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MANAGEMENT AGREEMENT

between

SSD OPERATING CO., LLC

as Owner

and

SSD MANAGEMENT, LLC

as Manager

for

**Sheraton San Diego Hotel and Marina [TBD Name Change?]
San Diego, California**

DRAFT v1.1, September 13, 2019

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MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT, dated as of August __, 2019 (the "Effective Date"), by and between SSD Operating Co., LLC, a Delaware liability company ("Owner"), and SSD MANAGEMENT, LLC, a Delaware limited liability company ("Manager"). Owner and Manager are sometimes referred to collectively in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. Manager, together with its Affiliates (as defined below), is knowledgeable and experienced in the management and operation of hotels and resorts, directly and through affiliated entities.

B. SSD Holdings, LLC ("Master Lessee") is the exclusive holder of a leasehold interest in and to parcels of real property and the improvements thereon generally described as follows and more particularly described in those certain Master Leases dated March 1, 2013, as amended and assigned (the "Master Leases") between Master Lessee and the Port of San Diego ("Master Landlord"): the real property located at 1380 Harbor Island Drive, in the City of San Diego, San Diego County, California and legally described as shown in Exhibit A to this Agreement which is attached hereto and incorporated herein (the "Site") and the improvements thereon, which include the Sheraton San Diego Hotel and Marina, approximately 130,000 square feet of meeting space, restaurants, bars, retail facilities, parking facilities, pools, a fitness center, a spa and other related facilities (collectively referred to herein throughout as the "Hotel").C.

Owner subleases the Hotel from the Master Lessee.

D. Owner desires to engage Manager to manage and promote the Hotel on behalf of Owner in accordance with the terms and conditions and subject to the limitations contained in this Agreement.

AGREEMENT

NOW, THEREFORE, Owner and Manager covenant and agree as follows:

ARTICLE 1
DEFINITIONS

All capitalized terms used without definition in this Agreement shall have the meanings assigned to such terms in this Article 1.

Affiliate – and all derivations thereof, shall mean (i) as to any Person which is not an individual, any other Person controlling, controlled by or under common control with such Person,

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including, without limitation, any partner, member, shareholder, officer or director of such Person, as the case may be, and (ii) with respect to any Person who is an individual, such individual's parents, spouse, direct lineal or adoptive descendants, siblings, nieces, nephews and/or first cousins and/or one or more trusts created solely for the benefit of such individual or any such family members. For the purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a Person, whether through ownership of voting securities or a partnership or membership interest, by contract or otherwise. Notwithstanding the foregoing, in no event shall Owner be deemed to be an Affiliate of Manager, nor shall Manager be deemed to be an Affiliate of Owner.

Agreement – this Management Agreement, as it may be amended or supplemented from time to time.

Annual Operating Plan – as defined in Section 4.1.

Arbitration Tribunal – as defined in Section 10.2.

Bank Accounts – as defined in Section 4.4.

Claims – as defined in Section 11.2.

Corporate Personnel – any personnel from the corporate offices of Manager or its Affiliates who perform activities at or on behalf of the Hotel in connection with the services provided by Manager under this Agreement.

Effective Date – the date of execution of this Agreement by the Parties, as set forth in the preamble.

Event of Default – any of the events described in Section 3.2.

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Force Majeure Event – any one or more of the following events or circumstances that, alone or in combination, directly or indirectly, adversely affects the operation of the Hotel: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, rebellion, riots, acts of terrorism, or other civil unrest or commotion; shortage of critical materials or supplies; action or inaction of governmental authorities having jurisdiction over the Hotel; or any other event beyond the reasonable control of Owner or Manager; provided, however, that general economic conditions, including, without limitation, a recession or a decline in tourism in the greater San Diego, California area, which are not the result of any of the above events, shall not constitute a Force Majeure Event.

Franchise Agreement – that certain agreement dated **September , 2019** and as amended between Owner and Franchisor granting Owner a license to operate the Hotel under the Sheraton brand.

Franchisor – Marriott International, Inc.

Furniture, Fixtures and Equipment or FF&E – all furniture, furnishings, wall coverings, fixtures, equipment and systems located at, or used in connection with the Hotel, together with all replacements thereof and additions thereto.

Generally Accepted Accounting Principles or GAAP – those conventions, rules, procedures and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States. Any financial or accounting terms not otherwise defined herein shall be construed and applied according to GAAP.

Gross Operating Profit – for any Operating Year, the amount by which Gross Revenues for such period exceeds Operating Expenses for such period.

Gross Revenues – all revenues, receipts and income of any kind derived, directly or indirectly, by, from, or in connection with the operation of the Hotel and properly attributable to the period under consideration, including, as applicable, brokerage commissions earned in connection with the leasing, sale or disposition of time-shares, fractional ownership, vacation club, condominiums or similar real estate assets, Net Membership Cash Flow, rentals or other payments from tenants, lessees, licensees or concessionaires (but not including their gross receipts), whether on a cash basis or credit, paid or collected, determined in accordance with GAAP and the Uniform System (except that Manager shall be permitted to vary from the Uniform System to the extent consistent with its accounting practices for the Managed Hotels), but specifically excluding: (i) excise, sales and use taxes (including transient occupancy taxes) collected directly from patrons and guests or as part of the sales price of any goods, services or displays (such as gross receipts, admissions, cabaret or similar or equivalent taxes) and paid over to federal, state or municipal governments; (ii) funds furnished by Owner; (iii) interest accrued on amounts in the Reserve Fund

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or Operating Account; (iv) gratuities received by Hotel Personnel (other than service charges which shall be included in calculating Gross Revenues); (v) proceeds from the sale or other disposition of capital assets other than in the ordinary course of business; (vi) receipts from awards or sales in connection with any condemnation or taking, from other transfers in lieu of and under the threat of any condemnation or taking, and other receipts in connection with any condemnation or taking, except to the extent that such amounts are specifically identified as compensation for loss of operating revenue at the Hotel; and (vii) insurance proceeds other than the proceeds of business interruption insurance.

Group Services – as defined in Section 2.6.

Hazardous Materials – any substance or material containing one or more of any of the following: hazardous material, hazardous waste, hazardous substance, regulated substance, petroleum, pollutant, contaminant, or asbestos, as such terms are defined as of the Effective Date or thereafter defined in any applicable laws, or otherwise generally understood, in such concentrations or amounts as may require clean-up or removal, or which may present a significant risk of harm to guests, invitees, or Hotel Personnel.

Hotel – as defined in Recital B.

Hotel Building – the Hotel's building(s) (including all roof coverings and exterior facades and any walkways and bridges) and all structural, mechanical, electrical, heating, ventilating, air conditioning, sanitation, sewage treatment and disposal, plumbing and vertical transportation elements of such building(s).

Hotel Guest Data – as defined in Section 4.2.

Hotel Intellectual Property – all U.S. and foreign patents, copyrights, trademarks, service marks, trade dress, brand names, corporate names, logos and other source indicators, internet domain names and other intellectual property, in each case including applications and registrations related thereto, owned by Owner or licensed to Owner or Manager for use in connection with the operation of the Hotel.

Hotel Personnel – all individuals performing services in the name of the Hotel at the Hotel under the direction of the Manager, whether employees of Manager or its Affiliates or otherwise.

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Index – the Consumer Price Index for All Urban Consumers, All Items, for the market area that includes the Hotel, 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 Owner and Manager.

Insurance Costs – insurance premiums relating to liability and casualty coverage and business interruption policies maintained with respect to the Hotel.

IRR – as of any date and on a pre-tax basis, the internal rate of return on a member's capital contribution, to such date, calculated to be that discount rate (expressed on a percent per annum basis) which, when compounded annually and applied to the capital contributions, and the corresponding distributions with respect thereto, causes the net present value, as of such date, of such distributions and initial capital contributions to equal zero. In order to calculate the IRR, the XIRR function (or any successor function) on Microsoft Excel will be utilized. For this purpose, capital contributions and distributions shall be assumed to have occurred on the date which such capital contributions or distributions take place.

Legal Requirements – any federal, state, or local law, code, rule, ordinance, regulation or order of any governmental authority, regulatory authority or agency having jurisdiction over the business or operation of the Hotel or the matters which are the subject of this Agreement, including those related to zoning, building, employees, health, safety, environmental matters and accessibility of public facilities.

Liquidity Event – a sale, directly or indirectly, of the Hotel, whether through a sale of substantially all of the assets or the equity interest of Owner, a recapitalization of Owner or other third party investment whereby a third party acquires 51% or more of the outstanding equity interests of Owner.

Major Capital Expenditures – any repairs, alterations, improvements, renewals, replacements, or additions to the Hotel Building, which are normally capitalized under GAAP and which are not Routine Capital Expenditures.

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Managed Hotels – all hotels and Hotels in the United States that are managed by Manager or its Affiliates under the Manager Marks, including all such hotels and Hotels that are owned by Manager and/or its Affiliates.

Manager – as set forth in the preamble.

Manager Guest Records – all guest contact information, guest profiles, guest histories, guest preferences and other guest information in the customer database of Manager or its Affiliates which is maintained, obtained or derived by Manager, or its Affiliates, from: (i) guests of the Hotel (subject to Owner's rights to Hotel Guest Data, as provided in Section 4.2); (ii) guests of any hotel or similar facility which Manager, or its Affiliates, own, lease, license, manage, or franchise; (iii) Manager's sales and reservation operations, if any, included in the Sales and Marketing Group Services; (iv) Manager's websites (other than the Hotel's website); (v) Manager's frequent guest or rewards programs, if any; and (vi) any other sources or databases maintained by Manager or its Affiliates at a system-wide level (as opposed to sources or databases maintained at the Hotel). For the purposes of this definition, "guest" shall include customers of any hotels or similar facilities owned, leased, operated, or franchised by Manager or its Affiliates, and any customers of any of the facilities associated with such hotels (e.g. restaurants, golf courses, spas, etc.).

Manager Marks – the principal registration mark "KSL", and all other service marks, trademarks, trade names, insignias and logos used for hotel services, for other related goods and services, and for the hotel business associated therewith that contain the "KSL" name.

Manager Proprietary Information – collectively: (i) the Manager Marks; (ii) the Manager Guest Records, subject to the rights of Owner under Section 4.2; and (iii) all trade secrets and other information, materials and copyrightable or patentable subject matter of a proprietary nature that are developed, acquired, or licensed by Manager or any of its Affiliates for use in the operation of the Managed Hotels and that contain or describe Manager's internal policies, procedures and standards. "Manager Proprietary Information" shall not include any information relating to the employment history, training, performance, discipline, compensation, benefits or contact data for any of the Hotel Personnel.

Manager's Grossly Negligent or Willful Acts – any gross negligence, knowingly willful misconduct, or fraud committed by Manager, its Affiliates, the Corporate Personnel or the general manager, chief financial officer or director of sales and marketing of the Hotel, in the performance of Manager's duties under this Agreement. The acts or omissions (including grossly negligent, knowingly willful misconduct or fraudulent acts or omissions) of Hotel Personnel other than the general manager or chief financial officer of the Hotel shall not be imputed to Manager or its Affiliates, or to the Corporate Personnel, or deemed to constitute Manager's Grossly Negligent or

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Willful Acts, unless such acts or omissions resulted directly from the gross negligence, knowingly willful misconduct or fraudulent acts of the Corporate Personnel or the general manager or chief financial officer of the Hotel in supervising such Hotel Personnel.

Master Landlord – as defined in Recital B.

Master Leases – as defined in Recital B.

Mediation Service Provider – as defined in Section 10.1.

Mortgage – any real estate, leasehold, security deed, mortgage, deed of trust, security agreement or other similar security interest encumbering the Site and/or the Hotel, or any part thereof.

Mortgagee – any holder or beneficiary of a Mortgage.

Net Operating Income – for any Operating Year, Gross Operating Profit less the sum of: (i) Taxes, (ii) Insurance Costs, (iii) [REDACTED] and (iv) the Reserve Fund Contribution.

Operating Account – a bank account or accounts, in Owner's name, established for the purpose of depositing all funds received in the operation of the Hotel and paying all Operating Expenses and all other charges and amounts due to Manager under this Agreement.

Operating Expenses – all those ordinary and necessary expenses incurred in the operation of the Hotel in accordance with this Agreement, including Reimbursable Expenses, all costs and expenses associated with the Hotel Personnel (including, or if applicable, salaries, wages, bonuses and other compensation paid by Manager to Hotel Personnel and, if applicable, their benefits, including life, medical and disability insurance and retirement benefits), the costs associated with Hotel permits and licenses, the cost of maintenance and utilities, administrative expenses, the costs of advertising, marketing and business promotion and any amounts payable to Manager as set forth in this Agreement, all as determined in accordance with GAAP and the Uniform System (except that Manager shall be permitted to vary from the Uniform System to the extent consistent with its accounting practices for the Managed Hotels). Notwithstanding the foregoing description, the following shall not constitute Operating Expenses: (i) [REDACTED]; (ii) Taxes; (iii) Insurance Costs; (iv) Routine Capital Expenditures and Major Capital Expenditures; (v) interest payments on any Mortgages; (vi) depreciation and amortization of capitalized assets; (vii) costs and expenses of Owner or Owner's personnel, including entertainment expenses, salaries, wages and employee benefits of Owner's employees, directors' fees and the expenses of directors or Owner's employees to attend board meetings; (viii) professional fees and costs, including the fees and disbursements of attorneys, accountants and appraisers, incurred directly or indirectly in connection with any category of expense that is not itself an Operating Expense; and (ix) lease or rental payments made in connection with the Operating Lease.

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Operating Lease – That certain Operating Lease by and between Master Lessee as lessor and Owner as tenant dated _____, 2019.

Operating Standards – as defined in Section 2.2.

Operating Year – each calendar year during the Term, commencing on January 1 and ending on December 31, except that (i) the first Operating Year (if not commencing on January 1) shall be a partial year commencing on the Effective Date and ending on December 31 of the year in which the Effective Date occurs; and (ii) the last Operating Year (if this Agreement is terminated effective on a date other than December 31) shall be a partial year commencing on January 1 of the year in which such termination occurs and ending on the effective date of such termination.

