

SPA OPERATIONS AND SUB-MANAGEMENT AGREEMENT

This Spa Operations and Sub-Management Agreement (together with all attachments and exhibits, this "**Agreement**") executed as of the dates set forth below but effective September 30, 2018 (the "**Effective Date**"), is entered into by and between Hyatt Corporation, as agent of HST San Diego HH LP, a Delaware Limited Partnership d/b/a Manchester Grand Hyatt San Diego with a business address of 1 Market Place, San Diego, California 92101 ("**Hyatt**") and Sanford Spas, LLC, a Florida limited liability company with a principal business address of 1802 N. Alafaya Trail, Unit 132, Orlando, FL 32826 (d/b/a/ Marilyn Monroe Spas) ("**MM Spas**"). Hyatt and MM Spas are each a "**Party**" and together, the "**Parties**."

RECITALS

- A.** San Diego Unified Port District ("**Fee Owner**") owns the land on which the hotel commonly known as the Manchester Grand Hyatt San Diego (the "**Hotel**") is located and leases to Manchester Grand Resorts, L.P., a California limited partnership ("**MGR**"), the land on which the Hotel is located pursuant to the terms and conditions of that certain ground lease dated June 5, 2001 (the "**Ground Lease**");
- B.** MGR leases the Hotel and subleases the land on which the Hotel is located to HST San Diego HH LP ("**Owner**");
- C.** The Hotel is managed and operated on behalf of Owner by Hyatt pursuant to that certain Hotel Management Agreement dated January 14, 1988, (as amended, modified and assigned from time to time the "**Amended and Restated Management Agreement**"), between Owner and Hyatt;
- D.** MM Spas desires to operate and manage the Hotel's existing spa ("the "**Spa**") which is located within the Hotel, as depicted in the attached Exhibit A (the "**Premises**"), and Hyatt desires MM Spas to do so;

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

- 1. Recitals.** The Recitals are incorporated into this Agreement by reference.
- 2. Definitions.** All initially capitalized terms used but not otherwise defined in this Agreement will have the meanings set forth in the attached Exhibit B.
- 3. Term.** The term of this Agreement begins on the Effective Date and will continue through the Initial Term. Thereafter, MM Spas will have the right and option to exercise up to two (2) Renewal Options to extend the Initial Term of this Agreement for the Renewal Term upon compliance with the terms and conditions as follows: (i) the applicable Renewal Option must be exercised by MM Spas, if at all, by delivering written notice to Hyatt at least one hundred eighty (180) days prior to end of the Initial Term or first Renewal Term, time being of the essence; (ii) as of the date of delivery of the above-referenced written notice and as of the expiration of the Initial Term or Renewal Term, no circumstance will then exist that with the giving of notice or the passage of time, would, if left uncured, permit Hyatt to terminate this Agreement For Cause; and (iii) no Renewal Default will have previously occurred during the Initial Term or Renewal Term, if applicable. In addition, Hyatt may, at its option, adjust the Base License Fee to be paid by MM Spas during any Renewal Term; provided, however, that the total Annual Base License Fee and Additional License Fee may not exceed 7.5% of annual Net Spa Sales during any Renewal Term.

4. Permitted Use and License Grant.

(a) Generally. Beginning on the Effective Date, Hyatt grants MM Spas a limited, revocable (provided, that revocation shall occur only upon termination of the Agreement pursuant to the terms and provisions hereof), and exclusive (as to third-parties only) license to enter, occupy and use the Premises for the Permitted Use; provided, however, that MM Spas acknowledges that Hyatt makes no representation or warranty to MM Spas regarding the permissibility of operating the Spa as contemplated herein under applicable Laws. In addition, Hyatt grants MM Spas a limited, revocable (under the terms of this Agreement) license to (i) enter Guest Rooms of the Hotel solely as permitted hereunder and otherwise as required to perform the Services; and (ii) enter the Hotel Fitness Center solely as permitted hereunder and as necessary to perform its obligations under this Agreement. For the avoidance of doubt, Guest Rooms and the Hotel Fitness Center are not part of the Premises (excluding any locker or changing room facilities shared by Customers and others using the Hotel Fitness Center) and shall be under the exclusive control and management of Hyatt and Hyatt may make any Improvements thereto, in its sole discretion, but in accordance with its good faith obligations set forth below, without breaching any of its obligations to MM Spas hereunder. Hyatt agrees not to enter or utilize the Premises during the Term, except (i) to the extent required to perform its obligations hereunder; (ii) as set forth in Section 8(a)(vii)(E)(2); and/or (iii) in case of emergency.

(b) Reservation of Rights. Hyatt reserves the right to access and use, in common with MM Spas, any locker or changing rooms located on the Premises for any reasonable business purpose, and specifically including providing locker and changing room facilities for Customers or Guests using the Hotel Fitness Center at no cost to such Customers or Guests. The amount, frequency and nature of such use shall be mutually agreed to by the Parties.

(c) Right to Relocate. Notwithstanding anything in this Agreement to the contrary, Hyatt will have the right, upon reasonable advance notice to MM Spas, to relocate the Spa, at Hyatt's expense, to another area of substantially similar size within the Hotel.

(d) Common Areas. In addition, Hyatt grants MM Spas a nonexclusive license, in common with Hyatt and all others to whom Hyatt has or may grant licenses, to use the Common Areas as designated from time to time by Hyatt (including in this Agreement) to the extent necessary and related to the lease of the Premises. Hyatt will operate, manage, equip, light, insure, secure, repair and maintain the Common Areas in its sole discretion and in accordance with its standard practices and policies. In addition, Hyatt grants MM Spas and the MM Spas Employees a non-exclusive license of ingress and egress to the Premises through the public areas of the Hotel.

(e) Spa Operations Services. Except as set forth herein, MM Spas will perform all services necessary to manage and operate a first-class spa in the Premises, which include, without limitation, all spa, management, booking, staffing, training, procurement and retail sales of Products, and related Services in accordance with first-class luxury spa industry standards, as well as the other standards and obligations set forth herein. MM Spas agrees to provide Spa Services to Customers. In addition, MM Spas may also provide Spa Services to Guests in their Guest Rooms as set forth in this Agreement. Without limiting the foregoing, MM Spas agrees it will not provide, without Hyatt's prior written consent, on the Premises or in Guest Rooms, any "medi-spa," medical or "quasi-medical," services such as Botox injections, any other injections, chemical facial peels, services involving the use of lasers, nutritional counseling or related services; all of the foregoing are explicitly excluded from the definition of Permitted Use of the Premises. Promptly after the Effective Date, MM Spas will provide Hyatt with its current menu of Spa Services and agrees not to modify such Spa Services, including adding or deleting Spa treatments, without providing Hyatt at least ten business days' prior written notice.

(f) Exclusivity.

(i) MM Spas will be the exclusive performer and/or provider of the Services described herein and acknowledges and agrees that services involving instruction or participation in any physical fitness, personal fitness training, yoga, dance, movement, meditation, or substantially related services or activities will not constitute Spa Services or part of the defined term Permitted Use for the purposes of this Agreement and that Hyatt may offer, or cause to be offered, such services at the Hotel by itself or a third-party.

(ii) MM Spas agrees not to operate or cause to be operated a spa or similar business under any trade name or trademark (excluding a nail boutique) within a two (2) mile radius, excluding the City of Coronado, as depicted in Exhibit C, of the Hotel during the Term.

(iii) Without limiting the foregoing, MM Spas will seek Hyatt's prior written approval, which will not be unreasonably withheld, if it wants to open a spa or similar business (excluding a nail boutique) in any new hotel or resort developments built and/or opened after the Effective Date (A) within a two (2) mile radius during the Term or (B) regardless of such radius, at any of the following hotel or resort properties: San Diego Marriott Marquis & Marina, San Diego Marriott Gaslamp Quarter, and Hilton San Diego Gaslamp Quarter.

(g) MM Spas' Rights Subject To. Without limiting any specific term of this Agreement, and without limitation, and notwithstanding anything to the contrary herein, MM Spas' acknowledges and agrees that its use and occupancy of the Premises is at all times subject to all present and future Laws, covenants, ground leases, financing to which this Agreement is subordinate, and all applicable rules, standard operating procedures and regulations now in effect or promulgated from time to time by Hyatt.

(h) Name of Spa. The Spa will be operated under the name ICONIC: a Marilyn Monroe Spa. As discussed more fully below, ICONIC is and will remain a Hyatt Mark.

(i) Improvements. MM Spas specifically acknowledges and agrees that it may not make any Improvements to the Premises except as explicitly set forth herein unless the nature, type and budget for such Improvements is approved by Hyatt in a written amendment to this Agreement. In addition, MM Spas acknowledges and agrees that Hyatt's approval of any Improvements during the Term is not intended and will not be construed to be a representation, warranty or other statement by Hyatt that the Improvements comply with applicable Laws, and MM Spas will not, and will not be entitled to, rely on such approval for any purpose other than acknowledgment that the Improvements have been approved by Hyatt. As set forth herein, compliance with Laws applicable to the foregoing is MM Spas' sole responsibility

5. [Intentionally omitted].

6. Condition of Premises. MM Spas acknowledges, agrees and accepts the Premises in the condition or state in which it now is, without reliance on any representation, covenant or warranty, express or implied, in fact or in law, by Hyatt, and without recourse to Hyatt, as to the nature, condition or usability thereof, or the use or uses to which the Premises or any part thereof may be put, and that the Premises is being leased, in its presently existing "as-is" condition, and Hyatt has made no promise to alter, remodel, repair, replace or improve it (or to provide MM Spas with any credit or allowance for the same, except as explicitly set forth below.

7. [Intentionally omitted].

8. **Operating Period.**

(a) MM Spas Responsibilities. During the Operating Period, MM Spas agrees to perform the Services, including Spa Services as set forth herein, at its sole cost and expense, including as follows:

(i) Spa Operating Hours. MM Spas will provide Spa Services to Customers during the Spa Operating Hours in the Spa. MM Spas Employees will also perform Spa Services in Guest Rooms during hours mutually agreed to, if any. Spa Operating Hours and other Services hours, if any, may not be modified without Hyatt's prior written consent, which will not be unreasonably withheld.

(ii) Waiver. MM Spas agrees that all Customers receiving Spa Services, excluding hair styling, manicure and pedicure Services, must sign a waiver and hold harmless substantially similar to that attached as Exhibit D, or such amended waiver as the Parties agree to in writing from time to time, before receiving Spa Services and MM Spas will not provide any such Services without a properly executed waiver. Without limiting the foregoing, any substitute waiver or hold harmless used by MM Spas must maintain the same level protection for the Hotel Companies (as defined in Exhibit D) as is present in the waiver and hold harmless set forth therein.

(iii) Budgeting.

(A) Annual Budget. MM Spas will prepare an Annual Budget for each Operating Year of the Term. The Annual Budget will be provided to Hyatt for its written approval at least 60 days before the end of the previous Operating Year. The Parties agree to cooperate in good faith to resolve any disputes or objections to the Annual Budget. If the Annual Budget is not approved before the beginning of the applicable Operating Year, MM Spas will continue operating the Spa reasonably in accordance with the previous Annual Budget; provided, however, that as set forth elsewhere herein, no capital Improvements may be made to the Spa without Hyatt's prior written consent. Upon approval of the new Annual Budget, MM Spas will operate the Spa in accordance therewith.

(B) Modifications. For any Annual Budget, if, within the first 9 months of a Operating Year, MM Spas becomes aware of any event or fact that causes or should reasonably cause it to believe that the Annual Budget for such Operating Year is no longer accurate in any material respect, it will promptly advise Hyatt thereof and provide a modified Annual Budget for Hyatt's written approval, in accordance with the process set forth in the previous Section.

