, CONTAINING 168,291 SQUARE FEET OR 3.86 ACRES OF WATER COVERED TIDELANDS AREA.

PARCEL NO. 3

BEGINNING AT SAID POINT NO. 2 MENTIONED ABOVE ; THENCE NORTH 45°34'52" EAST A DISTANCE OF 40.00 FEET TO THE BEGINNING OF A 548.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5°30'00" AN ARC DISTANCE OF 52.60 FEET; THENCE NORTH 40°04'52" EAST A DISTANCE OF 41.00 FEET TO THE BEGINNING OF A 196.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°03'45" AN ARC DISTANCE OF 65.21 FEET TO THE BEGINNING OF A 115.00 FOOT RADIUS COMPOUND CURVE, CONCAVE SOUTHEASTERLY, TO WHICH A COMMON RADIAL BEARS NORTH 30°51'23" WEST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°46'30" AN ARC DISTANCE OF 71.81 FEET; THENCE SOUTH 85°04'53" EAST A DISTANCE OF 104.78 FEET TO THE BEGINNING OF A TANGENT 300.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 7°41'49" AN ARC DISTANCE OF 40.30 FEET TO THE BEGINNING OF A 200.00 FOOT RADIUS REVERSE CURVE, CONCAVE TO THE SOUTH, TO WHICH A RADIAL BEARS NORTH 02°46'42" WEST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°46'57" AN ARC DISTANCE OF 65.56 FEET TO THE BEGINNING OF A 250.00 FOOT RADIUS REVERSE CURVE, CONCAVE TO THE NORTH, TO WHICH A RADIAL BEARS SOUTH 16°00'15" WEST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15°44'14" AN ARC DISTANCE OF 68.67 FEET; THENCE SOUTH 89°43'59" EAST A DISTANCE OF 289.77 FEET TO THE BEGINNING OF A 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 62°10'22" AN ARC DISTANCE OF 27.13 FEET; THENCE SOUTH 27°33'37" EAST A DISTANCE OF 9.98 FEET TO THE BEGINNING OF A TANGENT 35.00 FOOT RADIUS CURVE, CONCAVE TO THE WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°08'56" AN ARC DISTANCE OF 17.81 FEET TO THE BEGINNING OF A 298.00 FOOT RADIUS COMPOUND CURVE, CONCAVE TO THE WEST, TO WHICH A COMMON RADIAL BEARS SOUTH 88°24'41" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID

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CURVE THROUGH A CENTRAL ANGLE OF 16°09'35" AN ARC DISTANCE OF 84.05 FEET TO THE BEGINNING OF A 268.00 FOOT RADIUS COMPOUND CURVE, CONCAVE TO THE NORTHWEST, TO WHICH A COMMON RADIAL BEARS SOUTH 72°15'06" EAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 40°22'24" AN ARC DISTANCE OF 188.85 FEET; THENCE SOUTH 58°07'18" WEST A DISTANCE OF 117.96 FEET TO THE BEGINNING OF A TANGENT 426.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49°37'54" AN ARC DISTANCE OF 369.02 FEET; THENCE SOUTH 08°29'24" WEST A DISTANCE OF 72.10 FEET; THENCE NORTH 13°05'58" WEST A DISTANCE OF 70.77 FEET; THENCE NORTH 03°49'15" EAST A DISTANCE OF 173.05 FEET; THENCE NORTH 42°28'44" WEST A DISTANCE OF 307.17 FEET TO THE BEGINNING OF A 387.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 28°34'19" AN ARC DISTANCE OF 192.99 FEET TO THE POINT OF BEGINNING OF SAID PARCEL NO. 3, CONTAINING 249,090 SQUARE FEET OR 5.72 ACRES OF TIDELANDS AREA.