Other Group Services – as defined in Section 2.6.2.

Out-of-Pocket Expenses – the actual out-of-pocket expenses of Manager and its Affiliates (with no mark-up or profit to Manager) reasonably incurred for the account of or in connection with the Hotel's operation, including reasonable travel expenses, document reproduction, printing, promotional materials, postage, courier services, computer system charges, long-distance telephone calls, facsimiles, etc.

Owner – as set forth in the preamble.

Owner's Additional Invested Capital – any amounts advanced by Owner following the Effective Date for Major Capital Expenditures or future development costs related to the Hotel, in excess of amounts available in the Reserve Fund and excluding amounts advanced for real estate development for sale to third parties. The amount of Owner's Additional Invested Capital shall be calculated after the Effective Date as of the end of each quarter.

Parent – as defined in Section 13.2.7.

Party or Parties – as set forth in the preamble.

Person – an individual, partnership, corporation, limited liability company, association, government or any department or agency thereof, trustee, trust, or any other entity or organization.

Purchasing Funds – as defined in Section 2.8.

Reimbursable Expenses – as defined in Section 5.3.

Reservation Services – those reservation services provided by Manager or its Affiliates to the Hotel, including, without limitation securing bookings for the Hotel through its sales and reservations operations, or other third-party distribution and sales systems.

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Reserve Fund – an interest bearing bank account, in Owner’s name, established for the purpose of depositing the Reserve Fund Contribution and paying all Routine Capital Expenditures.

Reserve Fund Contribution – an amount equal to four percent (4%) of Gross Revenues for each Operating Year during the Term, or such greater percentage of Gross Revenue required by Owner's lender providing first mortgage financing with respect to the Hotel pursuant to such lender's loan documents.

Routine Capital Expenditures – (i) alterations, improvements, replacements, renewals and additions to the FF&E in the ordinary course of the Hotel’s operation; and (ii) routine repairs and maintenance to the Hotel Building which are normally capitalized under GAAP.

Sales and Marketing Group Services – as defined in Section 2.6.1.

Senior Executive Personnel – the individuals employed from time to time as the general manager, the chief financial person for the Hotel, and the director of sales and marketing (or serving such functions, regardless of the specific titles given to such individuals).

Taxes – all taxes, including real estate and personal property taxes, business and occupation taxes, levies, assessments, impact fees and similar charges on or relating to the Hotel imposed by any governmental authority having jurisdiction over the Hotel, but not including income, franchise or similar taxes imposed on Owner.

Term – the term of this Agreement, as defined in Section 3.1.

Termination Notice – as defined in Section 3.3.2.

Total Project Costs – the sum of (i) **Sixty Three Million Dollars (\$63,000,000.00)** (ii) Owner’s Additional Invested Capital, and (iii) other extraordinary expenditures mutually agreed upon by Manager and Owner.

Uncontrollable Expenses – as defined in Section 4.1.2(b).

Uniform System – the Uniform System of Accounts for the Lodging Industry (11th Revised Edition, 2014) as published by Hospitality Financial & Technology Professionals (HFTP, Inc.), as the same may hereafter be revised. W.A.R.N. – Worker Adjustment and Retraining Notification Act, as applicable under all federal and state laws, and any other similar employment related federal and state laws.

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W.A.R.N. Indemnitees – as defined in Section 3.3.2.

ARTICLE 2
HOTEL OPERATIONS

2.1 Engagement of Manager. Subject to the terms and conditions of this Agreement, Owner hereby engages Manager to act as the sole operator and manager of the Hotel during the Term, with exclusive responsibility, and complete and full control and discretion in the operation, direction, management and supervision of the Hotel. Manager hereby agrees to be engaged and undertakes to supervise, direct, and control the management, operation and promotion of all aspects of the Hotel, as the agent of Owner, and as the exclusive operator of the Hotel during the Term.

2.2 Standards of Operation and Care. The Hotel shall be operated, serviced, maintained and refurbished (i) at the level of service of an upper upscale (as that term is defined by Smith Travel Research) Hotel, (ii) in a manner consistent with the requirements and limitations set forth in this Agreement (including those relating to the Annual Operating Plan), in compliance with all Legal Requirements and the terms and conditions of the Master Leases, the Franchise Agreement, the Operating Lease, and any and all Mortgages, (iii) in accordance with standards, policies and programs in effect from time to time that are applicable to the operation of the Managed Hotels, and (iv) in a manner reasonably calculated to (a) protect and preserve the assets that comprise the Hotel, and (b) optimize over the Term the financial performance of the Hotel's operations. The foregoing shall collectively constitute the "Operating Standards" of the Hotel. Owner and Manager agree to perform their respective obligations under this Agreement, and exercise their respective rights of approval in a manner that permits Manager to maintain the Operating Standards and preserves the character, physical condition, state of repair and reputation of the Hotel.

2.3 Authority and Duties of Manager. Subject to and in furtherance of the responsibilities of Manager described in Sections 2.1 and 2.2, and subject to the other terms and limitations in this Agreement (including, without limitation, the provisions of Sections 2.11 and Section 4.1.2) and, as applicable, the Franchise Agreement, Manager shall have the exclusive right, authority and duty during the Term to direct, supervise, manage and operate the Hotel on a day-to-day basis in accordance with this Agreement, and the Operating Standards, (subject to the availability of adequate funds generated from the Hotel operations or provided by Owner), and specifically to:

2.3.1 establish all room rates, credit policies, entertainment policies, food and beverage policies (including pricing), and rates for commercial space and other amenities and services;

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2.3.2 determine and implement all labor and personnel policies, including wage and salary rates and terms, fringe benefits, pension, retirement, bonus and employee benefit plans, collective bargaining agreements, and the hiring (subject to Section 2.5.3) and discharge of all Hotel Personnel;

2.3.3 negotiate, enter into and administer, in the name and on behalf of Owner, service contracts and licenses for Hotel operations, including contracts and licenses for utilities, telecommunications (including internet service), television services, vermin extermination, security, cleaning, trash removal, health and safety systems, elevator and boiler maintenance, air conditioning maintenance, laundry and dry cleaning, computer systems and other services Manager deems advisable (and in connection therewith appoint counsel) in its own name or in the name and on behalf of Owner or the Hotel, and as an Operating Expense; provided, however, that with respect to the liquor license for the Hotel, Manager shall hold such license in the name of Manager, to the extent permitted under applicable Legal Requirements.

2.3.4 establish all sales, marketing, advertising, public relations and promotional policies with respect to the Hotel, including exclusive control over all paid advertising, press releases and conferences relating to the operation of the Hotel, and the policies relating to complimentary rooms or other goods and services at the Hotel;

2.3.5 arrange for the purchase of all FF&E, inventories, operating equipment and consumable supplies for the proper operation of the Hotel;

2.3.6 obtain and administer leases, licenses, and concession agreements appropriate for the operation of the Hotel, in Owner's name;

2.3.7 maintain the Hotel and FF&E in good working order, repair and condition as shall be necessary to meet the Operating Standards and comply with all Legal Requirements;

2.3.8 institute or defend (and in connection therewith appoint counsel) in its own name or in the name and on behalf of Owner or the Hotel, and as an Operating Expense, any and all legal actions or proceedings relating to the operation of the Hotel, including, by way of example, proceedings to collect charges, rent, or other income derived from the Hotel's operations or to oust or dispossess guests, tenants, or other Persons in possession therefrom, or to cancel or terminate any lease, license, or concession agreement for the breach thereof or default thereunder by the tenant, licensee, or concessionaire;

2.3.9 at Owner's direction, take appropriate steps to challenge, protest, appeal and/or litigate to final decision in any appropriate court or forum the application of any Legal Requirements affecting the Hotel (and in connection therewith appoint counsel) in its own name or in the name and on behalf of Owner or the Hotel, and as an Operating Expense;

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2.3.10 at Owner's direction, manage the design, construction and installation of any renovations, improvements, repairs, or replacements of FF&E, building systems, or other physical components of the Hotel that may be undertaken by or with the consent of Owner following the Effective Date; [REDACTED]

2.3.11 negotiate, enter into, and administer, in the name and on behalf of Owner, contracts for the use of banquet and meeting facilities and guest rooms by groups and individuals;

2.3.12 prepare and submit to Owner, and implement, the Annual Operating Plan in accordance with Section 4.1;

2.3.13 supervise and maintain complete books and records consistent with the Uniform System (except that Manager shall be permitted to vary from the Uniform System to the extent consistent with its accounting practices for the Managed Hotels) and Generally Accepted Accounting Principles, including the books of accounts and the accounting procedures of the Hotel;

2.3.14 cooperate with Owner and any prospective purchaser, lessee, Mortgagee, or other lender in connection with any proposed sale, lease, or financing (or refinancing) of or relating to the Hotel; provided, however, that Manager shall not be required to release to any Person any Manager Proprietary Information;

2.3.15 be available to consult with and advise Owner or Owner's designee at Owner's reasonable request and upon reasonable notice concerning matters relating to the Hotel;

2.3.16 collect on behalf of Owner and account for and remit to governmental authorities all applicable excise, sales, occupancy, and use taxes or similar governmental charges collected by the Hotel directly from patrons or guests, or as part of the sales price of any goods, services, or displays, such as gross receipts, admission, or similar or equivalent taxes;

2.3.17 keep Owner informed and advised of all material financial and other matters concerning the Hotel and the operation thereof and give reasonable consideration to suggestions of Owner from time to time;

2.3.18 in connection with Owner's responsibility to maintain effective internal controls over financial reporting and the requirements for complying with the Sarbanes Oxley Act

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of 2002 (if applicable), Manager hereby agrees to provide access and reasonable assistance necessary to Owner that will allow Owner to conduct activities necessary to satisfy its responsibilities, as previously outlined, including but not limited to the activities stipulated by the Public Company Accounting Oversight Board in its release 2004-1, or other similarly promulgated guidance by other regulatory agencies. Manager shall be reimbursed its reasonable expenses incurred (including direct Out-of-Pocket Expenses and a reasonable allocation of its overhead for Corporate Personnel, to the extent not already allocated as a Reimbursable Expense or other allocation) for all such services and assistance requested by Owner;

2.3.19 collect all charges, rent, and other amounts due from guests, lessees, and concessionaires of the Hotel and use those funds, as well as funds from other sources as may be available to the Hotel, first to pay all Operating Expenses [REDACTED], and then any other financial obligations of the Hotel as Owner may direct, or as may be otherwise set forth in this Agreement;

2.3.20 promptly notify Owner in writing of any material adverse change to the Hotel of which Manager becomes aware, such as material changes to any environmental condition, including, without limitation, the material presence of biocontaminants, such as mold (and, if applicable, promptly notify the applicable insurance carriers and submit all claim information related thereto pursuant to Article 7), and in connection therewith promptly undertake and/or arrange for appropriate assessment, remedial and preventative actions sufficient to meet any 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 Manager shall undertake and/or arrange for (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, all of which shall be an Operating Expense, Routine Capital Expenditure and/or Major Capital Expenditure, as applicable. In connection with the foregoing, and prior to undertaking any remedial or preventative actions, Manager shall provide a written remediation plan and budget to Owner for Owner's prior written approval, which approval shall not be unreasonably withheld. Owner hereby acknowledges that Manager shall assume no liability in connection with its actions under this Section 2.3.20, except to the extent caused by Manager's Grossly Negligent or Willful Acts;

2.3.21 use the Hotel Intellectual Property in the operation or management of the Hotel pursuant to this Agreement;

2.3.22 comply in all material respects with the terms of Owner's secured credit facility and related obligations thereto; and

2.3.23 perform such other services and functions as are customary and usual in the operation of a hotel of the class and standing of the Hotel.

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2.4 Hotel Name. During the Term, the Hotel shall be operated by Manager under the names “Sheraton San Diego Hotel and Marina”, or by such other name as may be approved by Owner and Franchisor. Manager shall make or cause to be made any fictitious name filings or disclosures required by applicable law with respect to the use of such name for or in connection with the Hotel. Manager shall not sub-brand and/or tag-line the Hotel without Owner’s prior written approval, or with respect to a sub-brand and/or tag-line previously approved by Owner, change such sub-brand and/or tag-line (including in connection with a system-wide change in Manager’s Marks) without Owner’s prior written approval, which approval shall be in Owner’s sole discretion.

2.5 Hotel Personnel. [REDACTED]

2.5.1 Manager shall have the sole right and obligation, necessary or appropriate for the proper operation, maintenance and security of the Hotel, to: (i) select, appoint, hire (subject to Section 2.5.3), promote, direct, supervise, train and discharge, all Hotel Personnel; (ii) determine all labor and personnel policies, including wage and salary rates and terms, fringe benefits, pension, retirement, bonus and employee benefit plans, and collective bargaining agreements for the Hotel Personnel; and (iii) establish and maintain all policies relating to the employment of the Hotel Personnel. Manager shall use commercially reasonable efforts to cause Manager’s employment practices to comply with all Legal Requirements. Manager shall provide Owner with copies of all new (i.e., not in existence as of the Effective Date) material written agreements or material revisions to existing written agreements, if any, between Manager and any group of employees or long-term employment contracts (i.e., in excess of one year) or deferred compensation plans with any Hotel Personnel (excluding employment offer letters).

2.5.2 All Hotel Personnel shall be employees of Manager; provided, however, that the payroll and all employee related costs and expenses for all Hotel Personnel shall be Operating Expenses of the Hotel.

2.5.3 Notwithstanding anything to the contrary contained herein, Owner shall have the right to interview and approve, prior to his or her appointment, each individual selected by Manager for any Senior Executive Personnel position, which approval shall not be unreasonably withheld or delayed. Prior to appointing any of the Senior Executive Personnel, Manager shall provide Owner with a written summary of each such individual’s professional experience and qualifications and shall offer Owner the opportunity to interview each candidate at the Hotel or another mutually acceptable location. Owner will forego its right to interview any such individual and be deemed to have approved such individual if Owner or its authorized representative is unwilling or unable to participate in the interview within ten (10) days following Manager’s offer. Owner shall be deemed to have approved the appointment of any such individual unless Owner delivers written notice of its disapproval of such appointment within three (3)

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business days after Owner interviews such candidate. Owner acknowledges that it may not reject more than three (3) qualified candidates proposed by Manager for any particular Senior Executive Personnel position.