(iv) Capital Reserve. Beginning in Operating Year 2019, MM Spas will establish a Capital Reserve Fund, contributions to which will be included in each Annual Operating Budget's Operating Expenses. MM Spas will pay into the Capital Reserve Fund monthly in arrears and each monthly contribution will be due on the first day of the applicable month. Contributions will equal 1% of Gross Spa Sales for the month immediately preceding the month in which payment is made. Amounts and transactions of and using the Capital Reserve Fund will be tracked for accounting purposes as if it were a separate bank account with full accounting reported to Hyatt set forth in each Annual Budget. In addition, each Operating Year, the Parties will develop a three year replacement schedule for Premises furniture and Equipment,

including, if applicable, certain branded finishes, which replacements will be done at MM Spas' sole expense using the Capital Reserve Fund.

(v) Management of Spa Finances. MM Spas will operate the Spa in an efficient and cost-effective manner. In addition:

- (A) Payment and Collection of Monies. Except as explicitly set forth herein, MM Spas will be responsible for the management of all financial affairs of the Spa, including, without limitation, the payment of all expenses of constructing, opening, operating, furnishing, supplying, MM Spas' marketing, maintaining and repairing of the Spa, the collection and deposit of all cash receipts, and other monies from Customers for Spa Services, and the establishment of, and control over, any bank accounts, all in accordance with and subject to the provisions of this Agreement.
- (B) Guest Folios. MM Spas will permit Guests to charge Spa Services and Products to the Guest's folio; provided however, that MM Spas agrees that any amount that is disputed by a Guest or any amount deemed by the controller of the Hotel, using Hyatt's standard collections policies and practices, to be uncollectible from a Guest or purported guest will be deducted by Hyatt from any payment otherwise owing to MM Spas, as set forth below. In addition:
 - (1) Hyatt will inform MM Spas of any disputed charges at the time of collection or at the time Hyatt determines such disputed charges are not collectible;
 - (2) MM Spas will submit a weekly Guest Room charge report setting forth all amounts for Spa Services charged to Guests' folios and Hyatt will pay MM Spas weekly any amounts it has collected from Guests for Spa Services and/or Products less two percent (2%) of the total amounts collected as the reimbursement for credit card transaction and processing fees. If Hyatt's records and MM Spas' weekly report differ, the Parties will cooperate in good faith to reconcile them before Hyatt makes payment; and
 - (3) Without limiting the foregoing, if MM Spas fails to post or inaccurately posts the foregoing charges, or if Hyatt is unable to recover any such charges from the applicable Guests, such amounts will be deducted from the Gross Spa Sales figure for the applicable time period.
- (C) Financial Statements. On or before the 15th of each month, MM Spas will prepare and deliver to Hyatt Monthly Statements. For the avoidance of doubt, these Monthly Statements will include Gross Spa Sales charged to all Customers, including amounts charged to Guests' folios. The Monthly Statements will be used to calculate the Base License Fee and any Additional License Fee owed Hyatt, as more particularly defined and described below.

- (D) Operating Shortfalls. For the avoidance of doubt, MM Spas will be solely responsible for financing or otherwise making up any operating shortfalls that may occur in its provision of the Services hereunder.

(vi) POS Interface.

- (A) MM Spas will acquire, implement, update, and maintain the POS Interface at its sole cost and expense. MM Spas will be solely responsible for ensuring compatibility with the Hyatt Systems. As indicated below, the POS Interface will only permit such limited access to Hyatt Systems as to provide MM Spas with data required to allow it to fulfill its obligations hereunder. If Hyatt makes any changes or upgrades to the Hyatt Systems that require a material update or upgrade of the POS Interface that would require MM Spas to incur costs, Hyatt and MM Spas will negotiate in good faith to agree upon allocation of such costs.
- (B) If, at any time during the Term, Hyatt reasonably determines that the POS Interface is (1) providing MM Spas' unauthorized access to the Hyatt Systems or any information contained therein; (2) interfering with the operation or efficiency of the Hyatt Systems or the Hotel, or (3) otherwise creating a security risk or risk of breach of any Personal Information held by Hyatt, MM Spas will immediately disable the POS Interface upon Hyatt's request. Guest charges will then be billed manually in accordance with a mutually agreed-upon practice and procedure.

(vii) Utilities, Maintenance and Repair.

- (A) Utilities. In addition to those other amounts required to be paid by MM Spas hereunder, all Premises electrical and water will be sub-metered and MM Spas will pay Hyatt for actual Premises' electrical and water usage each month. If sub-meters are not feasible or available for such services, MM Spas shall reimburse Hyatt those operating utility costs not to exceed \$750.00 per month, unless mutually agreed upon by the parties or in the event of significant increase in the costs of those services to Hyatt.
- (B) Telephone and Internet. MM Spas may use telephone and internet in the Premises at no charge, provided that Hyatt will bill MM Spas, and MM Spas shall pay to Hyatt for all actual local and long distance calls (if charges apply) made from the Premises each month.
- (C) System Loads. MM Spas agrees that it will not use the Premises in such a way as to (1) cause design loads for the Utilities Systems to be exceeded; or (2) adversely affect the Premises or the operation of such Utilities Systems in the Premises or cause deterioration or damage to either.
- (D) Maintenance and Repair of Premises.
- (1) MM Spas will, at its sole cost and expense, keep and maintain the interior non-structural elements of the Premises in a clean, orderly, sanitary and attractive condition throughout the Term. Without limiting the foregoing, MM Spas will keep the interior of the Premises,

including, if applicable, any locker rooms or changing rooms, together with the interiors and exteriors of all plate glass windows, doors, door frames and any interior non-structural elements of the Premises, in good sanitary condition and repair, except that Hyatt will be responsible for repair of any and all windows, doors, and door frames if and to the extent damage requiring repairs is caused by weather or environmental events outside the control of MM Spas and/or Hyatt's negligence or willful misconduct. For the avoidance of doubt, (a) "interior non-structural elements" specifically excludes the Premises ceiling (except with regard to maintaining its sanitary and attractive condition), walls, and exterior portions of Utilities and mechanical Systems, which will be Hyatt's responsibility, as more completely described below; (b) MM Spas will not be required to paint or repair any exterior walls of the Premises. For clarity, MM Spas will be responsible for the replacement of any broken or cracked windows or doors, except as explicitly set forth in this Section. MM Spas will be solely responsible for waste removal from the Premises in accordance with Hyatt's written policies and procedures regarding same. Without limiting the foregoing, MM Spas will be responsible for all janitorial and housekeeping obligations in the Spa to meet the above standards. For the avoidance of doubt, MM Spas will be responsible for the replacement and/or repair of any and all fixtures, equipment and materials required to perform its obligations hereunder.

- (2) MM Spas will not be liable, and may seek reimbursement from Hyatt for, any repairs or maintenance it is required to perform under this Section if and to the extent such repairs or maintenance are required as a result of Hyatt's negligence or willful misconduct, including, without limitation, replacing damaged windows or doors if and to the extent such damage was caused by Hyatt's negligence or willful misconduct, or the negligence or willful misconduct of its employees or contractors.
- (3) MM Spas will immediately notify Hyatt of any necessary repairs, replacements or maintenance Hyatt is required to perform hereunder of which it becomes aware or which, in the exercise of ordinary diligence it should have become aware.
- (4) Hyatt will have the right, but not the obligation, to pay any amount, undertake repairs or maintenance, and do any act which may be necessary or appropriate if MM Spas does not perform its obligations under this Agreement, including, without limitation, its obligations to keep the Spa and Premises in good working condition and repair in accordance with the terms hereof. Hyatt agrees that it shall only exercise this right following 30 days' notice to MM Spas, except in the case of emergency repairs or maintenance, including those required if continued failure to repair or maintain is likely to create a public health risk or threat, pose a risk of permanent or significant damage to the Premises or Customers, or otherwise is likely to expose Hyatt to third-party liability, including government fines or penalties for failure to comply with applicable Laws. If Hyatt exercises such

right, MM Spas agrees to pay to Hyatt within thirty (30) days of demand an amount equal to all such reasonable and actual sums plus interest at the Default Rate, from the date Hyatt pays such sums. As more particularly discussed below, Hyatt may offset any costs it incurs under this Section against any amounts it owes MM Spas hereunder.

(E) Exclusions.

- (1) For the avoidance of doubt, nothing in this Agreement is intended or will be construed to require MM Spas to keep up, maintain or repair any part of the Hotel beyond the Premises, including Steam Room mechanical systems.
- (2) For the avoidance of doubt, Hyatt shall have the right to enter the Premises at all reasonable hours for the purpose of inspecting the Premises, showing the Premises to prospective lenders, tenants and purchasers, or for making repairs, alterations or additions to the Premises or the Hotel. Hyatt will limit the showing of the Premises to prospective tenants to the final six (6) months prior to expiration of the Term.

(viii) MM Spas Employees.

- (A) MM Spas Employees. MM Spas expressly guarantees that all MM Spas Employees performing Services, whether in the Premises or otherwise, have a legal right to work in the United States and that MM Spas complies with all applicable immigration Laws including, without limitation, adherence to the form I-9 verification requirement;
- (B) Drug-Free Work Environment. MM Spas will provide MM Spas Employees who do not abuse drugs and who are not under the influence of illegal drugs or alcohol. In addition, MM Spas will require drug testing in the event of any workers compensation documented incident and certain documented work performance incidents. Should any MM Spas Employee report to the Hotel under the influence of any illegal drug or alcohol or should any MM Spas Employee use, possess or attempt to sell such substance or drug paraphernalia while on duty at the Hotel, such MM Spas Employee shall be removed immediately from the Hotel by MM Spas. Hyatt reserves the right to refuse to allow any such MM Spas Employee to work at the Spa thereafter;
- (C) Background Check.
 - (1) Except as set forth in the following Section, MM Spas will perform (or have performed) a multi-state criminal background check on behalf of each MM Spas Employee. Such background check will be performed by a company satisfactory to Hyatt and will include, at a minimum, a search of sex-offender registries as well as felony and misdemeanor convictions for the previous seven years. The verification must be based on the addresses where the MM Spas Employee has established credit. MM Spas will contact the Hotel's General Manager or Human Resource Director should any potential

MM Spas Employee's background check include any felonies or misdemeanors during the previous 7 years or should the potential MM Spas Employee's name appear on any sex-offender registry, before the MM Spas Employee is allowed to enter the Hotel. Further, MM Spas acknowledges and agrees that it will promptly remove any MM Spas Employee who commits any misdemeanor or felony (including sex offenses) during the Term, provided that MM Spas is aware of such acts or should, in the exercise of reasonable diligence, have been aware;

- (2) MM Spas will not be required to perform (or have performed) the foregoing background checks for Existing Spa Personnel it retains to become MM Spas Employees if: (a) Hyatt or the previous operator of the Spa has performed such background checks for such Existing Spa Personnel within one (1) year of the date the Existing Spa Personnel becomes an MM Spas Employee and (b) the Existing Spa Personnel grants Hyatt permission to share the results of such background check with MM Spas;
- (D) MM Spas Employees Performing Sensitive Services. Without limiting any of MM Spas' other obligations hereunder, MM Spas acknowledges and agrees that those MM Spas Employees performing Services (1) in locations where Guests have a reasonable expectation of privacy; (2) during which Guests may be partially clothed or unclothed or that otherwise require physical intimacy; and (3) in Guest Rooms will be suitable and fit for providing such Services, including awareness of their sensitive nature.
- (E) Number of MM Spas Employees. MM Spas agrees to provide an adequate number of MM Spas Employees in order to perform the Services in accordance with the standards required under this Agreement. If any Services are amended, MM Spas agrees to the appropriate increase or decrease in the number of required MM Spas Employees. The foregoing notwithstanding, MM Spas acknowledges and agrees that Hyatt does not guarantee that it will require any minimum number of MM Spas Employees at any time during this Agreement. If any MM Spas Employee is unable to perform adequately or is unable to perform for the entire period of his or her shift, MM Spas agrees to provide substitute MM Spas Employee(s) of comparable skill and knowledge;
- (F) Replacement Employees. MM Spas agrees that it will not retain to provide Services at the Hotel any MM Spas Employees to which Hyatt reasonably objects in writing, provided, however, that Hyatt's reasonable objection does not violate or cause MM Spas to violate applicable Laws.
- (G) Time, Manner, and Method of Work. MM Spas will be responsible for all aspects of MM Spas Employees' work performance. MM Spas, not Hyatt, controls the time, manner and method of the work to be performed by MM Spas Employees and MM Spas agrees to complete all work in a good and workmanlike manner, in accordance with first-class hotel industry standards;