PARCEL NO. 4

BEGINNING AT SAID POINT NO. 3 MENTIONED ABOVE THENCE; SOUTH 27°20'15" WEST A DISTANCE OF 61.53 FEET TO THE BEGINNING OF A TANGENT 515.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°00'14" AN ARC DISTANCE OF 161.83 FEET; THENCE SOUTH 09°20'01" WEST A DISTANCE OF 52.68 FEET TO THE BEGINNING OF A TANGENT 145.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 83°55'36" AN ARC DISTANCE OF 212.40 FEET TO THE BEGINNING OF A 18,922.00 FOOT RADIUS REVERSE CURVE CONCAVE TO THE SOUTH, TO WHICH A COMMON RADIAL BEARS SOUTH 03°15'37" WEST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0°47'50" AN ARC DISTANCE OF 263.28 FEET TO THE BEGINNING OF A NON-TANGENT 295.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 02°27'47" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 43°44'53" AN ARC DISTANCE OF 225.25 FEET; THENCE NORTH 48°42'54" EAST A DISTANCE OF 271.68 FEET TO THE BEGINNING OF A TANGENT 395.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°22'39" AN ARC DISTANCE OF 147.38 FEET TO THE POINT OF BEGINNING OF SAID PARCEL NO. 4, CONTAINING 40,946 SQUARE FEET OR 0.94 ACRES OF TIDELANDS AREA.

THE ABOVE DESCRIBED TIDELANDS AREAS ARE DELINEATED ON THE SAN DIEGO UNIFIED PORT DISTRICT DRAWING NO. 006-003, DATED OCTOBER 2012 AND REVISED DECEMBER 2012 AND MADE A PART OF THIS AGREEMENT.

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ALL BEARINGS AND DISTANCES IN THE ABOVE LEGAL DESCRIPTION ARE GRID,
AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6, N.A.D. 83,
EPOCH 1991.35.

APN: 760-010-16-00

PRIVILEGED & CONFIDENTIAL**SCHEDULE B****PROVISIONS RELATING TO EXCESS FF&E**

1. This Schedule B is intended to insure that all of the rent payable under this Agreement qualifies as “rents from real property” within the meaning of Section 856(d) of the Code or any similar or successor provisions thereto. In furtherance of such purpose, the parties have agreed to the terms set forth in the following paragraphs of this Schedule B with the objective that, anything contained in this Agreement to the contrary notwithstanding, the average of the fair market value of the items of “personal property” (within the meaning of Section 856(d)(1)(C) of the Code) that are leased to Tenant under a lease at the beginning and at the end of any Fiscal Year shall not exceed 14% of the average of the aggregate fair market value of the Leased Property under such lease at the beginning and at the end of each such Fiscal Year as determined by the Landlord pursuant to Section 856(d)(1)(c) (the “FF&E Limitation”). The provisions contained in the following paragraphs shall be interpreted in a manner consistent with the intent and objective described above (it being understood that this paragraph constitutes a statement of the parties’ mutual intent only and that the failure to achieve such objective, absent any Default or Event of Default under the other paragraphs of this Schedule B or any other provisions of this Agreement, shall not constitute a Default or an Event of Default hereunder).

2. If Landlord reasonably anticipates and gives Notice (an “Excess FF&E Notice”) and reasonably satisfactory evidence to Tenant that the FF&E Limitation might be exceeded with respect to the Leased Property for any Fiscal Year, Tenant shall, in accordance with the provisions set forth below and within 60 days following the delivery of such Excess FF&E Notice, purchase from Landlord, or Landlord shall contribute to the capital of Tenant, those items or categories of FF&E to be acquired by Landlord during such Fiscal Year which are designated in such Excess FF&E Notice as anticipated to cause Landlord to exceed the FF&E Limitation (“Excess FF&E”). If Tenant shall purchase such Excess FF&E from Landlord, the price shall be equal to the Excess FF&E FMV (as hereinafter defined).