2.5.4 Manager shall have the right to utilize personnel from other Managed Hotels in connection with the operation of the Hotel, to the extent the scope of work covered was contemplated in the applicable Annual Operating Plan or otherwise approved by Owner. In such event, the employee related costs and expenses for such personnel shall be allocated in a fair and equitable manner, and included in the Annual Operating Plan.

2.5.5 Upon timely receipt of notice of any termination of this Agreement (including, without limitation, any notice of termination under Section 3.2, 3.3 or 3.4), Manager shall be responsible for determining whether the provisions of W.A.R.N. (or any other applicable employee notice requirements under state or federal Legal Requirements) will require the delivery of notices to Hotel Personnel as a result of such termination and for delivering to all Hotel Personnel whose employment may be terminated by Manager as a result of such termination all notices under, pursuant to, and in accordance with W.A.R.N. (or any other applicable employee notice requirements under state or federal Legal Requirements), specifying therein the applicable date of termination; provided, however, that (a) in the case of termination as a result of expiration of this Agreement, no notice of termination from Owner shall be required, and (b) in the case of a termination without cause, the provisions of this Section 2.5.5 shall be subject to the provisions of Section 3.4. Owner shall not be responsible for any compensation, benefits, or other claims relating to any period after termination and arising as a result of Manager's failure to timely deliver such notices (following any notice that Owner has agreed to give to Manager), and Manager shall indemnify and hold Owner harmless against the same. In connection with this Section 2.5.5 Manager may appoint counsel as reasonably necessary in its own name or in the name and on behalf of Owner or the Hotel, and as an Operating Expense.

2.6 Group Services. The Hotel's participation in the Sales and Marketing Group Services and Other Group Services (collectively, the "Group Services") described in this Section 2.6 is mandatory. [REDACTED]

2.6.1 Sales and Marketing Group Services. Manager shall furnish, or cause its Affiliates to furnish, to the Hotel certain group benefits, services and facilities relating to advertising, marketing, promotion, publicity, public relations and group sales services for the Hotel and other Managed Hotels (the "Sales and Marketing Group Services"), to the extent such services are offered to other Managed Hotels.

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2.6.2 Other Group Services. In addition to the Sales and Marketing Group Services, Manager shall furnish, or cause its Affiliates to furnish to the Hotel such additional services, programs or group benefits as are, from time to time, provided generally to all or distinct sub-groups of the Managed Hotels (the "Other Group Services"). Manager shall have the right, with Owner's consent, to implement a preferred guest program following prior written notice to Owner.

2.7 Hotel Specific Marketing. In addition to the Sales and Marketing Group Services, Manager shall develop and implement a specific marketing program for the Hotel, which will provide for planning, publicity, and budgeting activities to be undertaken by Hotel Personnel. The Hotel's specific marketing plan may include all or some of the following activities: (i) production, distribution and placement of Hotel promotional materials; (ii) development and implementation of promotional offers or programs that benefit the Hotel; (iii) attendance of Hotel Personnel at conventions, seminars, conferences and travel congresses; (iv) selection of, and guidance to, advertising and public relations agencies; and (v) preparation and dissemination of news releases. Corporate Personnel with marketing and sales expertise will provide periodic assistance to the Hotel Personnel, and Owner shall pay for the reasonable Out-of-Pocket Expenses incurred by Manager in connection with such assistance. The cost of the development and implementation of the Hotel's specific marketing program shall be included in the Operating Expenses and the estimated costs of the program for each Operating Year (including the Out-of-Pocket Expenses associated with such program) will be included in the Annual Operating Plan for such Operating Year.

2.8 [Intentionally Omitted]

2.9 Manager's Affiliates. Manager may, following prior written notice to Owner in each case, elect to use the services of its Affiliates in fulfilling its obligations under this Agreement. Manager's inclusion and reference to such Affiliates in the Annual Operating Plan shall constitute prior written notice in accordance with the preceding notice. If an Affiliate of Manager performs services Manager is required to provide, Manager shall be ultimately responsible to Owner, and Owner shall not pay more for the Affiliate's services and expenses than Manager would have been entitled to receive under this Agreement had Manager performed the services. If an Affiliate of Manager provides goods to the Hotel, such goods shall be supplied at prices and on terms at least as favorable to the Hotel as generally available in the relevant market. For purposes of this Section 2.9 and the notice requirements described in the first sentence, the Parties hereby acknowledge that Manager's use of personnel from other Managed Hotels and/or use of Corporate Personnel does not constitute use of its Affiliates.

2.10 Operation at Owner's Expense. In performing its duties hereunder, Manager shall act solely for the account of Owner and all expenses incurred by Manager in such performance shall be borne exclusively by Owner. To the extent necessary funds are not generated by the operation of the Hotel, Owner shall, on not less than ten (10) days' prior written notice, supply

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such funds to Manager, as provided in Sections 5.5 and 6.3. Manager shall in no event be required to advance any of its own funds for the operation of the Hotel, or to incur any liability in connection therewith unless Owner shall have furnished Manager with funds necessary for the discharge thereof. Without limiting the restrictions set out in Section 2.11.4, all debts and liabilities to third persons incurred by Manager in the course of its operation and management of the Hotel in accordance with this Agreement shall be the debts and liabilities of Owner.

2.11 Limitations on Manager's Authority. Notwithstanding the general grant of authority given to Manager in Section 2.3, and without limiting any of the other circumstances under which Owner's approval is specifically required under this Agreement:

2.11.1 Legal Proceedings. The filing, prosecution and defense of all legal proceedings arising out of the operation of the Hotel, and involving amounts in excess of \$100,000 shall require Owner's approval of the action and designated counsel and, at the election of Owner, any such action may be jointly controlled by Owner and Manager; provided, however, that with respect to legal actions or proceedings which relate to (i) legal actions involving more than one hotel operated by Manager, unless such other hotels are also owned by Owner; or (ii) policies, procedures or business practices of Manager or its Affiliates, Manager shall have the right to select and direct primary counsel for such actions. Owner shall have the right to direct and control all legal actions pertaining to property related claims not involving the operation of the Hotel (e.g. zoning disputes, structural defects, and title disputes). Notwithstanding anything contained herein to the contrary, with respect to all disputes or legal proceedings relating to employment matters, group sales contracts, collection matters or membership contracts, Manager may direct the course of action and designate counsel with respect to such disputes.

2.11.2 Leases. Owner's prior written approval shall be required for the execution of any lease of space within the Hotel.

2.11.3 Contracts. Owner's approval shall be required for the execution of any equipment lease or other contract for goods or services having a term in excess of one year or that requires aggregate annual payments in excess of \$100,000 (but specifically excluding any group sales contracts or membership contracts), unless such equipment lease or other contract is terminable without penalty upon notice of thirty (30) days or less.

2.11.4 No Credit. Manager shall not borrow any money or execute any credit obligation in the name and on behalf of Owner or pledge the credit of Owner without Owner's prior consent.

2.11.5 Annual Operating Plan. All grants of authority made to Manager in this Article 2 or elsewhere in the Agreement shall be subject to the provisions of Section 4.1.2.

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2.12 Asset Management Offices. Manager acknowledges and agrees that Owner may require use during the Term of administrative offices at the Hotel for use by Owner's asset management personnel. Such area shall be made available to Owner without charge and the precise location of such area shall be subject to the agreement of the Parties.

ARTICLE 3
TERM AND TERMINATION

3.1 Term. The initial operating term shall commence on the Effective Date and expire at 11:59 p.m. on the tenth (10th) anniversary of the Effective Date (the "Term"), unless sooner terminated as hereinafter provided.

3.2 Event of Default. If, at any time during the Term, any of the events set forth in this Section 3.2 occur and continue beyond the applicable grace period (each an "Event of Default"), the non-defaulting Party may terminate this Agreement upon ten (10) days' prior written notice to the defaulting Party, which notice shall be in addition to any notice requirements set forth below and shall clearly state in bold and capital letters that it is the intent of the non-defaulting Party to terminate this Agreement at the expiration of such ten (10) day period, unless the Event of Default is cured. The right of termination set forth in the preceding sentence shall be in addition to, and not in lieu of, any other rights or remedies at law or in equity (or pursuant to other provisions of this Agreement) by reason of the occurrence of any such Event of Default, it being understood and agreed that the exercise of the remedy of termination shall not constitute an election of remedies and shall be without prejudice to any such other rights or remedies otherwise available to the non-defaulting Party. The Parties hereby acknowledge that all rights and remedies available to the non-defaulting Party shall be subject to the process set forth in Article 10. Events of Default are as follows:

3.2.1 The failure of either Party to pay any sum of money to the other Party when due and payable (other than a payment described in Section 3.2.3), if such failure is not cured within ten (10) days after written notice by the non-defaulting Party to the defaulting Party specifying the failure of the defaulting Party.

3.2.2 The failure of either Party to perform, keep or fulfill any of the other covenants, undertakings or obligations set forth in this Agreement, if such failure is not cured within 30 days after written notice by the non-defaulting Party to the defaulting Party specifying the failure of the defaulting Party. If such failure is incapable of cure within such period (but is capable of cure), and the defaulting Party commences to cure such default during such period and thereafter prosecutes such cure to completion with all due diligence, then no Event of Default shall exist. If such failure is incapable of cure regardless of the cure period afforded herein, the non-defaulting Party shall be entitled to seek all rights and remedies; however, such Party shall not have the right to terminate this Agreement as a result of such Event of Default unless (i) the Event

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of Default in question (a) shall be material in amount or in its adverse effect on the Hotel, or (b) represents intentional misconduct, reckless behavior or repeated Events of Default of a similar nature by the defaulting Party; or (ii) remedies hereunder are inadequate to redress such Event of Default; or (iii) termination is provided for under any of the express provisions of this Agreement.

3.2.3 The failure by Owner to deposit in the Operating Account or Reserve Fund, as applicable, funds requested by Manager in accordance with Section 5.5 or 6.3.

3.2.4 Any action by a Party for dissolution of its operations; a general assignment by a Party for the benefit of its creditors; an arrangement or composition with its creditors by a Party; a judgment of insolvency against a Party; a voluntary petition filed by any Party for relief under applicable bankruptcy, insolvency, or similar debtor relief laws or regulations; the appointment (or petition or application for appointment) of a receiver, custodian, trustee, conservator, or liquidator to oversee all or any substantial part of a Party's assets or the conduct of its business; an order for relief against a Party under applicable bankruptcy, insolvency, or similar debtor relief laws or regulations; a Party's failure generally to pay its debts as such debts become due; a notice to any governmental body of insolvency or pending insolvency of or suspension of operation by a Party; or any other similar or analogous proceedings in any relevant jurisdiction affecting any Party.

3.2.5 The issuance of a levy or an attachment against all or any portion of the Hotel resulting from a final judgment against a Party for which all appeal periods have expired in an amount in excess of \$5,000,000.00 which is not fully covered by insurance and is not discharged within thirty (30) days.

3.3 Termination on Sale.

3.3.1 Owner shall be permitted to transfer its interest in the Hotel at any time. This Agreement shall automatically terminate in connection with such transfer; provided that such termination shall be on the terms and conditions of this Agreement [REDACTED]

3.3.2 To effect such a termination, Owner must deliver written notice to Manager (the "Termination Notice"). The Termination Notice shall set forth the effective date of termination, which shall in no event occur prior to the date which is sixty-five (65) days after receipt of the termination notice, unless Owner elects to (x) ensure that a sufficient number of the Hotel Personnel will be retained following such sale such that the provisions of W.A.R.N. (or any other notice required to comply with any applicable employee notice requirements under state or federal Legal Requirements) shall not require advance notice to the Hotel Personnel or (y) execute and deliver to Manager an indemnity in favor of Manager, its officers, directors, employees, shareholders and Affiliates (collectively, the "W.A.R.N. Indemnitees") from a party reasonably acceptable to Manager in light of the credit risk involved, pursuant to which such party indemnifies

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and agrees to hold harmless each of the W.A.R.N. Indemnitees against any and all claims by Hotel Personnel whose employment is terminated prior to sixty (60) days after receipt of a W.A.R.N. notice (or such longer period to comply with any applicable employee notice requirements under state or federal Legal Requirements, provided the applicable party is proceeding with good faith and diligence in complying with such requirements) by reason of the termination date of this Agreement occurring within such sixty (60) day period and provided the same shall not be the result of Manager's failure to timely deliver the W.A.R.N. notices (or any other notice required to comply with any applicable employee notice requirements under state or federal Legal Requirements, as provided in Section 2.5.5), for an amount up to sixty (60) days' (or such longer period as necessary to comply with any applicable employee notice requirements under state or federal Legal Requirements, provided the applicable party is proceeding with good faith and diligence in complying with such requirements) total compensation (including all applicable fringe benefits) for each such employee, plus the amount of any applicable statutory penalties. Notwithstanding any limitations on indemnity set forth herein, the foregoing shall in no way limit Owner's indemnity obligations set forth in Section 11.1.