- (H) On Site Supervisor. MM Spas shall provide, at MM Spas' expense, at least one Spa Supervisor or Director (or similarly named MM Spas Employee) who will supervise and coordinate all MM Spas Employees' work. MM Spas shall provide an adequate number of supervisors to oversee the work of the applicable MM Spas Employees at the Hotel at all times when Services are being performed. Upon Hyatt's request, and with reasonable notice, a member of MM Spas' management team and/or the Spa Director will attend periodic meetings at the Hotel, and the Spa Supervisor(s) will attend one or more walk-throughs with Hyatt management, as determined by Hyatt, to inspect Services performed by MM Spas Employees to be sure they meet the standards set forth in this Agreement;
- (I) Training. MM Spas shall be responsible for all aspects of MM Spas Employees' work performance, including informing MM Spas Employees of applicable Hotel rules and policies and procedures. Training shall be in accordance with accepted industry practices and shall conform to the reasonable rules and regulations of Hotel which are established from time to time by Hotel regarding the conduct of, and in relation to, the MM Spas Employees working at the Hotel Premises when such employees are on Hotel Premises.
- (J) Attire. MM Spas will ensure that MM Spas Employees are supplied with and perform Services at the Hotel wearing uniforms or other standard attire approved by Hyatt which are reasonably different from Hotel employees' uniforms and indicate that the MM Spas Employee is an employee of MM Spas and not of Hyatt. MM Spas may, but is not required to, provide MM Spas Employees nametags or name badges.
- (K) Compensation. Subject to the terms and conditions of this Agreement, MM Spas shall be solely responsible for setting compensation rates for and providing benefits (by way of example only, vacation, health insurance and retirement) to MM Spas Employees; provided, however, that: (1) MM Spas expressly agrees that it shall provide competitive wages over the federal minimum wage amount and will pay its employees in accordance with all federal, state and local wage and hour laws, including overtime earned by MM Spas Employees; and (2) MM Spas agrees, represents and warrants that it shall provide competitive benefits to MM Spas Employees and shall specifically provide health insurance, and a 401k retirement plan to MM Spas Employees; and
- (L) Employment Related Tax. MM Spas also expressly guarantees that it will comply with related tax filings, payments and deductions for MM Spas Employees, including, but not limited to, the IRS W-2 and W-4 forms, FICA, FUTA, SUTA and statutory payroll deductions and shall make all related payments for such taxes. In order to meet the foregoing requirements, MM Spas shall track and maintain appropriate time records and personnel records for all such employees.
- (ix) Subcontracting. MM Spas understands and agrees that the Spa Services and any other Services performed during the Operating Period provided pursuant to this Agreement may not be subcontracted or delegated without the prior written consent of Hyatt, except for such independent

contractors performing Services included in the definition of "MM Spas Employees" and except with regard to Sub-Processors, in accordance with Section 14 below. Without limiting any particular requirements as to Sub-Processors, if Hyatt consents to such subcontracting, then MM Spas further understands and agrees:

- (A) To notify Hyatt in writing of the names of any proposed Sub-Contractors whom MM Spas is requesting to use to perform any portion of or all of the Services described above;
- (B) That MM Spas is fully responsible for the acts and omissions of its Sub-Contractors and of persons either directly or indirectly employed or hired by them as it is for the acts and omissions of persons directly employed by MM Spas;
- (C) To bind every Sub-Contractor to the terms and conditions of this Agreement so far as is applicable to the Sub-Contractor's work. However, nothing contained in any provision of this Agreement shall create any contractual relationship, including any tenancy or sub-tenancy, between Hyatt and any Sub-Contractor;
- (D) That any Sub-Contractor(s) it engages to provide Services under this Agreement will be reputable entities;
- (E) That any such Sub-Contractor(s) used in the performance of the Services hereunder is qualified to perform such Services; and
- (F) That all provisions of this Agreement will be deemed to apply to Sub-Contractors.

(x) Materials and Equipment.

- (A) Generally. Except as explicitly set forth herein, MM Spas will be solely responsible for acquiring, maintaining, cleaning, repairing and replacing any and all Equipment, Linens and Products, all of which will be of a quality and acquired in amounts necessary to allow MM Spas to meet its obligations hereunder and will otherwise be kept in good working order and condition.
- (B) Laundry. MM Spas will be solely responsible for laundering both current and future Linens.

(xi) Security. Without limiting any liability that Hyatt may have for the acts or omissions of its employees or other personnel acting within the scope of their employment or engagement with Hyatt under applicable Laws, MM Spas will be solely responsible for Premises physical security, including the safety and security of MM Spas Employees and any Equipment and Products contained or stored therein. Hyatt will not be liable for any losses to MM Spas Equipment or any other personal or other property or bodily or personal injury caused by criminal acts or entry by unauthorized individual into the Premises or the Hotel. If such criminal acts or unauthorized entries are made or occur using or as a result of unauthorized access to any master keys in Hyatt's possession, Hyatt will reasonably cooperate with MM Spas to investigate such usage. MM Spas fully and forever releases Hyatt from any liability for criminal acts or entry by unauthorized persons into the Premises regardless of any actions or precautions that Hyatt may have taken to prevent the acts of entry of any such individual.

(xii) Marketing. MM Spas will perform those marketing obligations set forth in Exhibit E hereto in accordance with this Agreement; provided, however, that the Parties acknowledge and agree that such obligations may be reviewed on an annual basis at the request of either Party and that such obligations may also be amended, modified, supplemented or removed from time to time upon the Parties' mutual agreement.

(xiii) Complimentary Services. MM Spas will provide a mutually agreed upon number and/or dollar amount of complimentary Spa Services per month to those Guests designated in Hyatt's sole discretion. The number and/or amount of such complimentary Services will be reviewed and mutually agreed upon no less than annually.

(xiv) Pre-existing Agreements. MM Spas agrees to honor the relevant terms of all agreements between Hyatt and one or more groups executed before the Effective Date and valid at any time during the Term, including such terms as may relate to services to be provided to group attendees in the Spa, including all such services that are Spa Services when performed by MM Spas, and pricing discounts. As of the Effective Date, Hyatt represents that, to the best of its information and belief, no such group agreements are outstanding; however, Hyatt will make commercially reasonable efforts to provide MM Spas with relevant information about such group bookings as promptly as possible if and when Hyatt determines that there are any.

(xv) Group Discounts. MM Spas acknowledges and agrees that Hyatt may, at any time during the Initial Term or Renewal Terms of this Agreement, discount current Spa Services pricing by up to 10% without MM Spas' prior approval for group business. Hyatt must seek MM Spas' prior written approval before agreeing to discounts on Spa Services greater than 10%; provided, however, that if Hyatt executes a group agreement including Spa Services discounted at more than 10%, Hyatt will owe and pay MM Spas the difference between the group's contracted rate and 10% off the current Spa Services pricing. Hyatt will inform MM Spas of the pertinent details of any group agreements offering Spa Services to group attendees (including, if applicable, any discounts) executed after the Effective Date within a commercially reasonable time after such agreements are executed.

(xvi) Donations. MM Spas will honor any outstanding charitable donations of Spa Services made by Hyatt before the Effective Date and will receive reimbursement from Hyatt of a mutually-agreed upon percentage of the face value of such donated Services. Hyatt will make commercially reasonable efforts to promptly provide MM Spas with a list and/or other records of all such outstanding donations.

(xvii) Memberships. MM Spas may sell memberships for Spa Services. Hotel will cooperate in good faith with MM Spas in the design, development and marketing of these memberships, including possible affiliation with the Hotel Fitness Center. The number of Spa memberships will be mutually agreed to by the parties, including, if applicable, the number of affiliated Hotel Fitness Center members.

(b) Hyatt Responsibilities.

(i) Premises.

(A) Repair and Maintenance of Structure. Hyatt will keep in good order, condition and repair all load-bearing walls, structural columns, structural elements of the floor and structural elements of the ceiling of the Premises, and structural elements of the exterior of the Premises. As part of Hyatt's obligations hereunder, it will keep in good order, condition and repair all

roof curbing and flashing and will, if necessary, repaint and repair exterior walls. In addition, Hyatt will be responsible for and will repair any and all windows, doors, and door frames if and to the extent damage requiring repairs is caused by weather or environmental events outside the control of MM Spas and/or Hyatt's negligence or willful misconduct. Without limiting the foregoing, MM Spas will be required to reimburse Hyatt for any repairs or replacements Hyatt makes, does or causes to be made or done of the Premises under this Section required as a result of (1) repairs, installations, alterations or Improvements by or for MM Spas or anyone with apparent authority to act as agent for MM Spas and/or (2) MM Spas, MM Spas Employees and/or anyone with apparent authority to act as agent for MM Spas' use of the Premises in violation of the terms of this Agreement.

- (B) Utilities. Hyatt will, at its sole cost and expense, contract with third-party utilities or related service providers for the provision of water, sewage, gas and electricity in accordance with Hyatt's current business practices and procedures, except that MM Spas will be responsible for its portion of certain of these costs, as described above. In addition, Hyatt will be solely responsible for maintaining all of the following in good working order, condition and repair: all plumbing, electrical, sprinkler and television/Internet cabling and HVAC systems located in the Premises, including, without limitation, all ducts, vents, thermostats, controls and pipes associated with or comprising such systems. For the avoidance of doubt, Hyatt or its agent, contractor, invitees or an authorized utility company, as the case may be, will have the right to run utility lines, pipes or conduits where necessary or desirable, through attic space or other parts of the Premises, and to repair, alter, replace or remove the same, all in a manner that does not interfere unnecessarily with MM Spas' use thereof.
- (C) Internal Telephone. Hyatt will provide or maintain telephone service between Guest Rooms and the Spa such that Guests may contact the Spa using a four-digit internal extension or a single "speed dial" button and will bear any costs associated with switching or forwarding telephone lines to meet this obligation.
- (D) Trash and Recycling Facilities. Hyatt will provide and maintain trash disposal and recycling facilities which may be used by MM Spas as described below in accordance with its standard practices and procedures for the rest of the Hotel.
- (E) Fire and Casualty Damage.
 - (1) If during the Term the Hotel and/or Premises alone is damaged by Casualty, if and to the extent that, in the sole judgment of Hyatt, restoration of the Hotel and/or Premises and its continued operation could be uneconomical, or if such damage occurs during the last 12 calendar months of the Term, then Hyatt may elect to terminate this Agreement without the requirement to pay liquidated damages by giving MM Spas notice within thirty (30) days after the occurrence of the Casualty event.