3. With respect to any Excess FF&E first received or purchased by Tenant pursuant to the terms of this Schedule B during a particular Fiscal Year, Tenant’s Annual Rent obligations shall be reduced, because such Excess FF&E is no longer leased by Tenant, in the following manner (the “FF&E Adjustment”):

(a) For the Fiscal Year in which such Excess FF&E is first placed in service by Tenant, such reduction shall be in an amount (the “First Year FF&E Adjustment”) equal to the mathematical product of (A) the Market Leasing Factor (as defined below) for personal property with an average expected useful life corresponding to the weighted average expected useful life (as determined in accordance with GAAP and rounded to the nearest whole year) of all Excess FF&E first placed in service by Tenant during such Fiscal Year (such weighted average, the “Applicable Expected Life”) times (B) the Excess FF&E Value (as defined below) of all Excess FF&E first placed in service by Tenant during such Fiscal Year times (C) 110% times (D) 50%;

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(b) For each subsequent Fiscal Year prior to the Fiscal Year in which the Applicable Expected Life for such Excess FF&E expires, such reduction shall be in an amount equal to twice the First Year FF&E Adjustment; and

(c) For the Fiscal Year in which the Applicable Expected Life for such Excess FF&E expires, such reduction shall be in an amount equal to the First Year FF&E Adjustment.

It is contemplated that there would be a separate FF&E Adjustment for all Excess FF&E first placed in service during a single Fiscal Year (with such FF&E Adjustment extending for a period equal to the lesser of the remaining Term or the Applicable Expected Life of the Excess FF&E acquired during such Fiscal Year). The Rent payable by Tenant for each Accounting Period in a Fiscal Year to which one or more FF&E Adjustments apply shall be reduced by an amount equal to the mathematical product of (i) the amount of such applicable FF&E Adjustment (or if more than one FF&E Adjustment apply in such Fiscal Year, the sum of such applicable FF&E Adjustments) times (ii) a fraction, the numerator of which is one and the denominator of which is the number of Accounting Periods in such Fiscal Year. The "Excess FF&E Value" of any Excess FF&E shall be the fair market value of such Excess FF&E ("Excess FF&E FMV") plus the aggregate amount of out-of-pocket transactional costs (including, without limitation, reasonable attorneys' fees and any ad valorem, sales, transfer, transaction or similar tax, levy or other governmental charge) incurred by such purchaser in connection with its purchase of such Excess FF&E. The "Market Leasing Factor" (with there to be a separate Market Leasing Factor for each whole number of years of expected useful life of Excess FF&E) shall be determined by an independent valuation expert, acceptable to both Landlord and Tenant, who shall determine the Market Leasing Factors based on the median of the leasing rates of at least three nationally recognized companies engaged in the business of leasing similar FF&E or personal property and equipment. The cost of such expert shall be borne by Landlord.

Notwithstanding anything to the contrary contained in this paragraph, Tenant's Annual Rent as reduced by operation of this paragraph shall not be less than the Minimum Rent provided for in Article 3.

4. In the event that Tenant owns any Excess FF&E at the expiration or earlier termination of this Agreement (including, without limitation, a termination in connection with a transfer of ownership of the Leased Property), Landlord shall purchase from Tenant and Tenant shall sell to Landlord (the "Excess FF&E Repurchase"), on the effective date of such expiration or termination, all such Excess FF&E for a purchase price equal to the fair market value (which the parties hereby agree shall not be less than the adjusted book value) of such Excess FF&E at such time (the "Excess FF&E Repurchase Price").

5. In the event that a Lender forecloses on its Mortgage on any Excess FF&E owned by Tenant in connection with, but not separate from, a foreclosure of the Leased Property, Landlord shall reimburse Tenant for the loss of such Excess FF&E in an amount equal to the Excess FF&E Repurchase Price plus any reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Tenant in complying with (but not contesting) such foreclosure (the "Excess FF&E Reimbursement Amount").

PRIVILEGED & CONFIDENTIAL**SCHEDULE C****GROUND LEASES*****BAY TOWER***

- Ground Lease by and between San Diego Unified Port District and Host San Diego Hotel LLC (Bay Tower) effective as of November 1, 2012.
- Memorandum of Ground Lease (Bay Tower) by and between San Diego Unified Port District and Host San Diego LLC dated March 1, 2013.
- Letter regarding CPI increase along with Database, Tables & Calculators by Subject (Bay Tower) dated September 21, 2017.
- Memorandum of Ground Lease (Bay Tower) by and between San Diego Unified Port District and Host San Diego Hotel LLC dated December 18, 2018.