3.3.3



3.4 Actions Upon Notice of Termination. Upon the earlier to occur of notice of termination given by either Party pursuant to this Article 3 or sixty (60) days prior to the expiration of the Term, for the purpose of transitioning the management of the Hotel without disruption of Hotel operations, the following shall be applicable. Manager shall provide reasonable access to the Hotel to Owner's personnel, consultants and agents (including the personnel of the successor manager selected by Owner), including without limitation reasonable access to (i) the books and records of the Hotel, (ii) the reservations systems, (iii) employee records, (iv) Bank Accounts, (v) records of current accounts receivable and accounts payable, and (vi) all mechanical, electrical and

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other building systems. Manager hereby acknowledges and agrees that during such period following notice of termination but before the effective date of such termination (a) Owner's personnel, consultants and agents may shadow and oversee management in the day to day operations of the Hotel for the purpose of understanding the Hotel operations and systems in anticipation of a transition of management, and (b) Owner may, in Owner's discretion, provide increased oversight and direction with respect to the day to day operation of the Hotel subject, however, to the provisions of Section 3.5. Also during such period, Manager and Owner shall cooperate to identify Hotel Personnel who could be eligible for hire by Owner, its advisors, property manager or other service providers to perform services for Owner after the expiration or termination of the Term, and Owner shall have the right and reasonable access to interview such employees; provided, however, that Manager shall also have the right to solicit for hire any Hotel Personnel identified by Owner and Manager during such process. All costs associated with the foregoing transition procedures shall be borne by Owner (i.e., not as an Operating Expense) and Manager shall be reimbursed for any reasonable expenses incurred in connection with such transition procedures.

3.5 Transition Procedures. Upon the expiration or termination of the Term for any reason, the following shall be applicable:

3.5.1 Manager shall execute all documents and instruments reasonably necessary to transfer (if transferable) to Owner or its nominee all governmental permits and licenses held by Manager necessary to operate the Hotel.

3.5.2 Manager shall assign to Owner or its nominee, and Owner and its nominee shall assume, if any, any interest which Manager may have or claim in and to the Bank Accounts.

3.5.3 Manager shall assign to Owner or its nominee, and Owner and its nominee, if any, shall assume, all leases and concession agreements in effect with respect to the Hotel then in Manager's name, except for blanket concessions affecting other Managed Hotels, if any.

3.5.4 Manager shall assign to Owner (or its nominee) its (Federal and State) statutory and contractual rights, duties, and obligations relating to employees, including, without limitation, collective bargaining agreements, pension plans, and any other third party union or benefit agreements, if any.

3.5.5 Owner shall have the right to continue to use the general telephone number for the Hotel.

3.5.6 Manager shall deliver to Owner or as Owner may direct, to Owner's designee, all keys to the safe deposit boxes in the Hotel, all receipts and agreements relating to such safe deposit boxes and a complete list of such safe deposit boxes which list shall contain the name and room number of each depositor. One day prior to the termination date, Manager will

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send written notice to guests at the Hotel who have safe deposit boxes advising of the change of Hotel management and requesting the removal and verification of the contents thereof before the expiration or termination date. All such removals shall be under the supervision of a representative of Manager and Owner.

3.5.7 All baggage, valises, trunks and other items (collectively, "baggage") of guests and others which have been checked with or left in the care of Manager, and all "lost and found" items, shall be inventoried, sealed and tagged jointly by Manager and Owner (or Owner's designee) on the termination date. On such date Manager will deliver to Owner or, as Owner may direct, to Owner's designee, all records and books as to the baggage and any keys to the baggage (provided, however, that no baggage shall be opened). After the date of termination, Owner shall be responsible for all baggage listed in such inventory.

3.5.8 All books and records for the Hotel maintained by Manager pursuant to Section 4.2 (including Hotel Guest Data, but specifically excluding any of the Manager Proprietary Information) shall be turned over to Owner so as to ensure the orderly continuance of the operation of the Hotel; provided, however, that as joint owner of the Hotel Guest Data, Hotel Manager shall have the right to retain copies of Hotel Guest Data. Additionally, all other books and records shall thereafter be available to Manager at all reasonable times for inspection, audit, examination and transcription for a period of three (3) years and Manager may retain any copies or computer records thereof.

3.5.9 Owner shall remove from the Hotel any signs or other indicia of any connection with Manager at Owner's cost; provided, however, that such removal shall be at Manager's cost if the termination of this Agreement is due to an Event of Default by Manager. Owner acknowledges that it has no right, title or interest in any of the Manager Proprietary Information and Owner agrees that no right or remedy of Owner, nor any other provision of this Agreement, shall confer on Owner or any transferee, assignee, sublicensee or successor of Owner, or any person, firm, or corporation claiming through or by Owner, the right to use any of the Manager Proprietary Information whether before or after the expiration or termination of this Agreement.

3.5.10 Manager shall remit to Owner from the Operating Account and the Reserve Fund all funds remaining, if any, after payment of all accrued Operating Expenses, [REDACTED] and any other amounts due to Manager and its Affiliates. Any such amounts as to which there is any pending dispute between Owner and Manager shall be remitted to an escrow holder mutually acceptable to Owner and Manager to hold pending the resolution of such dispute.

3.5.11 Manager shall peacefully vacate and surrender the Hotel to Owner.

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3.5.12 Manager shall deliver to Owner a current inventory of all assets of the Hotel, including FF&E and consumable inventory, and all keys, locks and safe combinations.

3.5.13 Manager shall provide reasonable cooperation and assistance to Owner in facilitating the orderly transfer of Owner's records and data contained in any software that constitutes Manager Proprietary Information (and that is therefore being removed from the Hotel), to the extent necessary for an orderly transition of management functions, including (a) providing both a hard copy and an electronic copy of all information relating to the Hotel for the period through the termination of this Agreement, to the extent reasonably available to Manager, (b) cooperating with Owner in the retrieval of such data and the adaptation thereof to the software and operating systems of Owner or any successor manager, and otherwise making such data available to Owner and any successor manager in a conveniently useable form and (c) permitting Owner to continue to use any software included in the Manager Proprietary Information for a period not to exceed thirty (30) days, all of which shall be at Owner's sole expense.

3.5.14 For a period of thirty (30) days following the expiration or termination of this Agreement, Manager shall reasonably consult with Owner at Owner's request and subject to Manager's reasonable availability, with respect to Hotel operations and the transition to new management, to the extent Manager continues to exist and some of Manager's senior corporate executives remain employees of Manager following the expiration or termination of this Agreement. All reasonable and direct Out-of-Pocket Expenses incurred by Manager in rendering the foregoing assistance shall be borne by Owner (i.e., not as an Operating Expense) and reimbursed to Manager.

ARTICLE 4
ANNUAL OPERATING PLAN

4.1 Annual Operating Plan. Not later than (sixty) 60 days prior to the commencement of each Operating Year, Manager shall submit an annual operating budget proposal for the Hotel (the "Annual Operating Plan") to Owner for Owner's review and approval. The Annual Operating Plan shall contain the following information for the upcoming Operating Year: (i) an estimate of Gross Revenues, Operating Expenses, [REDACTED]; (ii) an estimate of amounts to be dedicated to the Reserve Fund and anticipated Routine Capital Expenditures to be made from the Reserve Fund; (iii) an estimate of the anticipated Major Capital Expenditures in the forthcoming Operating Year; (iv) a marketing and advertising plan for the Hotel; (v) a cash flow forecast; (vi) a three (3) year forecast for Routine Capital Expenditures and Major Capital Expenditures; and (vii) such other information as may reasonably be requested by Owner or Mortgagee, to the extent such information is reasonably available to Manager without undue cost or effort. Notwithstanding the foregoing, not later than sixty (60) days prior to the commencement of each Operating Year, Manager shall submit to Owner the following portions of the Annual Operating Plan: (a) the estimate of Gross Revenues

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set forth in (i) above; (b) all items set forth in (ii) above; (c) all items set forth in (iii) above; and (d) all items set forth in (iv) above.

4.1.1 Owner shall have thirty (30) days from its receipt of the entire Annual Operating Plan to review and approve the Annual Operating Plan, provided that Owner shall not withhold its approval with respect to costs that are system-wide for and equitably allocated between Managed Hotels, including any system-wide compensation or benefit programs, provided such programs are reasonably comparable to others in the hospitality industry. Any notice of disapproval of a proposed Annual Operating Plan shall include a reasonably detailed summary of the elements of such Annual Operating Plan to which Owner objects. Manager further acknowledges that Owner shall have a right to approve or disapprove as part of its review of any Annual Operating Plan, each proposed item of Routine Capital Expenditures and Major Capital Expenditures proposed by Manager for inclusion in the Annual Operating Plan. If the Parties, despite their good faith efforts, are unable to reach final agreement on the Annual Operating Plan for an Operating Year by January 1 of that Operating Year, those portions of such Annual Operating Plan that are not in dispute shall become effective on January 1 of such Operating Year and the matter(s) in dispute may be submitted by either Party for resolution in accordance with Article 10 of this Agreement. The prior year's Annual Operating Plan shall govern the items in dispute, except that the budgeted expenses provided for such item(s) in the prior year's Annual Operating Plan (or, if earlier, the last Annual Operating Plan in which the budgeted expenses for such disputed item(s) were approved) shall be increased by the percentage increase in the Index during such prior Operating Year (and, if applicable, each additional Operating Year between the prior Operating Year and the Operating Year in which there became effective the last Annual Operating Plan in which the budgeted expenses for such disputed item(s) were approved); provided, however, that if any item in dispute is submitted for resolution in accordance with Article 10, the decision reached or issued in accordance with Article 10 shall control as to such item.

4.1.2 Manager shall use commercially reasonable efforts to operate the Hotel in accordance with the approved Annual Operating Plan. The Parties acknowledge that the Annual Operating Plan is an estimate only and that unforeseen circumstances during the course of the applicable Operating Year such as Force Majeure Events, the costs of labor, material, services and supplies, operation of law or economic and market conditions may make adherence to the Annual Operating Plan impracticable, and Manager shall be entitled to depart therefrom due to causes of the foregoing nature. Manager shall not, without Owner's prior approval, which approval shall be deemed given if not denied within twenty (20) days after a written request therefor that includes (in bold, capital letters) a reference to the twenty (20) day response deadline, incur costs or expenses or make expenditures that would cause the total expenditures in the operating budget included in any Annual Operating Plan (excluding capital expenditures which are addressed in Article 6) to exceed the aggregate amount of expenditures provided for in such budget by more than ten percent (10%) for any budget category or by more than five percent (5%) in the aggregate for all budget categories. Notwithstanding the foregoing, Owner understands and agrees as follows:

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(a) Certain expenses provided for in the Annual Operating Plan for any Operating Year will vary based on the occupancy and use of the Hotel. Accordingly, to the extent that occupancy and use of the Hotel for any Operating Year exceeds or is less than the occupancy and use projected in the approved Annual Operating Plan for such Operating Year, such approved Annual Operating Plan shall be deemed to include corresponding increases or decreases in such variable expenses.

(b) The amount of certain expenses ("Uncontrollable Expenses") which may include real estate and personal property taxes, utilities, insurance premiums, license and permit fees and charges provided for in contracts and leases entered into pursuant to this Agreement, are not within the ability of Manager to control. For purposes of clarity, Uncontrollable Expenses shall refer to increases in the unit cost of such item or service as opposed to any increase in usage or change of service. Manager shall have the right to pay from the Operating Account all Uncontrollable Expenses without reference to the amounts provided for in respect thereof in the approved Annual Operating Plan for any Operating Year.

(c) If any expenditures are required on an emergency basis to avoid imminent damage to the Hotel or injury to Persons or property, Manager may make such expenditures, whether or not provided for or within the amounts provided for in the approved Annual Operating Plan for the Operating Year in question, as may reasonably be required to avoid or mitigate such imminent damage or injury. Such expenditures shall be treated as Operating Expenses or Capital Expenditures as determined in accordance with the terms hereof; provided, however, that Manager may initially make such expenditure out of the Operating Account and/or Reserve Fund, to the extent funds in the Operating Account are insufficient. If such expenditure is made out of the Reserve Fund, Owner shall within thirty (30) days thereafter replenish the Reserve Fund in the amount expended by Manager in accordance with the terms hereof. Manager shall notify Owner as promptly as reasonably possible of the making of any such expenditures.

(d) If any expenditures are required to comply with any Legal Requirement or to cure or prevent any violation thereof that imposes an imminent threat of liability, Manager may make such expenditures, whether or not provided for or within the amounts provided for in the approved Annual Operating Plan for the Operating Year in question, as may be necessary to comply with such Legal Requirement or to remove or prevent the violation thereof. Such expenditures shall be treated as Operating Expenses or Capital Expenditures as determined in accordance with the terms hereof; provided, however, that Manager may initially make such expenditure out of the Operating Account and/or Reserve Fund, to the extent funds in the Operating Account are insufficient. If such expenditure is made out of the Reserve Fund, Owner shall within thirty (30) days thereafter replenish the Reserve Fund in the amount expended by Manager in accordance with the terms hereof. Manager shall notify Owner as promptly as reasonably possible of the making of any such expenditures.

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4.2 Books and Records. Manager shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel on an accrual basis, all in accordance with GAAP and the Uniform System (except that Manager shall be permitted to vary from the Uniform System to the extent consistent with its accounting practices for the Managed Hotels). The books of account and all other records relating to or reflecting the operation of the Hotel shall be kept at the Hotel, and shall be available to Owner and its representatives and its auditors or accountants, at all reasonable times for examination, audit, inspection and transcription. All of the books and records pertaining to the Hotel, including books of account and front office records (but specifically excluding the Manager Proprietary Information) shall be the property of Owner. In addition to the Hotel's books and records, Manager shall maintain any guest profiles, contact information, histories, preferences, and other information obtained in the ordinary course of business from guests of the Hotel during such guests' stay at the Hotel, or during such guests' use of the facilities associated with the Hotel (the "Hotel Guest Data"). Owner and Manager shall jointly own all Hotel Guest Data, and may use such Hotel Guest Data in any reasonable manner provided however that any Hotel Guest Data in Manager's possession or under Manager's control shall be subject to Manager's policies with respect to the maintenance of such data and compliance with state and federal law(s) relating to data security and/or consumer privacy, expressly including data minimization or reduction as deemed reasonably prudent by Manager.