(2) Notwithstanding the foregoing, in the event that the Premises and/or the Hotel are partially damaged by a Casualty, Hyatt agrees to repair the same provided that such damage does not occur in the last 12 months of the Term; and provided that the damage can reasonably be repaired within 180 days; and provided further that the damage is an insured casualty for which sufficient insurance proceeds are available to Hyatt to pay for the repairs. During the period from the damage until repairs are completed, this Agreement will remain in full force and effect except that the Base License Fee will be equitably and proportionately abated based on the percentage of the Premises and/or Hotel, if any, that is rendered unusable for purposes of performing the Services by such Casualty. If the damage cannot be repaired within 180 days, or it occurs during the last 12 months of the Term, or the casualty is uninsured or insurance proceeds are unavailable or insufficient to pay the costs of repair and restoration, then Hyatt and MM Spas will each be entitled to terminate this Agreement upon 30 days written notice to the other, without the requirement to pay liquidated damages. If Hyatt does not terminate this Agreement, then Hyatt will use due diligence to repair the damage as soon as practicable, and the Base License Fee will equitably and proportionately abated based on the percentage of the Premises and/or Hotel, if any, that is rendered unusable for purposes of performing the Services by such Casualty until repairs are completed.

(F) Limitation of Damages. Except as otherwise expressly provided herein Hyatt will not be liable to MM Spas for damages or otherwise and it will not be considered a breach of Hyatt's obligations hereunder (1) if any utility or service, including the supply of electricity or chilled water, becomes unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility; (2) for any interruption in any service hereunder (including, without limitation, any heating, ventilation or air-conditioning) caused by the making of any necessary repairs or Improvements or by any cause beyond Hyatt's reasonable control; (3) for any interruption of or interference with Spa business if and to the extent caused by changes, modifications, or Casualty damage made to or occurring at the Hotel, including Common Areas and (4) to the maximum extent permitted by law, for any loss or damage resulting to MM Spas from the breaking, bursting, stoppage or leaking of electrical cable and wires, and water, gas, sewer or steam pipes;

(G) Voluntary Alterations to Hotel. If Hyatt chooses to undertake significant modifications and/or changes to or at the Hotel, it will make reasonable good faith efforts to coordinate such modifications and/or changes with MM Spas to minimize the negative effect thereof on MM Spas' business.

(ii) Marketing. Hyatt will perform those marketing obligations set forth in Exhibit E hereto in accordance with this Agreement; provided, however that the Parties acknowledge and agree that such obligations may be reviewed on an annual basis at the request of either Party and that such obligations may also be amended, modified, supplemented or removed from time to time upon the Parties' mutual agreement. The foregoing notwithstanding, Hyatt will make commercially reasonable efforts to ensure that Guests are aware the Spa is at the Hotel and to encourage its use. This may be accomplished through

methods such as inclusion in pre -arrival emails, front desk information and scripts, providing information and directions, in-Guest Room Collateral, and/or signage in the Hotel. In addition, Hyatt will reasonably assist MM Spas in marketing Spa Memberships to Guests and potential Spa members, including, if applicable, Spa membership affiliation with the Hotel fitness center.

(iii) Employee Cafeteria. Hyatt will allow MM Spas Employees to eat in the Hotel's "employee" cafeteria during one normally scheduled meal period. If the MM Spas Employees want to purchase the food offered in the employee cafeteria, they may purchase meal at the then current rate. The price for meal tickets as of the Effective Date is \$2 per ticket for breakfast, lunch and dinner; such amount may be adjusted in Hyatt's discretion.

(iv) Parking. MM Spas Employees may and shall park their vehicles only in the Hotel employee parking lot or similar parking structure as designated by Hyatt.

(v) Complimentary Rooms. Hyatt will provide a mutually agreed upon number of complimentary Guest rooms for MM Spas' use in consideration for the complimentary Spa Services provided by MM Spas above. The number and/or type of such complimentary Guest rooms will be subject to availability and may be modified throughout the Term.

(vi) POS Customization. Any custom interfaces to MM Spas' POS or other computer systems to be used by Guests or other Customers for Hyatt or Hotel loyalty program point redemption, value cards, gift cards or similar items requested by Hyatt will be developed and implemented at Hyatt's cost and expense; provided, however, that MM Spas will provide access to its computer systems as necessary to permit testing and implementation of such interface and will reasonably cooperate with Hyatt therein, at its sole cost and expense.

9. Spa Packages. MM Spas and Hyatt will cooperate in good faith to design, market and develop Packages; provided, however, that Hyatt will be solely responsible for making such Packages available for booking.

10. Compensation.

(a) License Fee.

(i) Annual Base License Fee. MM Spas will pay Hyatt an Annual Base License Fee equal to the greater of (A) \$60,000; or (B) 3% of annual Net Spa Sales per Operating Year. The Annual Base License Fee will be paid as set forth below. In addition, MM Spas may be entitled to a temporary reduction in the Annual Base License Fee for any year in which the average Hotel occupancy drops below 70%, such deduction to be made no more than once per year. The parties shall cooperate in good faith to determine the appropriate reduction, if any, and any other applicable terms and conditions relating thereto, all of which shall be set forth in a written amendment to this Agreement signed by both parties. The foregoing notwithstanding, if MM Spas becomes entitled to a reduction in the Annual Base License Fee under this section, the reduction (which may be in the form of a credit applied to future amounts MM Spas owes, in Hyatt's discretion) will be applied for the calendar year immediately following the calendar year in which annual Hotel occupancy dropped below 70%.

(ii) License Fee. Beginning on the Effective Date, MM Spas will pay Hyatt the Base License Fee plus Port Charges, in arrears, on or before the 10th of the applicable month in accordance with the Monthly Statements provided by MM Spas. The Base License Fee will equal the greater of (1) \$5,000 or (2) 3% of monthly Net Spa Sales. In addition to the Base License Fee, the Percentage License Fee shall become payable in accordance with Section below.

(iii) **Percentage License Fee.** Beginning on the month in which the annual Net Spa Sales reach the amount equal to or exceeding \$2 million, \$2.75 million or \$3.25 million, as applicable, for that Operating Year, MM Spas shall pay to Hyatt the following amount as a Percentage License Fee with each payment of the Base License Fee, as follows:

10% of the portion of annual Net Spa Sales that exceed \$2 million if annual Gross Spa Sales \geq \$2 million < \$2.75 million
15% of the portion of annual Net Spa Sales that exceed \$2.75 million if annual Gross Spa Sales \geq \$2.75 million < \$3.25 million
20% of the portion of annual Net Spa Sales that exceed \$3.25 million if annual Gross Spa Sales \geq \$3.25 million

(iv) **Annual Reconciliation.** On or before the 15th day of the month following the end of each Operating Year, Hyatt and MM Spas will reconcile accounts, including, without limitation, the calculation of the Percentage License Fee. Any balance shown to be due to either Party shall be paid on or before January 31 of the applicable Operating Year.

(v) **Limitations.** The foregoing notwithstanding, the total Annual Base License Fee and Percentage License Fee paid by MM Spas to Hyatt in any Fiscal Year hereunder will not exceed 7.5% of annual Net Spa Sales.

(b) **License Fee Setoff.** After receipt of MM Spas' Monthly Statement, Hyatt will offset any amounts it owes MM Spas hereunder during the applicable month, if any, and will provide MM Spas with a reconciled Monthly Statement. MM Spas will pay Hyatt any remaining License Fee due and owing according to the reconciled statement within 5 days after receipt thereof from Hyatt. If Hyatt owes MM Spas, Hyatt will pay MM Spas any such amounts within 7 days after receipt of the Monthly Statement.

(c) **Right to Offset.** Without limiting the foregoing, each Party will have the right to offset any amounts it owes to the other against amounts owed to it by the other. Notwithstanding the foregoing and for the avoidance of doubt, (i) nothing in this Section or this Agreement is intended or will be construed to grant MM Spas the right to withhold or offset the License Fee, the Annual Base License Fee and/or Percentage License Fee or Port Charges for any purpose whatsoever; and (ii) the right to offset applies only to amounts actually due and owing at the time any payments are due from one Party to the other.

11. Licenses or Permits. If any governmental license or permit is required for the proper and lawful conduct of the Services, the Permitted Use and MM Spas' business or other activity carried on, in or at the Hotel (including the Premises), or if a failure to procure such a license or permit might or would in any way affect the operations of the Hotel, then MM Spas, at its expense, will procure and maintain all such licenses or permits and submit the same to inspection by Hyatt. MM Spas, at its sole cost and expense, will at all times comply with the requirements of each such license or permit. The foregoing includes, without limitation, any liquor licenses or permits.

12. Compliance with Laws.

(a) MM Spas understands, agrees, represents and warrants that MM Spas' performance of any and all Services performed pursuant to this Agreement and fulfillment of any of its obligations hereunder

do and will, at MM Spas' expense, fully comply with all Laws that may govern or regulate MM Spas' business and the Services. This obligation includes, without limitation:

(i) Compliance with all Laws that apply to MM Spas' employment status or MM Spas' employment relationship with MM Spas Employees and others, including, but not limited to all Laws related to the safety and health of MM Spas Employees and all Laws governing the payment of MM Spas Employees;

(ii) Compliance with all Laws applicable to the Equipment and the Products;

(iii) Compliance with all Laws related to any and all hazardous materials;

(iv) Payment of all Port Charges and Taxes now or hereafter in effect that are due and payable under this Agreement. This obligation includes, but is not limited to, Port Charges, sales and/or Services Tax, Federal Social Security Act, Use Tax, Personal Property Taxes or other Taxes that may arise in connection with this Agreement;

(v) Completion, maintenance and submission of any and all required documentation and records related to MM Spas' employment relationship with its personnel, including, but not limited to, OSHA Forms 300 and 301 regarding workplace injuries that occur at the Hotel (including on the Premises); and

(vi) Compliance with all applicable data privacy Laws. In addition, MM Spas represents and warrants that, with respect to all Personal Information of MM Spas Employees that it collects and shares with Hyatt for the purposes of this Agreement, that such Personal Information (A) was obtained from each MM Spas Employee with that MM Spas Employee's permission in compliance with all applicable data privacy Laws at the point of collection; or (B) is otherwise legally permitted.

(b) Employee Licensure. Each MM Spas Employee provided by MM Spas to perform Services under this Agreement shall be fully trained, certified and/or licensed in accordance with any federal, state or local requirements including without limitation, any certification required by OSHA and any site -specific training required by Laws. Upon request by Hyatt, MM Spas will provide Hotel with proof satisfactory to Hotel that such persons are so trained, certified and/or licensed.

(c) Representations and Warranties.

(i) By MM Spas. MM Spas represents and warrants that:

(A) It is duly organized, validly existing, in good standing in the state of its incorporation or organization, and has all requisite power and authority to own and lease property and conduct business in the state where the Hotel is located and the individual executing this Agreement on its behalf is duly authorized to do so;

(B) It has no knowledge of any threatened, pending, or ongoing claims or litigation which may materially and adversely affect its ability to perform its obligations under this Agreement;

(C) By executing this Agreement, operating the Spa and otherwise fulfilling its obligations hereunder, MM Spas is not violating, has not violated and will not be violating any restrictive covenant or agreement contained in any other

lease or contract affecting MM Spas or any affiliate, associate or any other person or entity with whom or with it is related or connected financially or otherwise, including, without limitation, any such agreement with the Marilyn Monroe Estate or related entity;

- (D) To its knowledge, or any of its affiliates' knowledge, any of their respective partners, members, shareholders or other equity owners, and none of its respective employees, including MM Spas Employees, officers, directors, representatives or agents is, nor will they knowingly become, (1) a person or entity with whom U.S. Persons or entities are restricted from doing business under regulations of the OFAC of the Department of the Treasury (including those name on OFAC's Specially Designated and Blocked Persons List) or under any Law (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as the same has been, and may hereafter be, from time to time updated and amend, and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities, (2) a "specially designated global terrorist" or other person listed in Appendix A to Chapter V of 31 C.F.R., as the same has been, and may hereafter be, from time to time updated and amended, or (3) a person either included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515 or designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or a person similarly designated under any related enabling legislation or any other similar executive order.