MARINA TOWER

- Ground Lease by and between San Diego Unified Port District and Host San Diego Hotel LLC (Marina Tower) effective as of November 1, 2012.
- Memorandum of Ground Lease (Marina Tower) by and between San Diego Unified Port District and Host San Diego LLC dated March 1, 2013.
- Letter regarding CPI increase along with Database, Tables & Calculators by Subject (Marina Tower) dated September 21, 2017.
- Memorandum of Ground Lease (Marina Tower) by and between San Diego Unified Port District and Host San Diego Hotel LLC dated December 18, 2018

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SCHEDULE D
MINIMUM RENT

For each Fiscal Year or portion thereof that is not a Renovation Period, the Minimum Rent shall be an amount equal to the annual sum of \$15,150,000, payable in arrears in equal, consecutive monthly installments (“Standard Minimum Rent”), on or before the first day of each calendar month of the Term; provided that in the case of the first Fiscal Year and the last Fiscal Year, the number of such installments shall equal the number of calendar months included within the Term of such Fiscal Year; provided, further, in the event the Property is in a Renovation Period during all or any portion of a month of the Term, the Standard Minimum Rent shall only be applied to the months and portions of months not included in a Renovation Period, and if a partial month, prorated on a per diem basis based on the actual number of calendar days included within the Term of such month that is not a Renovation Period.

For each Fiscal Year or portion thereof that is a Renovation Period, the Minimum Rent shall be an amount equal to the annual sum of \$5,500,000, payable in arrears in equal, consecutive monthly installments (“Renovation Minimum Rent”), on or before the first day of each calendar month of the Term; provided, that, in the event the Property is in a Renovation Period during all or any portion of a month of the Term, the Renovation Minimum Rent shall be applied to the months and the portions of months during a Renovation Period, and if a partial month, prorated on a per diem basis based on the actual number of calendar days included within the Term of such month that is a Renovation Period.

PRIVILEGED & CONFIDENTIAL**SCHEDULE E****PERCENTAGE RENT AMOUNT**

For each Fiscal Year or portion thereof that is not a Renovation Period, the Percentage Rent Amount shall be an amount equal to the sum of (the “Standard Percentage Rent”):

(A) the product of (i) all Gross Revenues for such Fiscal Year in excess of \$72,500,000 but less than \$95,000,000 multiplied by (ii) 20%; plus

(B) the product of (i) all Gross Revenues for such Fiscal Year in excess of \$95,000,000 but less than \$125,000,000 multiplied by (ii) 33%; plus

(C) the product of (i) all Gross Revenues for such Fiscal Year in excess of \$125,000,000 multiplied by (ii) 50%.

provided, in the event the Property is in a Renovation Period during all or any portion of a month of the Term, the Standard Percentage Rent shall only be applied to the months and portions of months not included in a Renovation Period, and if a partial month, prorated on a per diem basis based on the actual number of calendar days included within the Term of such month that is not a Renovation Period.

For each Fiscal Year or portion thereof that is a Renovation Period, the Percentage Rent Amount shall be an amount equal to the sum of (the “Renovation Percentage Rent”):

(A) the product of (i) all Gross Revenues for such Fiscal Year in excess of \$72,500,000 but less than \$95,000,000 multiplied by (ii) 10%; plus

(B) the product of (i) all Gross Revenues for such Fiscal Year in excess of \$95,000,000 but less than \$125,000,000 multiplied by (ii) 30%; plus

(C) the product of (i) all Gross Revenues for such Fiscal Year in excess of \$125,000,000 multiplied by (ii) 50%.

provided, that in the event the Property is in a Renovation Period during all or a portion of a month of the Term, the Renovation Percentage Rent shall be applied to the months and portions of months during a Renovation Period, and if a partial month, prorated on a per diem basis based on the actual number of calendar days included within the Term of such month that is a Renovation Period