4.3 Accounting. Manager shall deliver to Owner, within fifteen (15) days after the end of each calendar month, an interim accounting consisting of an income statement and balance sheet showing the results of the operation of the Hotel for such month and for the Operating Year to date. Within thirty (30) days after the end of each calendar month, Manager shall deliver a detailed accounting showing the results of the operation of the Hotel for such month and for the Operating Year to date, in a form consistent with that prepared for the Managed Hotels. Within ninety (90) days (or such earlier time period if required for compliance with any applicable regulatory requirements) after the end of each Operating Year, Manager shall deliver to Owner an annual accounting, audited and certified by a nationally recognized firm of certified public accountants having hotel accounting experience mutually agreed upon by Manager and Owner, showing the results of operations of the Hotel during such Operating Year. Following receipt of the annual accounting, Owner and Manager shall promptly make such adjustments as necessary to ensure that the proper amounts have been paid [REDACTED] and deposited in the Reserve Fund.

4.4 Bank Accounts. Owner expressly authorizes Manager to establish the Operating Account and Reserve Fund and such other bank accounts as Manager determines are necessary for the operation of the Hotel (collectively, the "Bank Accounts"). The Operating Accounts and the Reserve Fund account shall be established in a bank mutually agreed upon by Owner and Manager, provided, however, that Owner may require that the Bank Accounts be maintained with the banking institution, if any, providing first mortgage financing with respect to the Hotel provided that the same is reasonably acceptable to Manager. The Bank Accounts shall be the property of Owner, however, the Bank Accounts shall be maintained at all times solely by Manager, and

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checks or other documents of withdrawal therefrom shall be signed only by representatives of Manager. Gross Revenues and additional funds supplied by Owner for working capital or other purposes, exclusive of funds deposited in the Reserve Fund, shall be deposited in the Operating Account. On or before the twentieth (20th) day of each calendar month, Manager shall deposit the Reserve Fund Contribution from the Hotel's Gross Revenues into the Reserve Fund. At the end of each Operating Year, any amounts remaining in the Reserve Fund shall be carried forward to the next Operating Year and shall be in addition to the amount to be reserved in the next Operating Year.

ARTICLE 5
FEES, COSTS AND EXPENSES

5.1 Management Fee.

[REDACTED]

5.2 Group Services

[REDACTED]

5.3 Reimbursable Expenses.

[REDACTED]

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[REDACTED]

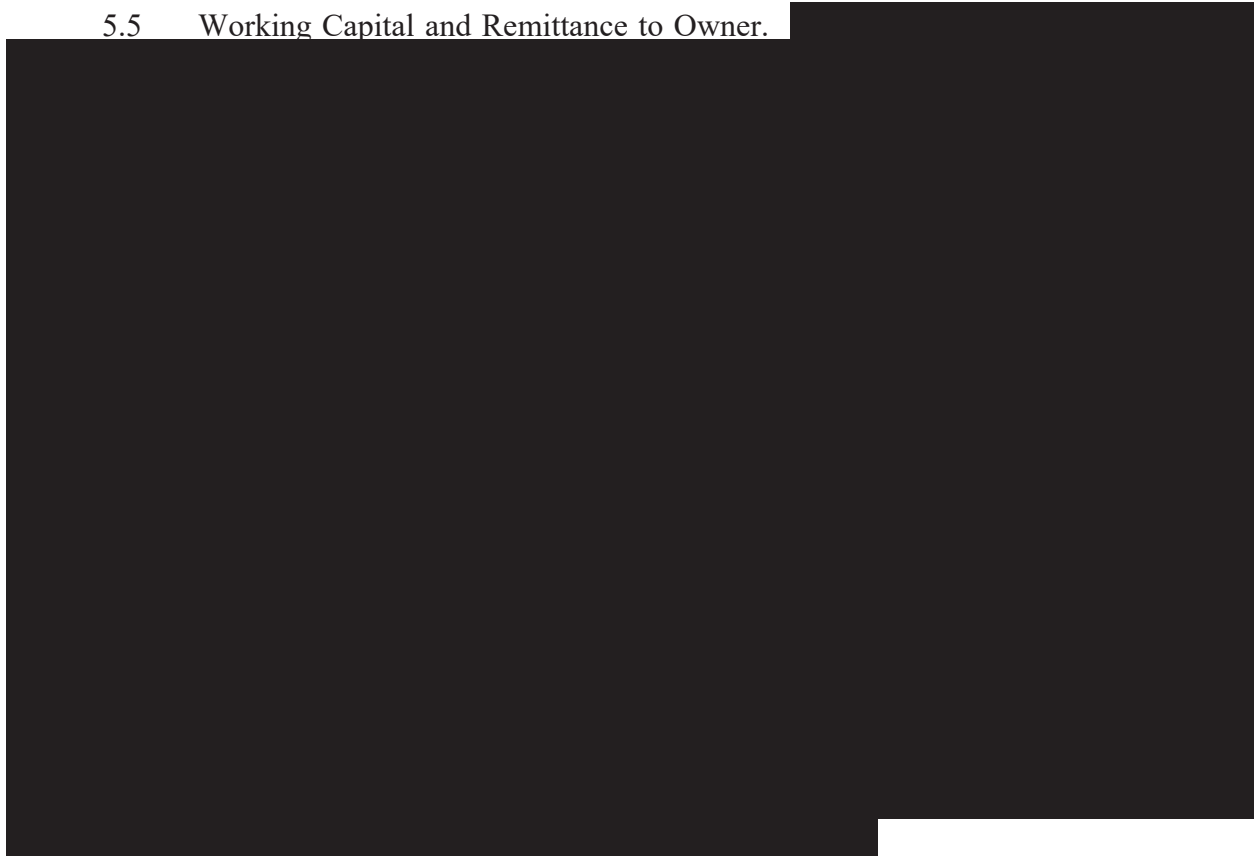
5.4 Payment.

[REDACTED]

[REDACTED]

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5.5 Working Capital and Remittance to Owner.



ARTICLE 6
ROUTINE AND MAJOR CAPITAL EXPENDITURES

6.1 Routine Capital Expenditures. Manager shall use the funds in the Reserve Fund for Routine Capital Expenditures as are set forth in the current Annual Operating Plan, or as otherwise approved by Owner. To the extent not included in the current Annual Operating Plan or not otherwise approved by Owner, Manager shall also be permitted to use the funds in the Reserve Fund for Routine Capital Expenditures deemed reasonably necessary by Manager to repair or correct any condition on or about the Hotel which are permissible in accordance with Section 4.1.2(c) and (d). Manager shall, if possible, give prior written or oral notice to Owner of its intention to use funds pursuant to the preceding sentence and, in any event, shall notify Owner in writing of any such use of funds promptly thereafter.

6.2 Major Capital Expenditures. Manager (or Owner, if Owner so elects) at Owner's sole expense shall make all recommended Major Capital Expenditures that are: (i) included in the Annual Operating Plan; (ii) otherwise approved by Owner, if not included in the Annual Operating Plan; or (iii) permissible in accordance with Section 4.1.2(c) and (d). If Owner and Manager disagree as to whether any Major Capital Expenditure is necessary for any of the purposes

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described in this Section 6.2, the Parties shall submit the matter to mediation and, if necessary, arbitration for resolution in accordance with Article 10. Reserve Funds may only be used to fund Major Capital Expenditures with the prior written approval of Owner, which may be withheld by Owner in its sole discretion.

6.3 Additional Funds. Owner shall provide funds for any Major Capital Expenditures permitted under Section 6.2 within twenty-five (25) days after receipt of written notice from Manager, or at any times provided in the Annual Operating Plan. If at any time there are insufficient funds in the Reserve Fund to pay for Routine Capital Expenditures permitted under Section 6.1, Manager shall notify Owner of the amount required, and within twenty-five (25) days after such notice, Owner shall provide sufficient amounts to Manager for the Routine Capital Expenditures.

ARTICLE 7
INSURANCE

7.1 Insurance Coverage.

7.1.1 Required Insurance. The following insurance shall be procured and maintained with respect to the Hotel at all times during the Term with limits and deductibles as set forth on Exhibit A:

(a) All risk property insurance, (and to the extent applicable, Builder's Risk Insurance) including coverage for loss from fire, windstorm, sprinkler leakage, vandalism and malicious mischief, water damage, and other risks including extended coverage written on an "All Risk" (or Special) Form on the improvements (excluding foundations) and contents including coverage for signs, awnings, canopies, gazebos, fences and retaining walls in an amount equal to the full (100%) replacement value thereof without a co-insurance penalty (Agreed Value endorsement);

(i) Ordinance or law coverage with limits and deductibles acceptable to Owner for loss to the undamaged portion of the building, demolition cost, and increased cost of construction;

(ii) Flood insurance, if the Hotel is located in whole or in part within an area identified as having a special flood hazard by the National Flood Insurance Program, with a limit and deductible acceptable to Owner and such deductible is commercially reasonable and maintained by owners of properties similar in type, location and quality. In the event that the deductible is deemed commercially unreasonable, any higher deductible must be acceptable to Owner which approval will not be unreasonably withheld;

(iii) Earthquake insurance, if the Hotel is located in whole or in part within an earthquake zone, with limits and deductibles acceptable to Owner and in accordance

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with that which is customarily carried by owners of properties similar in type, location and quality as the improvements;

(iv) Business interruption and "extra expense" insurance to be written on an "All Risk" or Special Form (and earthquake and flood forms if such insurance for those risks is required, it being understood earthquake and flood business interruption and extra expense are included in the earthquake and flood sublimits) covering at least eighteen (18) months loss of profits and continuing expenses and extended period of indemnity, [REDACTED]

[REDACTED];

(b) Insurance against loss from accidental damage to, or from the explosion of, boilers, air conditioning systems, including refrigeration and heating apparatus, pressure vessels and pressure pipes and other similar apparatus in an amount equal to the full replacement value of such items with deductibles acceptable to Owner; including business interruption insurance against loss from these damages in an amount acceptable to Owner;

(c) Certain of the insurance policies, except earthquake and flood, procured under Section 7.1.1(a) shall provide terrorism coverage, at Owner's election, to the extent available through the commercial insurance market or by Federal Act at rates, terms and conditions acceptable to Owner or pursuant to the terms of any Mortgage or loan documents held by a Mortgagee. If Owner requires terrorism insurance to be procured by Manager under Section 7.1.1(a), Owner shall authorize Manager to procure such coverage and Manager shall provide Owner said rates, terms and conditions of the terrorism insurance upon binding coverage for the Hotel;

(d) Commercial general liability against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the premises to cover at least the following hazards: (1) premises and operations; (2) products and completed operations, (3) independent contractors; (4) contractual liability; liquor liability on a per occurrence basis; and umbrella liability with terms consistent with the commercial general liability; automobile liability, and liquor liability;

(e) Commercial automobile liability insurance including coverage for owned, non-owned and leased automobiles and garage keepers liability;

(f) Comprehensive crime insurance in an amount acceptable to Owner and Manager; provided that maintenance of the deductible shall be commercially reasonable and shall be maintained by owners of properties similar in type, location and quality as the Hotel;

(g) Statutory workers' compensation benefits and employers' liability insurance;

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(h) Employment Practices Liability Insurance, and it is acceptable for this policy to be on a claims made trigger;

(i) Cyber Liability Insurance;

(j) Insurance against such other insurable risks as Owner or Manager may, from time to time, reasonably require; and which shall be consistent with industry standards for similar facilities and meets with the approval of Owner and Manager, which approval shall not be unreasonably withheld; and

(k) Insurance required pursuant to the terms of any Mortgages permitted under this Agreement or other loan documents held by a Mortgagee. The insurance requirements included in any new Mortgages will be reviewed by Owner and Manager prior to the closing of such Mortgages.

7.1.2 Responsibility to Maintain. During the Term, Owner, or if and to the extent requested by Owner, Manager at the expense of Owner, shall procure and maintain the insurance policies set forth in Section 7.1.1. Owner, however, may elect to provide such policies of insurance as identified in Section 7.1.1 (a) through (c) and require Manager to provide all other insurance required by Section 7.1.1. Owner acknowledges that Manager provides insurance programs which insure other managed hotels which may involve certain forms of self-funding. Owner may elect (exclusive of worker's compensation insurance which Manager as employer is responsible for insuring) to participate in such insurance programs provided by Manager, or to obtain, through alternative sources, on its own or through Manager, the insurance coverages required under this Article 7. In addition to standard premiums, Owner assumes the financial risk of providing first dollar (i.e., no deductible) or high deductible/retention coverage, letters of credit, loss fund escrow accounts, claims loss payments, reserve funds and claims handling fees. Owner and Manager acknowledge and agree that claims handling oversight, with the exception of property claims, will be managed by Manager in accordance with reasonable procedures established by Manager.

7.1.3 Changes in Coverage. Manager, by notice to and with the prior written approval of Owner, shall have the right to raise the minimum amount of insurance to be maintained with respect to the Hotel under Section 7.1.1 to make such insurance comparable to the amount of insurance carried with respect to other Managed Hotels, taking into account the size and location of the Hotel. In addition, neither party shall unreasonably withhold its consent to a request by the other party that such minimum limits of insurance be lowered on the basis that such insurance cannot be obtained in such amounts, or can be obtained only at a prohibitive cost. Similarly, if during the Term changes in the insurance industry shall make any description of the required insurance coverage inaccurate or inappropriate, then Manager shall have the right, by notice to and with the prior written approval of Owner, to change such requirements to accurately describe, in the then current vernacular, the type of insurance which would be comparable to the coverage described in Section 7.1.1.

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If at any time Manager is unable to place any of the insurance described in this Article 7 at premiums and otherwise on terms and conditions (including amounts of coverage and deductibles) at least as advantageous to Owner as the premiums and other terms and conditions available to Owner under blanket insurance policies available to Owner from time to time (except for workers' compensation benefits and employers' liability insurance), then Owner may arrange for such insurance through its blanket policies at Owner's cost and expense. If Owner desires to place its own insurance pursuant to this Section 7.1.3, Owner shall notify Manager in writing at least sixty (60) days prior to the scheduled effective date of such insurance or any renewal thereof. For so long as Hotel Personnel are employees of Manager or any Affiliate of Manager, Manager shall have the sole right to provide workers' compensation benefits and employers' liability insurance.