(ii) By Hyatt. Hyatt represents and warrants that it is duly organized, validly existing, in good standing in the state of its incorporation or organization, and has all requisite power and authority to executed this Agreement and conduct business in the state where the Hotel is located and the individual executing this Agreement on its behalf is duly authorized to do so.

13. Audit Rights. MM Spas shall maintain and keep MM Spas Records for at least three (3) years following each applicable Operating Year. MM Spas will keep the MMS Spas Records in accordance with GAAP. MM Spas further agrees that, upon reasonable request and at MM Spa's expense, it will permit Hyatt to, at least once per calendar year, inspect and audit the MM Spas Records, as well as MM Spas' business practices and compliance with all applicable Laws. Nothing contained herein shall limit any of MM Spas' other obligations under this Agreement.

14. Data Privacy and Protection. A breach of this Data Privacy and Protection Provision shall be deemed a material breach of this Agreement.

(a) Requirements for Data Processor. In the event MM Spas or its agents Process Personal Information, MM Spas in connection with this Agreement shall and shall cause MM Spas Employees and MM Spas agents that Process such Personal Information to:

- (i) comply with all applicable Data Protection Laws;
- (ii) Process the Personal Information, including any Personal Information set forth at the end of this subsection only to provide the Services for the Term. MM Spas may Process the following Personal Information: Customers' first and last names, email and physical addresses, telephone numbers,

Spa appointment times/dates, Spa Services purchased, and/or Hotel folio information (to the extent relevant), financial information related to the foregoing;

(iii) agree that, as between the Parties, all such Personal Information shall be deemed to be Hyatt's Confidential Information that is the property of Hyatt;

(iv) Process the Personal Information only on the prior written instructions of Hyatt (including, but not limited to, this Agreement) and only to the extent reasonably necessary for performance of this Agreement, unless required to Process the Personal Information for other purposes by applicable Data Protection Laws;

(v) provide prior notice to Hyatt where a requirement is placed on MM Spas under applicable Data Protection Laws to Process the Personal Information other than in accordance with Hyatt's written instructions, unless the relevant Law prohibits the giving of notice on important grounds of public interest;

(vi) inform Hyatt immediately if, in MM Spas' opinion, Hyatt's instructions would be in breach of applicable Data Protection Laws;

(vii) not disclose the Personal Information to any person except: (A) as required or permitted by this Agreement; (B) with Hyatt's prior written consent; or (C) pursuant to an order or requirement of a court of law, administrative agency, or other governmental body, provided that MM Spas gives reasonable notice to Hyatt to contest such order or requirement;

(viii) promptly notify Hyatt of: (A) requests for information or complaints about the Processing of the Personal Information; (B) requests for access to or transfer of the Personal Information; or (C) requests for any Personal Information to be deleted or corrected or its Processing to be restricted;

(ix) fully cooperate with Hyatt regarding any of the items referred to above and provide Hyatt (to the extent permitted by applicable Data Protection Laws) with information Hyatt reasonably requires to respond to requests or complaints of that or a similar nature (whether made to Hyatt, MM Spas or a third party);

(x) inform Hyatt immediately if the Personal Information may be at risk from seizure (including, without limitation, for purposes of satisfying a debt or responding to an order of a court or regulator), insolvency or bankruptcy measures or any other activities of third parties. MM Spas shall in such cases inform all third parties that the Personal Information is the sole property of Hyatt;

(xi) provide reasonable assistance to Hyatt to conduct privacy impact assessments relating to the Personal Information (and any related consultations) where required under applicable Data Protection Laws;

(xii) upon termination of this Agreement and at the option of Hyatt but only to the extent permitted by applicable Data Protection Laws, promptly return and then delete the Personal Information, or at Hyatt's request, destroy the Personal Information and certify in writing that MM Spas has done so. MM Spas may retain a copy of the Personal Information only to the extent it is obliged to do so by Data Protection Laws of the location where the Personal Information is derived; and

(xiii) not transfer the Personal Information across a national border (other than to Hyatt or to a Hyatt affiliate), except: (A) with Hotel's prior written consent; and (B) subject to any additional requirements of Hyatt (which may, for the avoidance of doubt, require MM Spas to ensure such parties as

are reasonably specified by Hyatt enter into the appropriate contractual clauses in the form approved by the European Commission.

(b) Use of Sub-Processors.

(i) Hyatt provides a general authorization to MM Spas to engage Sub-Processors. MM Spas shall provide Hyatt with a list of those Sub-Processors. MM Spas shall give Hyatt prior notice of any intended addition to or replacement of those Sub-Processors. If Hyatt reasonably objects to that change, Consultant shall refrain from making that addition or replacement.

(ii) MM Spas shall ensure that it has a written contract with any further Sub-Processors it engages to process Personal Information. That contract must impose obligations on the Sub-Processor equivalent to those set out herein and MM Spas shall ensure the Sub-Processor complies with those obligations.

(c) Security of Personal Information. MM Spas shall also:

(i) implement appropriate technical and organizational measures to protect the Personal Information against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access, and against all other unlawful forms of Processing;

(ii) ensure the reliability of MM Spas Employees who have access to the Personal Information, including, without limitation, ensuring that such personnel have received appropriate training, and requiring such personnel to keep the Personal Information confidential;

(iii) notify Hyatt promptly should it be aware that, or reasonably suspect that, any breach of subsections (a)(i) to (a)(xiii), (b)(i) to (b)(ii), or (c)(i) to (c)(ii) above or any other Data Breach has occurred and provide Hyatt with the following information: (A) a description of the nature of the Data Breach, including the volume and type of the Personal Information affected and the categories and approximate number of individuals concerned; (B) the likely consequences of the Data Breach; and (C) a description of the measures taken or proposed to be taken to address the Data Breach, including, where appropriate, measures to mitigate its possible adverse effects;

(iv) perform an investigation to learn the cause of the Data Breach; and

(v) promptly take any proposed steps communicated in accordance with subsection (c)(iii)(A) above and all further steps necessary to remedy the event and prevent the Data Breach's reoccurrence; and

(vi) fully cooperate with Hyatt to comply with any notification requirements that may result from such Data Breach. MM Spas shall document and maintain adequate retention processes and policies for all Data Breaches in accordance with all applicable legal and regulatory requirements.

(d) Audit Rights.

(i) MM Spas shall permit Hyatt or its designated representative to access any of MM Spas' or its agents' or Sub-Processors' premises, personnel and relevant records as may be reasonably required in order to: (A) fulfill any legally enforceable request by any government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any applicable Laws to supervise, regulate,

investigate or influence the matters dealt with in this Agreement or any other affairs of Hyatt; and/or (b) undertake verification that MM Spas is complying with this Section.

(ii) Hyatt shall use its reasonable endeavors to ensure that the conduct of each audit does not unreasonably disrupt MM Spas or delay the provision of Services by MM Spas and that, where possible, individual audits are coordinated with each other to minimize any disruption. Subject to Hyatt's obligations of confidentiality, MM Spas shall provide Hyatt or its designated representative with all reasonable cooperation, access and assistance in relation to each audit. Hyatt shall provide at least five (5) business days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required. The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this subsection (d) unless the audit identifies a material default of MM Spas in complying with its obligations under this Section, in which case MM Spas shall reimburse Hyatt for all its reasonable costs incurred in the course of the audit.

(iii) If an audit identifies that MM Spas is failing to comply with any of its obligations under this Section, without prejudice to the other rights and remedies of Hyatt, MM Spas shall take the necessary steps to comply with its obligations at no additional cost to Hyatt.

(iv) The Parties may agree in writing that a third party report or certification (e.g., a SSAE 16-Type II report) provided by MM Spas will satisfy the above audit requirements.

(e) MM Spas represents, warrants, and covenants that it shall comply with the terms of this Section.

15. Confidentiality.

(a) Non-Disclosure Agreement. This Section will supersede and replace any non-disclosure or confidentiality agreement currently in effect between the Parties or in effect between Hyatt Corporation and MM Spas, the latter solely with respect to matters concerning the Hotel.

(b) Ownership. As between the Parties, each Party will be considered the owner of its Confidential Information and will remain the sole owner thereof. Nothing in this Section is intended or will be interpreted to grant one Party a license or any other interest in or to the other's Confidential Information, except as explicitly set forth herein.

(c) Confidentiality. Each Party will receive, develop and hold the other Party's Confidential Information in the strictest confidence and shall preserve the confidentiality of such Confidential Information with at least the same degree of care that it protects its own most confidential business information. Each Party shall secure and safeguard the other's Confidential Information from disclosure or theft and shall certify destruction of all such Spas Confidential Information upon termination of this Agreement or when such Confidential Information is no longer required by the Party for performance under this Agreement, whichever occurs sooner. Without limiting the foregoing, each Party may only use the other's Confidential Information to perform its obligations under this Agreement and may not sell, transfer, publish, disclose, display or otherwise make available to outsiders, or otherwise use for its own benefit, all or any part of the other Party's Confidential Information without the prior written consent of the first Party, which may be withheld in that Party's sole discretion. Disclosures of Confidential Information between and among a Party's employees and other permitted personnel will be limited to designated employees with a need to know the same and made solely as necessary to enable them to perform obligations under this Agreement. All designated employees with access to the other Party's Confidential Information will be fully informed of, and held to, all security and confidentiality obligations under this Agreement. If any legal authority seeks to require a Party to disclose any Confidential Information of the other Party, then the Party

being asked to disclose shall give the other Party reasonable prior notice, to the extent reasonably feasible under the circumstances, so that the other Party can seek to prevent disclosure.

(d) Co-operation. If notwithstanding each Party's efforts to maintain confidentiality of the other's Confidential Information, one or more of a Party's, including MM Spas Employees, breach their respective confidentiality obligations, the employing Party will notify the other in appropriate detail promptly after learning of same, and will reasonably cooperate with the other, at the breaching Party's expense, in any investigation of the breach and any resulting litigation against the breaching employee(s) or former employee(s).

(e) Remedies. The Parties acknowledge that its breach of the foregoing confidentiality obligations would cause the Party owning the Confidential Information great and irreparable injury for which there would be no adequate remedy at law. Accordingly, the Parties will be entitled to pursue injunctive relief; and if the owning Party proves that a breach or threatened breach (for which there is reasonable evidence) of confidentiality is intended by any of the other Party's officers or senior executives, that Party will reimburse the owning Party's costs and expenses of litigation (including, without limitation, fees of its attorneys and experts) and pay appropriate damages. The non-breaching Party will also receive all other relief awarded by the court.

(f) Duration. The Parties' confidentiality obligations will remain in effect after the cessation or termination of this Agreement. If a dispute arises between the Parties as to whether specified information remains subject to the above confidentiality obligations, the non-owning Party will bear the burden of proving that at the relevant time the information does not fall within the definition of Confidential Information.

16. Intellectual Property License.

(a) Generally. Nothing in this Agreement is intended or will be construed to grant either Party the right to use the other's Intellectual Property without the first Party's prior written consent, as more particularly described below.

(b) Hyatt Intellectual Property. Hyatt grants MM Spas a limited, revocable, royalty-free, worldwide right and license during the Term to use the Hyatt Intellectual Property solely as provided by Hyatt to MM Spas and solely if and to the extent required to allow MM Spas to fulfill its obligations hereunder.

(c) MM Spas Intellectual Property. MM Spas grants Hyatt a limited, revocable, royalty-free, worldwide right and license during the Term to use the MM Spas Intellectual Property, solely as provided by MM Spas to Hyatt and solely if and to the extent required to allow Hyatt to fulfill its obligations hereunder.

(d) Right of Prior Approval. As part of each Party's marketing rights or obligations, it may use the Marks with certain Services or may develop and distribute certain Collateral containing the other Party's Intellectual Property. Each Party must review and approve any use, including with Collateral developed by the other Party, containing the first Party's Intellectual Property before it is displayed, distributed or otherwise made available to the public. For clarity, neither Party may use or display the other's Intellectual Property without the first Party's prior written consent. In addition to the foregoing, Hyatt will have the right to approve any Collateral developed and/or distributed by MM Spas that is (i) targeted to Guests; or (ii) distributed inside the Hotel (excluding the Premises), whether or not such Collateral contains the Hyatt Intellectual Property.

(e) Right of Removal. If either Party reasonably believes that any previously approved Collateral (including signs) is causing or likely to cause damage to its business reputation, its Intellectual Property or its Marks, it may request that such Collateral be removed from public display or distribution; provided, however, that neither Party will be required to recall previously distributed printed materials. The Parties will cooperate in good faith to modify any Collateral to remedy reputational concerns raised under this Section, if possible.

(f) Ownership. Each Party is and will remain the sole owner (or licensor) of its Intellectual Property and any goodwill therein, and nothing in this Agreement is intended or will be construed to transfer any right, title or interest in and to the owning Party's Intellectual Property, except for the license granted above. All goodwill accruing by the use of a Party's Marks will accrue to that Party or its licensors including, if applicable and in the case of MM Spas, and The Estate of Marilyn Monroe, LLC.

(g) Limitations. Each Party agrees that it will not use, register or seek to register any Marks that are confusingly similar to the other Party's Marks, including, without limitation, if MM Spas is the Party using a Mark, ICONIC, except if and to the extent use is permitted hereunder.

17. Future Cooperation and Further Assurances. Hyatt and MM Spas acknowledge and agree that the full effect of Hyatt's transition of its oversight of the Spa to MM Spas is not completely known at this time and that the integrated nature of the Spa may require that, notwithstanding this transition, certain items remain common to the Spa and the Hotel. Certain of these matters have been identified and addressed in this Agreement while other such items may come to light over time. Accordingly, Hyatt and MM Spas agree to negotiate in good faith from time to time as necessary (a) all allocations of revenue, costs and expenses associated with such common items under this Agreement, and (b) any future revisions to this Agreement as may be required to account for them.

18. Termination.

(a) By Hyatt. This Agreement may be terminated by Hyatt immediately upon written notice:

(i) For Cause;

(ii) If there is a breach by MM Spas' of the terms of this Agreement that creates a material threat to the safety of persons or the Hotel, and MM Spas fails to either (A) cure such breach within one (1) day after receipt of written notice from Hyatt thereof, if such breach is capable of cure in that period or (B) secure the material threat in such a way as to render the Premises safe for use by and presence of Customers and Personnel, if such threat cannot be cured as set forth in this Section. As an example only, if MM Spas becomes aware that a piece of Equipment is malfunctioning in such a way as to pose a threat as described herein, MM Spas may remove that Equipment from the public areas of the Premises or indicate that such Equipment is "out of order" or similar designation, so long as such designation is sufficient to notify individuals to avoid the threat within the one (1) day period if such Equipment cannot be repaired or replaced within that time;

(iii) If MM Spas breaches any of its obligations hereunder, including if it fails to provide satisfactory Services, as determined in a commercially reasonable manner, and does not cure such failure or breach within 30 days' receipt of notice from Hyatt reasonably describing the nature of the dissatisfaction or breach. At Hyatt's option, and in lieu of termination for fail to cure a breach under this Section, MM Spas and Hyatt may enter into a written corrective action plan or similar document setting forth any steps MM Spas must take to correct its breach. If such plan is entered into, it shall become a valid and binding part of this Agreement and MM Spas' failure to take such actions will be considered a breach hereof.

(iv) If a writ of attachment or execution is levied against, or other judicial seizure occurs, of substantially all of MM Spas' assets or its interest in this Agreement, such writ or seizure is not dismissed or discharged within 60 days thereafter;

(v) If MM Spas files a bankruptcy petition (or such a petition is filed against it) and the petition is not discharged within 60 days after the date of filing; and

(vi) If the Hotel is sold to new ownership; provided, however, that if Hyatt's successor-in-interest chooses to retain MM Spas to provide the Services, whether as a tenant or otherwise, MM Spas will not be entitled to any liquidated damages for such termination. If Hyatt's successor-in-interest chooses not to retain MM Spas to provide the Services, MM Spas will be entitled to liquidated damages as if Hyatt had terminated for convenience (as described below); and

(vii) For convenience, upon 90 days' written notice to MM Spas; provided, however, if Hyatt terminates for convenience, Hyatt will pay liquidated damages to MM Spas within 30 days after the effective date of termination in the amounts equal to three (3) times the average annual NOI for the three (3) years immediately preceding the year in which the Agreement is terminated. If the Agreement is terminated less than three (3) years after the Effective Date, the average annual NOI will be calculated by taking the total NOI for the entire Operating Period divided by the total number of months in the Operating Period and multiplied by 12.

(b) [Intentionally omitted] .

(c) [Intentionally omitted] .

(d) By MM Spas.

(i) For Cause. This Agreement may be terminated by MM Spas immediately upon written notice, if Hyatt materially breaches its obligations hereunder and does not cure such failure within 30 days' receipt of written notice from MM Spas describing, as completely as possible, the nature of the breach; and

(ii) For Convenience. This Agreement may be terminated by MM Spas for convenience (i.e. for any reason or for no reason) as follows: if MM Spas wants to terminate the Agreement for convenience, MM Spas shall provide Hyatt written notice thereof at least 30 days before the end of the Operating Year preceding the Operating Year during which MM Spas wants to terminate the Agreement for convenience. Such termination shall take effect 180 days after such anniversary. If MM Spas terminates for convenience, it shall pay liquidated damages to Hyatt in an amount equal to the following within 30 days after the effective date of termination: (A) if the termination will be effective during the Initial Term, the amount of NOI for the Operating Year immediately preceding the Operating Year in which termination is effective; and (B) if the termination will be effective during a Renewal Term, the amount of NOI for the six (6) months immediately preceding the commencement of the Operating Year in which termination is effective. If this Agreement is terminated pursuant to this Section 18(d)(ii) during the 2019 Operating Year, NOI shall be calculated as the sum of: (A) NOI of MM Spas for the period commencing on the Effective Date (i.e. September 30, 2018) and ending on December 31, 2018; and (B) the NOI of Niki Bryan Spas International, LLC, as the former tenant of the Premises, for the period beginning on January 1, 2018 and ending on the date immediately prior to the Effective Date.

(e) [Intentionally omitted]

(f) [Intentionally omitted]

(g) Effect of Termination.

(i) As of the effective date of termination for any reason, all licenses and other rights granted by one Party to the other and set forth herein will automatically end and neither Party may exercise its rights thereunder, including, without limitation, MM Spas' right to enter and operate the Spa and each Party's Intellectual Property license to the other, without the prior written consent of the other.

(ii) Upon termination, each Party must destroy or return the Confidential Information of the other Party, at the owning Party's option.

(iii) MM Spas will pay a percentage of the Capital Reserve Fund balance to Hyatt within 10 business days after the effective date of termination, as follows: 15% of Capital Reserve Fund if annual Net Spa Sales \leq \$3.5 million and 20% if annual Net Spa Sales $>$ \$3.5 million; measuring annual Net Spa Sales for the year immediately preceding the year in which the Agreement is terminated.

(iv) MM Spas will leave the Premises in the same condition as the date MM Spas opened for business (with approved Improvements), reasonable wear and tear and loss due to Casualty excepted, and will surrender all keys to Hyatt. MM Spas will also forfeit and quit title to any and all Improvements, modifications, furnishings, fixtures, and, except for termination by MM Spas for Hyatt's uncured breach, to Equipment, excluding any computer hardware or software and any materials containing MM Spas' Intellectual Property.

(v) For the avoidance of doubt, termination of this Agreement by either Party will not affect any amounts due and owing from one Party to the other incurred before termination.

(vi) In addition to those other Sections set forth above, Sections 8(b)(i)(F), 13, 16(f)-(g), 18(e)-(h), 25, 28-34, 36 and all payment obligations incurred before termination or expiration that remain unpaid will survive termination or expiration of this Agreement, as well as all other Sections and provisions that by their nature should so survive.

(h) Holdover By MM Spas. For clarity, MM Spas may continue to occupy and/or use the Premises after the expiration or earlier termination of this Agreement without the express written consent of Hyatt. No acceptance of any License Fee, Percentage License Fee or any other sum by Hyatt, and no act or statement by any employee or agent of Hyatt will constitute the consent of Hyatt to MM Spas' holding over. If MM Spas continues to occupy and/or use the Premises without the express written consent of Hyatt, such occupation and use will be at the sufferance of Hyatt and will not be construed as a renewal of this Agreement. In such case, License Fee at one hundred fifty percent (150%) times the amount of License Fee payable during the last year or month, as applicable, of this Agreement and one hundred percent (100%) of the Percentage License Fee and other charges due pursuant to this Agreement will be payable to Hyatt measured on a monthly basis and payable on the first of each calendar month for each calendar month during which MM Spas continues to occupy and use the Premises. In addition, such continuation will be subject to every other term, covenant and provision of this Agreement. If MM Spas continues to occupy and/or use the Premises, it shall indemnify and hold harmless the Indemnitees (as defined below) for all of the Indemnitees' direct and consequential damages, including costs, fees, expenses, damages and attorneys' fees incurred by Hyatt as a result of such actions and omissions, including but not limited to, damages and expenses incurred by Hyatt for its inability license and/or deliver possession of the Premises to a new licensee and/or to a tenant. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

19. Insurance.

(a) Throughout the Term, Hyatt shall carry and maintain in force an All Risk Property insurance policy in an amount equal to the full replacement cost of the Hotel as reasonably determined by Hyatt, provided that Hyatt shall have the right to self-insure;

(b) Throughout the Term, MM Spas shall carry and maintain in force all of the foregoing insurance policies and amounts through companies satisfactory to Hyatt:

(i) Workers' Compensation insurance as required by applicable statutes and Employer Liability in a minimum amount of \$1,000,000 per accident/employee;

(ii) Comprehensive General and Automobile Liability insurance against damages and liability (including attorneys' fees) on account of its use of the Premises and provision of Spa Services, or any property damage, or any injuries to or the death of any person however occasioned at or about the Hotel (including the Premises) (and as respects MM Spas' employees working at the Premises and occupants of all portions of the Hotel to which said employees are permitted access) in the minimum amount of \$1,000,000 for injuries to or the death of any one or more persons in any one accident and/or for damages to property, and \$2,000,000 in the aggregate. Such Comprehensive General Liability and Automobile insurance shall be endorsed (to the extent necessary) to include every aspect of MM Spas' business operation and shall include (or a separate policy shall provide coverage for) hazards of premises, personal and advertising injury, products and completed operations and contractual liability in the minimum amount of \$1,000,000 per occurrence;

(iii) Fire and extended coverage insurance on all fixtures and Equipment used in connection with the operation of the Spa, all betterments and Improvements and other personal property of MM Spas, Products and other stock for the full insurable value thereof existing from time to time;

(iv) Business interruption insurance against interruption resulting from loss or damage from the hazards insured against above to all MM Spas' owned property which prevents normal operations from continuing written on an annual loss of income basis in an amount equal to one year's expected NOI before deduction for income tax; and

(v) Errors and Omissions ("E&O") insurance in a minimum amount of \$1,000,000 USD per occurrence. Such E&O insurance shall be maintained by the MM Spas for a period of three (3) years following completion of the Services.