7.1.4 Requirements. The forms of policies and insurers for all insurance required by this Article 7 shall have a minimum rating reasonably satisfactory to Owner, Manager and Mortgagee. Except as provided in Section 7.1.1(h), all policies of insurance shall be written on an "occurrence" basis, if possible, and if any policy is written on a "claims made" basis, then such policy must, if possible, be continued in effect for a period of one (1) year following the expiration or early termination of this Agreement. The insurance coverage shall in any event comply with the requirements of all Mortgages permitted under this Agreement and all loan documents related thereto.

7.2 Policies and Endorsements.

7.2.1 Policies. All insurance provided for under Section 7.1 shall be effected by policies issued by insurance companies of good reputation and of sound and adequate financial responsibility. The party procuring such insurance shall deliver to the other party certificates of insurance and access to necessary policy terms and conditions with respect to all of the policies of insurance so procured, including existing, additional and renewal policies, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to the renewal policies to the other party as soon as practicable. If Owner shall elect to procure any portion of the property insurance, it shall also deliver to Manager certificates of insurance and access to necessary policy terms and conditions under which such insurance is maintained.

7.2.2 Endorsements. All policies of insurance provided for under this Article 7 shall have attached thereto to the extent obtainable (i) language that such policy shall not be canceled or materially changed without at least thirty (30) days prior written notice to Owner and Manager, and (ii) language to the effect that an unintentional act or omission of Owner or Manager shall not affect the obligation of the insurer to pay the full amount of any loss sustained. All insurance policies procured by Owner or Manager in accordance with this Section 7.2.2 shall be primary and non-contributory to any similar insurance carried by either party.

7.2.3 Named Insureds. All policies of insurance required under Sections 7.1.1(a) through (e) shall be carried in the name of Owner, and, if required, the Mortgagee, the lessor under the Operating Lease, and with respect to Section 7.1.1(a)(iv), Manager shall be named as an

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additional insured thereunder, with the understanding that Owner will pay Manager for all business interruption proceeds as described in such Section. Or if Manager procures insurance in accordance with Section 7.1.2 Manager shall name Owner, and if required, the Mortgagee and/or lessor under the Operating Lease as additional named insureds and/or loss payee. Losses thereunder shall be payable to the parties as their respective interests may appear. Notwithstanding the foregoing, if Mortgagee so requires, losses may be made payable to Mortgagee, or to a bank or trust company qualified to do business in the state where the Hotel is located, in either instance as trustee for the custody and disposition of the proceeds therefrom. Owner agrees to use reasonable efforts to cause Mortgagee to agree that its Mortgage shall contain a provision to the effect that proceeds from property insurance shall be made available for restoration of the Hotel. If procured by Owner, all insurance policies required in clauses (d), (e), (f) and (h) of Section 7.1.1, shall name Owner and its Affiliates, directors, officers, agents and employees of each such entity as named insureds, and Manager, its Affiliates, directors, officers, agents and employees of each such entity as additional insureds. If procured by Manager in accordance with Section 7.1.2, all insurance policies required in clauses (f), (g), (h), and (i) shall be carried in the name of Manager and shall name Owner, its Affiliates, directors, officers, agents and employees of each such entity and if required, any Mortgagee, lessor, or parties to any easement or such similar agreements as additional insureds.

7.2.4 Evidence of Insurance. As soon as practicable prior to the effective date of the applicable coverages, the party obtaining the insurance coverages under this Article 7 shall provide the other party with binders evidencing that the applicable insurance requirements of this Agreement have been satisfied and, as soon as practicable thereafter, shall provide access to the terms and conditions of policies for such insurance. As soon as practicable after renewal or new coverage becomes effective, the party obtaining such insurance shall provide the other party with binders or certificates evidencing renewal of existing or acquisition of new coverages. On request of the other party, each party shall furnish the other with a schedule of insurance obtained by such party under this Article 7, listing the policy numbers of the insurance obtained, the names of the companies issuing such policies, the names of the parties insured, the amounts of coverage, the expiration date or dates of such policies and the risks covered thereby.

7.2.5 Review of Insurance. All insurance policy limits provided under this Article 7 shall be reviewed by the parties every three (3) years following the commencement of the Operating Term, or sooner if reasonably requested by Manager or Owner, to determine the suitability of such insurance limits in view of exposures reasonably anticipated over the ensuing three (3) years. Owner and Manager hereby acknowledge that changing practices in the insurance industry and changes in the local law and custom may necessitate additions to types or amounts of coverage during the Term. Owner agrees to comply with any other insurance requirements Manager reasonably requests in order to protect the Hotel and the respective interests of Owner and Manager.

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7.3 Waiver of Liability. Neither Manager nor Owner shall assert against the other, and do hereby waive with respect to each other, or against any other entity or person named as additional insureds on any policies carried under this Article 7, any claims for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, development, construction, completion, operation or maintenance of the Hotel, to the extent that the same are covered by the insurance required under this Article 7. Each policy of insurance shall contain language which allows the waiver of subrogation reflecting the provisions of this Section 7.3.

7.4 Insurance by Manager. Any insurance procured or provided by Manager under this Article 7 may, at its option, be effected under policies of blanket insurance which cover other properties of Manager and its Affiliates, so far as such blanket policy meets the requirements for the individual property as stipulated by this Section 7.1.1, and Manager shall have the right to charge the Hotel with the Hotel's pro rata share of such premiums which shall be allocated to the Hotel on the same basis as allocated to participating Managed Hotels, or to charge the Hotel with the actual amount identified by underwriters if the policy does not utilize a composite rate. Any policies of insurance maintained by Manager pursuant to the provisions of this Article 7 may contain deductible provisions in such amounts as are maintained with respect to the Managed Hotels, for which Owner shall be responsible or which Manager, at Owner's expense, may pay; provided, however, that all allocated costs, including premiums and losses, and its methodology shall be fairly and equitably allocated amongst the Managed Hotels.

ARTICLE 8
TRANSFER RESTRICTIONS

8.1 Assignments. Except as expressly provided below, neither Party shall effect a transfer or assignment of its interest in this Agreement without the prior written consent of the other Party. Any assignment by either Party in violation of the terms of this Article 8 shall be void and of no force or effect and shall constitute a material breach of this Agreement governed by the terms of Section 3.2.

8.2 Assignment by Owner. Owner shall have the right, without Manager's consent, to effect a transfer or assignment of its interest in this Agreement (together with, but not independent of, a sale of the Hotel) to any Person that agrees to be bound by all the terms and conditions hereof and agrees to assume and perform Owner's obligations hereunder, in form and substance reasonably satisfactory to Manager.

8.3 Intentionally omitted.¹

¹ NTD: Any assignment of the management agreement, including to affiliates, requires the Port's consent under the Ground Lease.

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8.4 Effect of Permitted Assignment. Upon any assignment by Owner or Manager permitted under this Article 8, the assigning Party shall be relieved of all liabilities and obligations under this Agreement accruing after the effective date of such assignment. No such assignment shall relieve the assigning Party from its liabilities or obligations under this Agreement accruing prior to the effective date of the assignment.

ARTICLE 9
MORTGAGES

9.1 Authorization To Mortgage. Subject to the provisions of Section 9.3, Owner shall have the right to encumber all of the assets that comprise the Hotel, any part thereof, or any interest therein, including the real estate on which the Hotel is located, the Hotel Building and all improvements thereto and all FF&E and hotel equipment and operating supplies placed in or used in connection with the operation of the Hotel as contemplated in any Mortgage that is entered into by Owner, and to assign to any mortgagee as collateral security for any loan secured by the Mortgage, all of Owner's right, title and interest in and to this Agreement. Notwithstanding the foregoing, Owner shall not grant a Mortgage or security interest of any type in the Operating Account, the Reserve Fund or other Hotel bank accounts, unless the mortgagee expressly recognizes in writing the rights of Manager to use all funds in such accounts for the purposes contemplated by this Agreement (so long as this Agreement remains in effect). Manager shall take all actions reasonably necessary to operate the Hotel in compliance with all operating covenants imposed by any Mortgagee, to the extent that Owner has provided Manager with notice of such operating covenants, but only to the extent such operating covenants do not conflict with any of the terms or conditions set forth in this Agreement.

9.2 Representation. Owner represents and warrants that, as of the Effective Date, there is no Mortgage encumbering all or any part of the Hotel or its component real or personal property. Owner shall provide Manager with a true and complete copy of any new Mortgage and related documents within thirty (30) days of the signing of such documents by all parties.

9.3 Protection of Manager's Interest. Owner shall ensure that, so long as Manager is not in material default under this Agreement, Manager shall be able to enjoy, occupy and manage the Hotel throughout the Term free from interference or ejection by Owner, any Mortgagee (subject to Mortgagee's consent, as provided below), any ground lessor, or any other entity or individual claiming under, through, or by right of Owner. In furtherance of this obligation, Owner shall: (i) maintain title to the Hotel free and clear of any encumbrances (other than Mortgages permitted hereunder and such other encumbrances as are set forth as title exceptions on the applicable title commitment for the Hotel) that would jeopardize Manager's rights under this Agreement; (ii) pay and discharge any charge, assessment, or imposition relating to the Hotel and, at its sole expense, prosecute all actions necessary to assure Manager's receipt of the benefits of this Agreement for the full term hereof and to assure Manager's quiet and uninterrupted possession of the Hotel, subject to Owner's right to challenge such matters, as set forth in Section 2.3.9; and

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(iii) use its commercially reasonable efforts to obtain from all existing and future Mortgagees and lessors and provide Manager with non-disturbance agreements in form and content reasonably acceptable to Manager.

ARTICLE 10
DISPUTE RESOLUTION

10.1 Mediation. The Parties shall attempt to resolve any dispute that may arise in connection with this Agreement through a process of mediation administered by a mediation service provider mutually agreed upon by the Parties (the "Mediation Service Provider"). If, at the time such a dispute arises, the Parties cannot agree upon a Mediation Service Provider, the Mediation Service Provider shall be appointed by the American Arbitration Association. The Parties shall attempt to settle the dispute by participating in at least ten (10) hours of mediation at the offices of the Mediation Service Provider or such other location as may be reasonably agreeable to the Parties and the Mediation Service Provider. The complaining Party must notify the other Party in writing that a dispute exists and then contact the Mediation Service Provider to schedule the mediation conference. A designated individual mediator will then be selected in accordance with the rules of the Mediation Service Provider to conduct the mediation; provided that such mediator must have experience in the hospitality industry and must not have any conflict of interest. The mediation will be a nonbinding conference between the Parties conducted in accordance with the applicable rules and procedures of the Mediation Service Provider. Neither Party may initiate litigation or arbitration proceedings with respect to any dispute until the mediation of such dispute is complete with the sole exception of seeking emergency relief from a court of competent jurisdiction, as described below. Any mediation will be considered complete: (i) if the Parties enter into an agreement to resolve the dispute; (ii) with respect to the Party submitting the dispute to mediation, if the other Party fails to appear at or participate in a reasonably scheduled mediation conference; or (iii) if the dispute is not resolved within five (5) days after the mediation is commenced, provided the Parties have participated in at least ten (10) hours of mediation, as provided above.

10.2 Arbitration. If any dispute remains between the Parties after the mediation is complete, then either Party may require that the dispute be submitted to final and binding arbitration (without appeal or review) in the county in which the Hotel is located, administered by an independent arbitration tribunal pursuant to the expedited procedures of the Commercial Arbitration Rules of the American Arbitration Association (the "Arbitration Tribunal"). The Parties acknowledge that such procedures include reasonable opportunities for factual discovery by each Party, as determined by the Arbitration Tribunal. Notwithstanding the foregoing, the Arbitration Tribunal's decision on any matter submitted for arbitration (excluding matters involving the interpretation of any provisions in this Agreement) shall be based upon what is commonly referred to as the "baseball arbitration" approach, whereby the Arbitration Tribunal may only decide in favor of the position presented by either Owner or Manager, and may not make a ruling/determination other than in favor of one of the two positions presented. If more than one

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issue shall be submitted to the same Arbitration Tribunal for resolution, each such issue shall be deemed a separate arbitration for all purposes hereof, such issues to be identified separately by the Parties in their submission to arbitration, and each such issue shall be subject to a separate decision by the Arbitration Tribunal. Notwithstanding the foregoing, all disputes which involve an amount less than \$100,000 shall be submitted to an Arbitration Tribunal consisting of one arbitrator mutually selected by Owner and Manager. If Owner and Manager are unable to mutually agree upon an arbitrator, the arbitrator shall be appointed by the American Arbitration Association.

10.3 Arbitrators. All arbitrators appointed to the Arbitration Tribunal hereunder shall be persons having not less than ten (10) years' experience in the area of expertise on which the dispute is based (e.g. with respect to operational matters, experience in the management and operation of hotels of generally the same class and category as the Hotel, or, with respect to financial matters, experience in the financial or economic evaluation or appraisal of such upscale hotels).

10.4 Fees and Costs. The Parties agree to share equally the fees, costs and expenses of the Arbitration Tribunal and the arbitrators selected or appointed in accordance therewith; provided, however, that the prevailing Party in any arbitration, suit or other action arising out of or related to this Agreement shall be entitled to recover from the other Party all reasonable fees, costs and expenses incurred by the prevailing Party in connection with the arbitration, suit or other action, including reasonable judicial and extra-judicial attorneys' fees, expenses and disbursements and fees, costs and expenses relating to any mediation, arbitration or appeal.

10.5 Commencement. Any litigation (permitted herein) or arbitration of a dispute must be initiated within one (1) year from the date on which either Party first gave written notice to the other of the existence of the dispute, and any Party who fails to commence litigation or arbitration within such one-year period shall be deemed to have waived any of its affirmative rights and claims in connection with the dispute and shall be barred from asserting such rights and claims at any time thereafter. An arbitration shall be deemed commenced by a Party when the Party sends a notice to the other Party, identifying the dispute and requesting arbitration. Litigation shall be deemed commenced by a Party when the Party serves a complaint on the other Party with respect to the dispute.