(c) The company or companies writing any insurance which MM Spas, MM Spas' Sub-Contractors or Hyatt is required to take out and maintain or cause to be taken out or maintained hereunder shall be licensed to do business in the state in which the Hotel is located and have and maintain Best's Ratings of A: VII or better in each category.

(d) Each policy set forth above will provide that it may not be canceled or changed without at least thirty (30) days' prior written notice to Hyatt.

(e) MM Spas will furnish to Hyatt a Certificate of Insurance evidencing such coverage prior to the commencement of Services hereunder and will continue to provide Hyatt with subsequent Certificates of Insurance evidencing uninterrupted compliance with this insurance requirement until the termination of this Agreement. All policies required to be carried hereunder (except Workers' Compensation and E&O insurance) shall name San Diego Unified Port District, Hyatt Corporation, HST San Diego HH LP and Manchester Grand Resorts, L.P. and any other parties as requested by Hyatt as additional insureds; such insurance shall be primary and not contributory with the foregoing parties' insurance.

(f) Each Party will waive, and cause its insurance carrier to waive, any right of subrogation to be asserted against the other or any additional insured.

(g) MM Spas further agrees to require and cause the same insurance coverages and Certificates of Insurance as set forth herein, and the indemnifications as set forth below, from any and all of its Sub-Contractors, prior to any such Sub-Contractor's commencement of Services.

(h) The provisions of this Section shall survive termination or expiration of this Agreement.

20. Indemnification.

(a) TO THE MAXIMUM EXTENT PERMITTED BY LAW, MM SPAS SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SAN DIEGO UNIFIED PORT DISTRICT, HYATT CORPORATION, HST SAN DIEGO HH LP, MANCHESTER GRAND RESORTS, L.P, HOST HOTELS & RESORTS, L.P., AND THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, PARTNERS, MEMBERS, BENEFICIARIES, AGENTS, EMPLOYEES AND INVITEES ("INDEMNITEES") FROM AND AGAINST ANY AND ALL ACTIONS, COSTS, CLAIMS, LOSSES, EXPENSES AND/OR DAMAGES, INCLUDING INDEMNITEES' ATTORNEYS' FEES (TOGETHER, "CLAIMS"), ARISING OUT OF OR IN ANY WAY RELATING TO OR INCIDENTAL TO MM SPAS' OCCUPANCY OR USE OF PREMISES, THE PERFORMANCE OF THE SERVICES TO BE PERFORMED BY MM SPAS HEREUNDER OR THE PRESENCE OF MM SPAS EMPLOYEES AT THE HOTEL (INCLUDING ON THE PREMISES) INCLUDING, BUT NOT LIMITED TO ANY AND ALL CLAIMS BY MM SPAS EMPLOYEES RELATING TO THEIR PERFORMANCE OF SERVICES ON BEHALF OF MM SPAS HEREUNDER, ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO USE OF THE MM SPAS INTELLECTUAL PROPERTY, INCLUDING CLAIMS THAT THE MM SPAS INTELLECTUAL PROPERTY VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT AND ANY FINDING BY A COURT OR OTHER GOVERNMENTAL AUTHORITY THAT MM SPAS AND ONE OR MORE INDEMNITEES ARE JOINT OR CO-EMPLOYERS OF MM SPAS EMPLOYEES.

(b) MM SPAS SHALL FURTHER INDEMNIFY INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS FOR OR ARISING OUT OF ANY BODILY INJURIES TO OR THE DEATH OF ANY OF MM SPAS' EMPLOYEES WORKING AT THE HOTEL (INCLUDING ON THE PREMISES), HOWEVER CAUSED OR OCCASIONED, EXCEPTING THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF INDEMNITEES.

(c) IN ADDITION TO THE FOREGOING INDEMNIFICATION OBLIGATIONS, MM SPAS AND ITS SUB-CONTRACTORS SHALL INDEMNIFY AND HOLD HARMLESS INDEMNITEES, AND BE SOLELY RESPONSIBLE FOR PAYING AND KEEPING ALL RECORDS REQUIRED FOR WAGE AND HOUR PURPOSES, INCLUDING EXEMPTION CERTIFICATES, WAGES, WITHHOLDING TAXES, SOCIAL SECURITY TAXES, WORKERS' COMPENSATION COVERAGE AND PAYMENTS, UNEMPLOYMENT INSURANCE AND OTHER TAXES OR INSURANCE INCLUDING WORKERS' COMPENSATION INSURANCE INCIDENT TO EMPLOYMENT. MM SPAS SHALL ALSO BE RESPONSIBLE FOR COSTS OF HEALTH INSURANCE AND OTHER BENEFITS OFFERED TO ITS EMPLOYEES, AGENTS, SUB-CONTRACTORS OR WHICH ARE OWED TO OR WITH RESPECT TO SUCH EMPLOYEES, AGENTS OR SUB-CONTRACTORS. MM SPAS AGREES TO PROVIDE PROOF OF ITS COMPLIANCE WITH THESE REQUIREMENTS UPON REQUEST. WITH RESPECT TO THESE REQUIREMENTS, MM SPAS ACKNOWLEDGES THAT HYATT MAY REGULARLY REQUEST INFORMATION ABOUT I-9, OSHA, PAYROLL AND WAGE AND HOUR RECORDS.

(d) MM Spas shall cause its clients to release the Indemnitees from all liability for all potential Claims that such clients could make within the scope of the indemnity by MM Spas provided for above.

(e) THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS LEASE.

21. Fee Owner and Ground Lease.

Notwithstanding anything in this Agreement to the contrary:

(a) No assignment or sublicensing of this Agreement pursuant to Section 22 shall be permitted unless such assignment or sublicensing is permitted by the Ground Lease or otherwise approved in writing by Fee Owner.

(b) No changes to or removal of MM Spas' Improvements or signage shall be permitted unless such changes or removal are permitted by the Ground Lease or otherwise approved in writing by Fee Owner.

(c) Any holdover by MM Spas pursuant to Section 18 above shall also be subject to the prior express written consent of Fee Owner.

(d) This Agreement and any and all future amendments or modifications shall be subject to the approval of Fee Owner. In the event of a disapproval by Fee Owner, this Agreement shall be and become void and of no further force or effect and such disapproval shall not be deemed a default by Hyatt.

(e) This Agreement is subject to all obligations contained in the Ground Lease. MM Spas shall refrain from any action or inaction that would cause the Hotel to breach its obligations under the Ground Lease. In the event of any conflict or inconsistency between this Agreement and the Ground Lease, the provisions of the Ground Lease shall govern and prevail.

22. Assignment and Sublicensing. Except as permitted in this Section, MM Spas shall not assign this Agreement, in whole or in part, nor sublicense all or any part of the Premises, nor license concessions or departments therein, nor grant any other collateral assignments affecting this Agreement, without first obtaining the written consent of Hyatt, which consent may be granted or withheld in Hyatt's sole discretion. Hyatt's election to accept any assignee, sublicensee or transferee as the licensee hereunder and to collect monies from such assignee, sublicensee or transferee will not release MM Spas or any subsequent licensee from any covenant or obligation under this Agreement.

23. Subordination. MM Spas agrees that this Agreement is and will be automatically subject and subordinate to any ground lease or mortgage now or hereafter placed on the land of which the Hotel and Premises are a part and to all advances made or hereafter to be made upon the security thereto and to all amendment, modifications and replacements thereof. Upon ten (10) business days prior request by Hyatt, MM Spas shall further evidence in writing the subordination of its rights hereunder to any ground lease or to the lien of any mortgage now or hereafter in force. If any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage, or delivery of a deed-in-lieu of foreclosure, or in the event of termination of any ground lease, made by Hyatt covering the Premises, MM Spas shall (at the option of the purchaser or ground lessor) attorn to the purchaser or ground lessor upon any such foreclosure sale, conveyance or termination and recognize such purchaser, grantee or ground lessor, or their successors or assigns, as Hyatt under this Agreement.

24. [Intentionally omitted] .

25. Independent Contractor. This Agreement is an operating, sub-management and license agreement and does not create the relationship of landlord and tenant between Hyatt and MM Spas. No estate will pass out of Hyatt and MM Spas' interest in the Premises shall not be subject to levy, sale or other involuntary assignment. In addition, MM Spas is an independent contractor and all persons employed to perform Services hereunder, including MM Spas Employees, are employees of MM Spas and not of Hyatt. It is expressly understood that the Parties' execution of this Agreement does not, in any way or for any purpose, make either party a partner of the other in the conduct of its business, or otherwise, or joint venture or member of a joint enterprise with the other. If any individual including, but not limited to, any MM Spas Employees, or any entity including, but not limited to, any government agency alleges, asserts or otherwise claims that Hyatt is the employer or joint employer of any of MM Spas Employees, MM Spas agrees to affirmatively confirm that it is the sole employer of any such employee. MM Spas further agrees to make such affirmative representations in the form requested by Hyatt, including by affidavit or declaration, if appropriate.

26. No Solicitation. Each Party agrees it will not solicit for employment, directly or indirectly, any employees of the other Party for employment with such Party during the Term without the other Party's prior written consent. For the avoidance of doubt, MM Spas' fulfillment of its obligations to interview current Spa employees will not be a violation of this Section.

27. Force Majeure. Neither Party will have any liability for the failure to perform or a delay in performing any of its obligations under this Agreement if that failure or delay is the result of any legal restriction, strike, flood, fire, public emergency, revolution, insurrection, riot, war, unavoidable mechanical failure, electricity interruption, weather event or any other cause beyond the control of either Party. If either Party's performance under this Agreement is made impossible due to acts of God, war, government regulation, terrorism, disaster, strikes, civil disorder, curtailment of transportation facilities, or any other emergency of a comparable nature beyond the Party's control, making it impossible, illegal or which materially affects the Party's ability to perform its obligations under this Agreement, that Party will not be required to perform for the duration of such event. In such event, the non-performing Party shall give written notice to the other party within five (5) days of such occurrence.

28. Notices. All notices, requests, demands and other communications hereunder will be in writing and delivered or mailed, with postage prepaid, to the Party intended at its address set forth above, or to such address as a Party may specify in writing. Such notice shall be deemed to be given upon receipt or refusal in the case of hand delivery, within 1 day of mailing for overnight mail and within 3 days of mailing for regular mail services.

29. Governing Law, Jurisdiction and Venue. Hotel and MM Spas hereby agree that the laws of the State in which the Hotel is located will govern this Agreement. Hotel and MM Spas consent to the exclusive jurisdiction of the courts location in that State over any disputes between them arising out of this Agreement. Venue for all such disputes will be in the city or county in which the Hotel is located.

30. Binding. This Agreement shall inure to and bind the successors, assigns and representatives of the Parties, provided, however, this Agreement may not be assigned in whole or in part by MM Spas without the prior written consent of Hyatt.

31. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto, and supersedes any prior agreement promises and understandings between concerning the subject matter hereof. No representations, inducements, promises or agreements, oral or other, between the Parties not embodied herein, shall be of any force or effect.

32. Amendment of Agreement. This Agreement may be amended only by a written instrument signed by both Parties.

33. Legal Fees. If any legal action is taken by either Party against the other Party to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party to such action will pay to the prevailing party all court costs, reasonable attorneys' fees and expenses incurred by the prevailing Party.

34. Exhibits. The Exhibits attached to this Agreement are incorporated into it by reference. If there are any terms and conditions contained in any Exhibit attached hereto which are inconsistent with or additional to the terms and conditions contained in this Agreement, the terms and conditions of this Agreement will prevail over any inconsistent terms.