10.6 Arbitration Tribunal Awards. THE ARBITRATION TRIBUNAL SHALL HAVE NO AUTHORITY TO AWARD ANY PUNITIVE, EXEMPLARY, OR TREBLE DAMAGES OR TO VARY OR IGNORE THE TERMS OF THIS AGREEMENT, AND SHALL BE BOUND BY CONTROLLING LAW. THE PARTIES ACKNOWLEDGE THAT IN THE EVENT OF A CONFLICT BETWEEN ANY STATUTORY DAMAGES AND THE WAIVER OF PUNITIVE, EXEMPLARY OR TREBLE DAMAGES CONTAINED HEREIN, THE WAIVER SHALL IN ALL INSTANCES PREVAIL. ALL PROCEEDINGS, AWARDS AND DECISIONS UNDER ANY MEDIATION OR ARBITRATION PROCEEDING SHALL BE STRICTLY PRIVATE AND CONFIDENTIAL.

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10.7 Litigation. Notwithstanding anything in this Article 10 to the contrary, the Parties shall have the right to commence litigation or other legal proceedings with respect to any claims solely relating to: (i) protecting or preserving the Manager Proprietary Information; (ii) emergency or injunctive relief; or (iii) enforcement of the dispute resolution provisions of this Agreement and/or any arbitration award.

10.8 Survival and Severance. The provisions of this Article 10 are severable from the other provisions of this Agreement and shall survive and not be merged into any termination or expiration of this Agreement or any judgment or award entered in connection with any dispute, regardless of whether such dispute arises before or after termination or expiration of this Agreement, and regardless of whether the related mediation, arbitration or litigation proceedings occur before or after termination or expiration of this Agreement. If any part of this Article 10 is held to be unenforceable, it shall be severed and shall not affect either the duties to mediate or arbitrate or any other part of this Article 10.

ARTICLE 11
INDEMNIFICATION

11.1 Owner Indemnification. Except as to matters for which Manager is required to indemnify Owner under the provisions of Section 11.2 and Manager Events of Default, Owner shall indemnify, defend and hold Manager and its Affiliates and its and their respective directors, trustees, officers, members, managers, employees, agents and assigns harmless for, from and against any and all liabilities, claims, demands, actions, causes of action, judgments, orders, damages, costs, expenses, and losses (including reasonable attorney's fees and costs) directly or indirectly arising out of, relating to or resulting from this Agreement (collectively, "Claims").

11.2 Manager Indemnification. Manager shall indemnify, defend and hold Owner and its Affiliates and their respective directors, officers, members, managers, employees, agents and assigns harmless for, from and against any and all Claims that Owner may incur, become responsible for, or pay out to the extent caused by: (i) Manager's Grossly Negligent or Willful Acts; (ii) liabilities stemming from Group Services or other general corporate matters of Manager or its Affiliates, to the extent such general corporate matters are unrelated to the Hotel; (iii) infringement and other claims by third parties relating to Manager's Marks; (iv) any Claims arising under Title IV of ERISA or Section 4980B of the Internal Revenue Code which pertain to non-Hotel Personnel; (v) Manager's failure to maintain insurance coverage that Manager is required to maintain pursuant to the provisions of this Agreement (unless such failure is caused by Owner's failure, after notice, to provide funds therefor as required under this Agreement), and (vi) Manager's negligence with respect to the Bank Accounts and in handling funds received from the operation of the Hotel, provided, however, that unless due to Manager's Grossly Negligent or Willful Acts, Manager shall have no liability to Owner for the selection of investment options for funds deposited into the Bank Accounts. [REDACTED]

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11.3 Indemnification Process. Any indemnified party shall be entitled, upon written notice to the indemnifying party, to the timely appointment of counsel by the indemnifying party for the defense of any claim, which counsel shall be subject to the approval of the indemnified party. If, in the indemnified party's judgment, a conflict of interest exists between the indemnified party and the indemnifying party at any time during the defense of the indemnified party, the indemnified party may appoint independent counsel of its choice for the defense of the indemnified party as to such claim. Additionally, regardless of whether the indemnified party is appointed counsel or selects independent counsel (i) the indemnified party shall have the right to participate in the defense of any claim and approve any proposed settlement of such claim, and (ii) all costs, expenses and attorneys' fees of the indemnified party shall be borne by the indemnifying party. If the indemnifying party fails to timely pay such costs, expenses and attorneys' fees, the indemnified party may, but shall not be obligated to, pay such amounts and be reimbursed by the indemnifying party for the same, which amounts shall bear interest at the rate provided for in Section 5.4 until paid in full. The Parties hereby acknowledge that it shall not be a defense to a demand for indemnity that less than all claims asserted against the indemnified party are subject to indemnification. If a claim is covered by the indemnifying party's liability insurance, the indemnified party shall not take or omit to take any action that would cause the insurer not to defend such claim or to disclaim liability in respect thereof.

11.4 Miscellaneous. The obligations set forth in this Article 11 shall survive the expiration or any termination of this Agreement. Notwithstanding any contrary provision of this Article 11, Owner and Manager mutually agree for the benefit of each other to look first to the appropriate insurance coverages in effect pursuant to this Agreement in the event any claim or liability occurs as a result of injury to person or damage to property, regardless of the cause of such claim or liability. In no event shall the settlement by either Party in good faith of any claim brought by a third party (including Hotel Personnel) in connection with the ownership or operation of the Hotel be deemed to create any presumption of the validity of the claim, nor shall any such settlement be deemed to create any presumption that the acts or omissions giving rise to such claim constituted Manager's Grossly Negligent or Willful Acts.

ARTICLE 12
MANAGER PROPRIETARY INFORMATION

Owner hereby acknowledges that the Manager Proprietary Information (including the Manager Marks), and the goodwill associated therewith are the sole and exclusive property of Manager, and may be used by Manager and its Affiliates for any purpose. Owner shall not acquire any right, title or interest of any kind or nature whatsoever in or to the Manager Proprietary Information or the goodwill associated therewith and may not itself use the Manager Proprietary Information or apply for registration rights in the Manager Marks. Additionally, Owner shall not

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contest the rights of Manager or its Affiliates with respect to the Manager Proprietary Information, including any additions or improvements thereto, by whomever developed.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of Owner. Owner represents and warrants to Manager as of the Effective Date as follows:

13.1.1 Owner is duly organized, validly existing, and in good standing under the laws of its state of organization, is duly qualified to do business in the state in which the Hotel is located, and has full power, authority, and legal right to execute, perform and timely observe all of the provisions of this Agreement to be performed or observed by Owner. This Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with the terms hereof.

13.1.2 There is no claim, litigation, proceedings or governmental investigation pending against or relating to Owner, the properties or business of Owner or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability of Owner to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Manager.

13.1.3 This Agreement constitutes a valid and binding obligation of Owner and does not and will not constitute a breach of or default under any of the organizational or governing documents of Owner or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Owner is a party or by which it or any substantial portion of its assets (including the Hotel) is bound or affected.

13.1.4 No approval of any third party (including any ground lessor or the holder of any Mortgage) is required for Owner's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

13.1.5 Owner, at its own expense, shall maintain in full force and effect throughout the Term its legal existence and the rights required for it timely to observe and perform all of the terms and conditions of this Agreement.

13.1.6 Owner is the sole owner of a leasehold interest in and to the Hotel Building and its contents (other than personal property belonging to tenants, licensees and guests of the Hotel), and the sole owner of a leasehold interest in and to the real property on which the Hotel is located, subject to customary title exceptions. Owner has full power, authority and legal right to own a leasehold interest in and to such real and personal property.

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13.2 Representations and Warranties of Manager. Manager represents and warrants to Owner as of the Effective Date as follows:

13.2.1 Manager is duly organized, validly existing, and in good standing under the laws of its state of organization, is duly qualified to do business in the state in which the Hotel is located, and has full power, authority, and legal right to execute, perform and timely observe all of the provisions of this Agreement to be performed or observed by Manager. This Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Manager enforceable in accordance with the terms hereof.

13.2.2 There is no claim, litigation, proceedings or governmental investigation pending against or relating to Manager, the properties or business of Manager or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability of Manager to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Owner.

13.2.3 This Agreement constitutes a valid and binding obligation of Manager and does not and will not constitute a breach of or default under any of the organizational or governing documents of Manager or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Manager is a party or by which it or any substantial portion of its assets is bound or affected.

13.2.4 No approval of any third party is required for Manager's execution and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

13.2.5 Manager, at its own expense, shall maintain in full force and effect throughout the Term its legal existence and the rights required for it timely to observe and perform all of the terms and conditions of this Agreement.

13.2.6 Manager shall at all times be an "eligible independent contractor" as defined in Section 856(d) of the Internal Revenue Code.

13.2.7 [Intentionally Omitted]

ARTICLE 14
MISCELLANEOUS

14.1 Notices. Any notice, statement or demand required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly delivered and to be effective upon (i) personal delivery thereof to the other Party; (ii) upon electronic facsimile transmission to the other Party (with telephonic confirmation of receipt); or (iii) on the next business day following deposit by the sender via overnight DHL, Federal Express, or other similar

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courier service;; to the Parties at the addresses specified below, or at such other address as the Party to whom the notice is sent has designated in accordance with this Section.

if to Owner:

100 St. Paul Street, Suite 800
Denver, CO 80206
Attention: General Counsel
Fax: (720) 284-6401

and if to Manager:

50-905 Avenida Bermudas
La Quinta, CA 92253
Attention: General Counsel
Fax: (760) 564-8003

14.2 Further Assurances. The Parties shall execute and deliver all other appropriate documents and other instruments, and take any other action necessary to enable the Parties to perform their respective obligations under this Agreement, and to make this Agreement fully and legally effective, binding and enforceable as between them and as against third parties.

14.3 Confidentiality.

14.3.1 The Parties (including their respective Affiliates) agree that the terms, conditions and provisions set forth in this Agreement are strictly confidential. In addition, the Parties agree to keep strictly confidential the Manager Proprietary Information and any information of confidential nature about or belonging to a Party or to any Affiliate of a Party to which the other Party gains or has access by virtue of the relationship between the Parties. Except as disclosure may be required to obtain the advice of professionals or consultants, or financing for the Hotel from an institutional lender, or in furtherance of a permitted assignment of this Agreement, or as may be required by law or by the order of any government, regulatory authority, or tribunal or otherwise to comply with Legal Requirements (including reporting requirements applicable to public companies), each Party shall make every effort to ensure that such information is not disclosed to the press or to any other third Person without the prior consent of the other Party. Notwithstanding the foregoing, the Parties hereby acknowledge that (i) Manager shall have the authority to release information regarding the Hotel to Smith Travel Research (or a similar organization mutually agreed upon by the Parties), and (ii) Owner shall have the authority to disclose all fees and expenses paid under this Agreement to its direct and indirect owners, including without limitation the participants in any investment vehicle that directly or indirectly holds an equity interest in Owner. Further, notwithstanding anything to the contrary in the foregoing provisions of this Section 14.3 or elsewhere in this Agreement, any Party (and any employee,

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representative 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. 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 thirty (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. The obligations set forth in this Section 14.3.1 shall survive any termination or expiration of this Agreement.

14.3.2 During the Term, the Parties shall cooperate with one another on all press releases or other public statements, whether written or oral and no matter how disseminated (other than statements permitted pursuant to the third sentence of Section 14.3.1), regarding their contractual relationship as set forth in this Agreement or the performance of their respective obligations under this Agreement; however, each Party shall, without the involvement of the other, be entitled to make statements (whether public or private) that simply identify the Hotel as being owned by Owner and managed by Manager.

14.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Owner, its legal successors and permitted assigns, and shall be binding upon and inure to the benefit of Manager, its legal successors and permitted assigns.

14.5 Governing Law. This Agreement is executed pursuant to, and shall be construed under and governed exclusively by, the internal laws of the state of Delaware without regard to principles of conflicts of laws thereof.

14.6 Venue, Jurisdiction and Jury Waiver. The venue of any arbitration or judicial proceedings shall be in the state or federal courts located in the City and County of Denver county in, unless otherwise mutually agreed by the Parties. Each Party hereby expressly and irrevocably submits itself to the exclusive jurisdiction of the federal and states courts located in county in which the Hotel is located, unless otherwise mutually agreed by the Parties. Each Party waives, to the fullest extent permitted by law, trial by jury of all disputes arising out of or relating to this Agreement.

14.7 Environmental Matters. Owner and Manager shall each disclose to the other the presence of any Hazardous Materials known or discovered by Owner or Manager (as the case may be) that may require action in order to comply with (or avoid a violation of) applicable Legal Requirements or that may create or contribute to any claims, damages, losses, or expenses not

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typically insured against by the insurance coverages specified in Article 7. If any such Hazardous Materials require removal, abatement, or any other special procedures, such special procedures shall be performed at Owner's expense in compliance with all Legal Requirements. In any case, Manager shall cooperate with Owner and/or any insurance risk manager to analyze what insurance coverages may be available, and at what cost, against the presence of such Hazardous Materials, in order to protect the interests of both Manager and Owner.

14.8 Amendments. This Agreement may not be modified or amended except by a written instrument executed by Owner and Manager.

14.9 Estoppel Certificates. Owner and Manager agree, at any time and from time to time, as requested by the other Party upon not less than ten (10) days prior written notice, to execute and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications), certifying the dates on which required payments have been paid, and stating whether or not, to the knowledge of the signer, the other Party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the Party requesting such certificate may be dealing.

14.10 Effect of Approval of Plans and Specifications. Owner and Manager agree that in each instance in this Agreement or elsewhere wherein Manager is required to give its approval of plans, specifications, budgets and/or financing, no such approval shall imply or be deemed to impose upon Manager any responsibility for the design or construction of the Hotel, including structural integrity or life safety requirements or adequacy of budgets and/or financing; provided that (i) Manager shall nevertheless utilize due care and reasonable professional judgment in its review of such matters, and (ii) Manager's approval of any such matters shall constitute an acknowledgement that, from Manager's perspective, the same are sufficient to satisfy the Operating Standard.

14.11 Partial Invalidity. If a court of competent jurisdiction or an Arbitration Tribunal determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of such term to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

14.12 No Representation. In entering into this Agreement, Manager and Owner acknowledge that neither Owner nor Manager has made any representation to the other regarding projected earnings, the possibility of future success or any other similar matter with respect to the Hotel, and that Manager and Owner understand that no guarantee is made to the other as to any specific amount of income to be received by Manager or Owner or as to the future financial success

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of the Hotel. Nothing in this Section 14.12 shall limit or otherwise modify the rights of Owner under Section 3.3.

14.13 Relationship of Parties. In operating the Hotel, entering into contracts, accepting reservations, and conducting financial transactions for the Hotel, Manager acts on behalf of and as agent for Owner and assumes no independent contractual liability nor shall Manager be obligated or authorized to extend its own credit with respect to any obligation incurred in operating the Hotel or performing its obligations under this Agreement.

14.14 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written.

14.15 Force Majeure. In the event of a Force Majeure Event, the obligations of the Parties and/or the time period for the performance of such obligations (other than the payment of money) shall be adjusted to the extent such Parties are prevented, hindered, or delayed in such performance during the period of such Force Majeure Event. Upon the occurrence of a Force Majeure Event, the affected Party shall give prompt, written notice of such Force Majeure Event to the other Party. If at any time during the Term either Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, or if it becomes necessary to cease operation of the Hotel in order to protect the Hotel and/or the health, safety or welfare of the guests and/or employees of the Hotel, then Manager may close and cease or partially cease operation of all or any part of the Hotel as necessary based on the occurrence of the Force Majeure Event, reopening and recommencing operation of the Hotel when the reopening and commencement of operations may be done pursuant to applicable Legal Requirements and without jeopardy to the Hotel, its guests or Hotel Personnel.

14.16 Interpretation. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all genders; the singular shall include the plural and the plural shall include the singular. The table of contents and titles of articles, sections, exhibits and paragraphs in this Agreement are for convenience only and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to articles, sections, paragraphs, clauses, exhibits, addenda or riders shall refer to the corresponding article, section, paragraph, clause of, or exhibit, addendum or rider attached to this Agreement, unless otherwise specified. The recitals set forth at the beginning of this Agreement and the exhibits attached to this Agreement are incorporated in and made a part of this Agreement

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14.17 Approval. Except as herein otherwise provided, whenever in this Agreement the approval of Manager and Owner is required, such approval shall be in writing and shall not be unreasonably withheld or delayed.

14.18 Waivers. No failure or delay by a Party to insist on the strict performance of any term, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed, waived, discharged, or terminated except by an instrument in writing signed by the Party against whom the enforcement of the change, waiver, discharge, or termination is sought. No waiver of any breach shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity. **EXCEPT WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS, ANYTHING HEREIN CONTAINED, AND ANYTHING AT LAW OR IN EQUITY, TO THE CONTRARY NOTWITHSTANDING, IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES (INCLUDING, WITHOUT LIMITATION, ANY ARBITRATION PROCEEDING) ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR IN ANY MANNER PERTAINING TO THE HOTEL OR TO THE RELATIONSHIP OF THE PARTIES HEREUNDER, EACH PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES ANY RIGHT, POWER OR PRIVILEGE EITHER MAY HAVE TO CLAIM OR RECEIVE FROM THE OTHER PARTY HERETO ANY PUNITIVE, EXEMPLARY, OR TREBLE DAMAGES, EACH PARTY ACKNOWLEDGING AND AGREEING THAT THE REMEDIES HEREIN PROVIDED, AND OTHER REMEDIES AT LAW AND IN EQUITY, WILL IN ALL CIRCUMSTANCES BE ADEQUATE. THE PARTIES FURTHER ACKNOWLEDGE THAT IN THE EVENT OF A CONFLICT BETWEEN ANY STATUTORY DAMAGES AND THE WAIVER OF PUNITIVE, EXEMPLARY OR TREBLE DAMAGES CONTAINED HEREIN, THE WAIVER SHALL IN ALL INSTANCES PREVAIL. THE FOREGOING WAIVER AND RELEASE SHALL APPLY IN ALL ACTIONS OR PROCEEDINGS BETWEEN THE PARTIES AND FOR ALL CAUSES OF ACTION OR THEORIES OF LIABILITY, WHETHER FOR BREACH OF THIS AGREEMENT OR FOR VIOLATION OF ANY OTHER DUTY OWING BY EITHER PARTY TO THE OTHER WHICH MAY IN ANY WAY RELATE TO MANAGER'S MANAGEMENT OR OPERATION OF THE HOTEL. BOTH PARTIES FURTHER ACKNOWLEDGE THAT THEY ARE EXPERIENCED IN NEGOTIATING AGREEMENTS OF THIS SORT, HAVE HAD THE ADVICE OF COUNSEL IN CONNECTION HERewith, AND HAVE BEEN ADVISED AS TO, AND FULLY UNDERSTAND, THE NATURE OF THE WAIVERS CONTAINED IN THIS SECTION.**

Owner Initials	Manager Initials

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14.19 Limitations on Fiduciary Duties

The relationship between the Parties hereto shall be that of principal, in the case of Owner, and agent, in the case of Manager. Nothing contained in this agreement shall constitute, or be construed to constitute or create, a partnership, joint venture or lease between Owner and Manager with respect to the Hotel. This agreement is for the benefit of Owner and Manager and shall not create third-party beneficiary rights.

If and only if (i) Owner makes a claim for punitive, exemplary or treble damages, and the waiver of punitive, exemplary or treble damages set forth in sections 10.6 and 14.18 above is not upheld, or (ii) the waiver of punitive, exemplary or treble damages set forth in sections 10.6 and 14.18 is otherwise not upheld, the following limitations shall apply. To the extent any fiduciary duties are inconsistent with, or would have the effect of modifying, limiting or restricting, the express provisions of this agreement: (a) the terms of this agreement shall prevail, (b) this agreement shall be interpreted in accordance with general principles of contract interpretation without regard to the common law principles of agency (except as expressly provided for in this agreement), and (c) any liability between the parties shall be based solely on principles of contract law and the express provisions of this agreement. For purposes of assessing Manager's fiduciary duties and obligations under this Agreement, the Parties acknowledge that the terms and provisions of this Agreement and the duties and obligations set forth herein, are intended to satisfy the fiduciary duties which may exist as a result of the relationship between the Parties, including without limitation all duties of loyalty, good faith, fair dealing, full disclosure or any other duty deemed to exist under the common law principles of agency or otherwise (collectively, "Implied Fiduciary Duties").

The Parties hereby unconditionally and irrevocably waive and release any right, power or privilege either may have to claim or receive from the other Party any punitive, exemplary, statutory or treble damages or any incidental or consequential damages with respect to any breach of fiduciary duties. For purposes of further clarity, the limitations set forth in this section 14.19 shall not apply unless (i) Owner makes a claim for punitive, exemplary or treble damages, and the waiver of punitive, exemplary or treble damages set forth in sections 10.6 and 14.18 above is not upheld, or (ii) the waiver of punitive, exemplary or treble damages set forth in sections 10.6 and 14.18 is otherwise not upheld.

Furthermore, Owner specifically consents to all transactions and conduct by Manager and its Affiliates described in this Agreement, including those set forth below, and waives any Implied Fiduciary Duties which Manager may owe to Owner now, or which may arise in the future, in connection with such transactions or conduct. Owner acknowledges and agrees that its consent to the transactions and conduct by Manager described in this Agreement, including but not limited to those specifically set forth below, and its waiver of any Implied Fiduciary Duties otherwise owed by Manager: (i) has been obtained by Manager in good faith; (ii) is made knowingly by Owner based on its adequate informed judgment as a sophisticated party after seeking the advice of

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competent and informed counsel; and (iii) arises from the Owner's knowledge and understanding of the specific transactions and actions or inactions of operators that are normal, customary, and reasonably expected in the hotel industry generally for the top-tier of the luxury segment of the hotel industry (the "Customary Actions").

Manager and its Affiliates may establish or engage in any business of any kind or participate in any investment of any kind, whether using any of the Manager Marks or any of the other Manager Proprietary Information of Manager, at any location, in Manager's sole discretion.

Furthermore, Manager and its Affiliates may exercise such rights even though these businesses or investments may directly or indirectly compete with the Hotel, with Owner or its Affiliates, or with any other business or investment of Owner or its Affiliates.

Manager may elect to use the services of its Affiliates in fulfilling its obligations under this Agreement, as specifically described in this Agreement.

[REDACTED]

Manager and its Affiliates may receive the payments, fees, commissions and reimbursements from vendors in connection with Manager's purchasing services described in this Agreement for the Hotel and for other properties operated, managed, licensed or owned by Manager or its Affiliates.

Manager and its Affiliates shall jointly own the Hotel Guest Data with Owner as described in this Agreement. Manager and its Affiliates may use the Hotel Guest Data in any reasonable manner (as provided in Section 4.2).

Manager shall be permitted to use the funds in the Bank Accounts for the purposes described in this Agreement (including payment to Manager or its Affiliates of all fees, charges and reimbursements described in this Agreement).

Manager shall be permitted to institute, prosecute, and settle the legal actions or proceedings described in this Agreement, in its name or in the name of Owner, as described in this Agreement.

Manager shall have the right to determine all Hotel Personnel policies, including transferring Hotel Personnel of the Hotel to other properties owned, operated or licensed by Manager from time to time.

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Manager shall have the authority to negotiate and make agreement with any labor unions and enter into or amend or modify in any material respect any collective bargaining agreements with labor unions in connection with the Hotel, as described in this Agreement.

Owner and Manager acknowledge that (i) during the Term, changes in applicable Legal Requirements regarding the law of agency, or other law potentially affecting the rights of parties to a contract like the Agreement, are likely to occur, and (ii) such changes may result in the Customary Actions constituting conduct which may be interpreted as a violation of a fiduciary duty owed by Manager to Owner. If Owner believes that as a result of such changes in applicable Legal Requirements (whether applied to the conduct described herein or with regard to any new services being performed by Manager not contemplated by Owner at the time this waiver was given), Owner shall notify Manager of the specific conduct of Manager which Owner interprets as conduct violating a fiduciary duty owed by Manager to Owner, including without limitation the Implied Fiduciary Duties, which was not waived hereunder, whereupon Owner and Manager shall confer about the same and thereafter, if such conduct was not authorized pursuant to the terms hereof (as a result of such change in law), the Parties shall execute an amendment to this Agreement to incorporate such conduct in the specific list of permitted transactions and conduct of Manager set forth above.

Owner Initials	Manager Initials

14.20 Employment Related Notice Requirements. Notwithstanding anything to the contrary in this Agreement, all time periods specified herein with respect to the termination of this Agreement may be extended to the extent necessary to comply with any applicable employment-related notice requirements under State or Federal Legal Requirements, including the W.A.R.N. Act, unless Owner elects to ensure that a sufficient number of Hotel Personnel will be retained such that the notice requirement is not necessary or agrees to indemnify Manager, all in accordance with the subsections (x) and (y) of Section 3.3.2.

14.21 REIT Covenants. **[NTD: Assuming applicable]** At all times during the Operating Term, Manager shall be an "eligible independent contractor", as such term is defined in Internal Revenue Code Section 856(d) (to the extent such a structure is applicable and required under the Internal Revenue Code); provided that Manager shall not be in violation of the foregoing covenant based solely on a failure of the Operating Lease to qualify as a lease of the Hotel to "a taxable REIT subsidiary" within the meaning of Internal Revenue Code Section 856(d). The parties acknowledge that the rents payable by Owner to the lessor under the Operating Lease are intended to qualify as "qualified rents", under Internal Revenue Code Section 856(d). If Owner determines that the terms of this Agreement will cause such rents to fail to qualify as "qualified rents" under Internal Revenue Code Section 856(d), this Agreement shall be modified to the extent necessary

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to comply with the requirements of Internal Revenue Code Section 856(d), provided that such modifications do not materially increase Manager's obligations hereunder [REDACTED] or the practical realization of the rights and benefits of Manager hereunder.

14.22 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties hereto and all of which shall constitute one and the same agreement.

14.23 Master Leases. It is understood and agreed that Master Lessee holds a leasehold interest in the Site pursuant to the Master Leases. Manager hereby acknowledges the Master Leases and agrees that its rights hereunder are subject to the terms of the Master Leases and Manager shall manage the Hotel in accordance with the terms of the Master Leases. Manager further agrees 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 Master Leases on the part of the Master Lessee as lessee thereunder. As between Manager and Owner only, in the event of a conflict between the terms of the Master Leases and the terms of this Agreement, the terms of the Master Leases shall control. Notwithstanding the foregoing, none of the terms of this Section 14.23 shall materially affect Manager's rights hereunder, materially increase Manager's obligations hereunder or adversely affect the amount of the Management Fee.

[SIGNATURES FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, Manager and Owner have each duly executed this Agreement as of the Effective Date.

MANAGER:

SSD MANAGEMENT, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

OWNER:

SSD OPERATING CO., LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO MANAGEMENT AGREEMENT]

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EXHIBIT A

LEGAL DESCRIPTION

Legal Description

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EXHIBIT B
INSURANCE

Limits

Commercial General Liability (including umbrella or excess liability): \$1,000,000 per occurrence, bodily injury and property damage liability; \$2,000,000 per offense, personal and advertising injury liability; \$2,000,000 products and completed operations policy aggregate and \$2,000,000 general aggregate

Automobile Liability: \$1,000,000 combined bodily injury and property damage liability per accident for bodily injury and property damage.

Workers' Compensation as is required by statute or law, or as may be available on a voluntary basis and \$1,000,000 per accident for bodily injury by accident or disease, including \$1,000,000 disease aggregate for Employers' Liability

Crime: \$2,000,000 Limit of Liability, including social engineering/wire fraud

Cyber Liability: \$5,000,000 Limit of Liability

Employment Practices Liability: \$1,000,000 Limit of Liability

Deductibles

Property – not to exceed \$250,000, unless such greater amount is agreeable to both parties. Higher deductible may apply for high hazard risks (including perils of earthquake, named windstorm or flood) up to 5% of total insured value for location.

All other policies – deductible or self-insured retention not to exceed \$250,000 per occurrence, unless such greater amount is agreeable to both parties.