35. EEOC Compliance. Hyatt is an equal opportunity employer and federal contractor or subcontractor. Consequently, the Parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

36. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe neither the scope of this Agreement nor the intent of any provision thereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates indicated:

Hyatt Corporation, as agent of HST San Diego HH, LP d/b/a Manchester Grand Hyatt San Diego

By: [Signature]
 Name: Daniel Kuperschmid
 Title: GM
 Date: 5/28/19

Sanford Spas, LLC (d/b/a/ Marilyn Monroe Spas)

By: [Signature]
 Name: Gerald Woelcke
 Title: CEO
 Date: 5/22/19

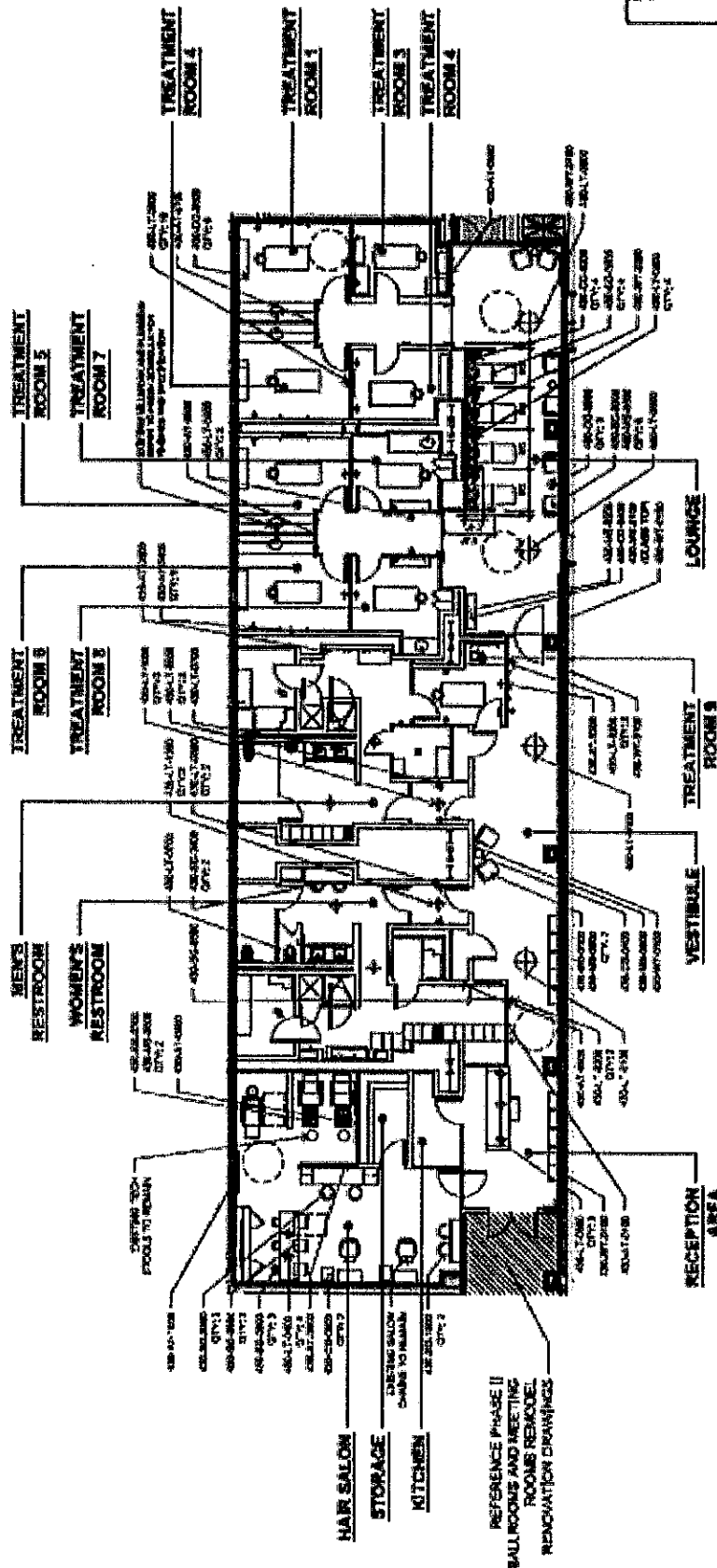
ACKNOWLEDGED AND APPROVED:

HST San Diego HH, LP,

By: HST San Diego HH Lessee GP LLC,
 its general partner

Approved by: [Signature]
 Name: Jeffrey S. Clark
 Title: Vice President
 Date: 6/3/19

EXHIBIT A Premises



KIN SPA
01 THIRD LEVEL FURNITURE PLAN

Exhibit B
Definitions

- (a) **Affiliate** means any entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a Party. As used herein, "control" means the power to direct the management or affairs of an entity, and "ownership" means the beneficial ownership of 50% or more of the voting equity securities or other equivalent voting interests of the entity;
- (b) **Annual Base License Fee** has the meaning given it in Section 10(a) of this Agreement;
- (c) **Annual Budget** means the Annual Operating Budget and an Annual Capital Budget for a given Operating Year unless otherwise set forth in this Agreement;
- (d) **Annual Capital Budget** means a budget setting forth any estimated costs associated with capital Improvements MM Spas is required to make under this Agreement;
- (e) **Annual Operating Budget** means a budget setting forth anticipated Gross Spa Sales and Operating Expenses;
- (f) [Intentionally omitted];
- (g) **Average Monthly Gross Spa Sales** will be calculated as follows: the Gross Spa Sales of the 12 months immediately preceding the effective date of termination divided by 12. If this Agreement is terminated less than 12 months after the Effective Date, Average Monthly Gross Spa Sales will be calculated by taking the total Gross Spa Sales for the entire Operating Period divided by the total number of months in the Operating Period;
- (h) **Average Monthly NOI** will be calculated as follows: the NOI of the 12 months immediately preceding the effective date of termination divided by 12. If this Agreement is terminated less than 12 months after the Opening Date, Average Monthly NOI will be calculated by taking the total NOI for the entire Operating Period divided by the total number of months in the Operating Period;
- (i) **Base License Fee** means the amount set forth in Section 10(a);
- (j) **Body Services** means the following Spa Services: massage Services (including hand and foot rubs and scalp/head massages), other body work (e.g. exfoliating wraps), waxing services, and facials;
- (k) **Capital Reserve Fund** means a fund for the purpose of replacement of furniture, fixtures and equipment in the Spa;
- (l) **Casualty** means fire, the elements, accident or other casualty whether or not covered by insurance;
- (m) **Collateral** means any marketing, promotional or advertising materials in any medium;
- (n) **Common Areas** means (i) all areas of the Hotel open to the general public; (ii) any trash, laundry and/or recycling facilities, and necessary ingress and egress to the Premises which MM Spas must



have access to perform its obligations hereunder; and (iii) the Hotel employee parking lot and necessary ingress and egress;

- (o) **Confidential Information** means any information in any medium (i) concerning a Party's tests, ideas and technologies, business or business plans; (ii) which a Party maintains for business purposes, including, but not limited to, information regarding a Party's customers, employees and vendors; (iii) information disclosed by one Party to another; and (iv) any other information which a Party is informed or reasonably ought to know the other Party regards as confidential. However, Confidential Information does not include (or as appropriate, shall cease to include) information (i) which a Party established it knew prior to first disclosure by the other (except that if one Party has paid the other to create or develop the information in question, this exception shall not apply), (ii) a Party publishes or which otherwise enters the public domain without fault of the other Party, and (iii) which is independently developed by persons who have not had access to the other Party's Confidential Information;
- (p) [Intentionally omitted];
- (q) [Intentionally omitted];
- (r) **Customers** means customers of the Spa, including Guests;
- (s) **Data Breach** means any breach of the Data Privacy and Protection Provision or any other breach of security or unauthorized disclosure of or access to any Personal Information;
- (t) **Data Privacy and Protection Provision** means Section 14 of this Agreement;
- (u) **Data Protection Laws** means data protection and privacy Laws in any relevant jurisdiction from time to time that are applicable to MM Spa's Processing of Personal Information in accordance with this Agreement including, but not limited to, European Union law, the GDPR, the law of any current Member State of the European Union, and the law of any state that subsequently becomes a Member State of the European Union;
- (v) [Intentionally omitted];
- (w) **Default Rate** means the interest rate that is at the higher of 6% or the maximum rate allowable by law;
- (x) **Equipment** means any and all equipment and materials used in the Spa or in connection with MM Spas' provision of the Services hereunder including, without limitation, massage and manicure tables, hair styling equipment and materials, cleaning materials, and computer hardware and software;
- (y) **Existing Spa Personnel** means those individuals currently working at the Spa, including, without limitation, front-desk personnel, janitorial staff and Spa Services providers;
- (z) **For Cause** means (i) the commission of any criminal act, intentional tort or act of gross negligence by MM Spas, MM Spas Employees or any other personnel employed or retained by MM Spas hereunder and/or, to the extent note covered in (i), (ii) MM Spas' intentional breach of its confidentiality obligations or the Intellectual Property license granted to it by Hyatt and (iii) MM Spas' breach of the same obligation, term or condition more than twice in any consecutive 24 month period;

- (aa) **GAAP** means generally accepted accounting principles;
- (bb) **"GDPR"** means EU General Data Protection Regulation 2016/679.
- (cc) **Gross Sales of Merchandise** means all receipts and revenues of the Spa from sales of retail products and merchandise sold at the Spa;
- (dd) **Gross Sales of Services** means all receipts and revenues of the Spa from sales of the Spa Services;
- (ee) **Gross Spa Sales** means all receipts and revenues of the Spa from all sources of any kind including, without limitation, the sale of Spa treatments, retail products, and memberships, computed on an accrual basis in accordance with GAAP but excluding (i) sales tax collected from Customers and actually paid to the applicable governmental agency; (ii) gratuities paid by Customers for Services or Spa Products; (iii) proceeds paid for an insurable loss (unless paid for the loss or interruption of business and representing payment for damage for loss of income and profits of those Spa Services which are intended to generate Gross Spa Sales); (iv) discounts and allowances for Spa Services;
- (ff) **Guests** means Hotel guests and patrons;
- (gg) **Guest Rooms** means sleeping rooms at the Hotel;
- (hh) **Hazardous Materials** means any explosive, toxic, radioactive, infectious, corrosive or otherwise hazardous chemical, substance, material or waste or component thereof;
- (ii) **Hotel** has the meaning given it this Agreement's Recitals;
- (jj) **Hotel Fitness Center** means any fitness center, gym or similar facility located in the Hotel or on its grounds;
- (kk) **Hyatt Intellectual Property** means the Hyatt Marks and any images, advertising copy, text, films, websites, multimedia clips or any other materials protected by copyright owned or licensed by Hyatt or its affiliates and provided to MM Spas;
- (ll) **Hyatt Marks** means the trade names and trademarks "Hyatt", "Hyatt Gold Passport", "Regency", "Park", "Andaz", "Hyatt Place", "Hyatt House", and "Grand", the Hyatt crest, and "Manchester Grand Hyatt San Diego," any other names or trademarks containing any of the foregoing, as well as ICONIC;
- (mm) **Hyatt Systems** means any and all computer systems and networks installed at the Hotel or otherwise used or provided by Hyatt, including Hyatt's POS system;
- (nn) **Improvements** means modifications, renovations, alterations, improvements and refurbishments to be made to the Premises, as well as any color schemes, furniture, fixtures, signage and other design and technology elements, materials, equipment and supplies to be attached, made, used, or included in, for or to the Premises;
- (oo) [Intentionally omitted];

- (pp) **Initial Term** means the Effective Date through October 1, 2023, unless earlier terminated by either Party as permitted in this Agreement;
- (qq) **Laws** means all national and international, federal, state and local statutes, rules, regulations, ordinances and court orders;
- (rr) **License Fee** means the Base License Fee, Percentage License Fee, Port Charges and any and all other amounts owed by MM Spas to Hyatt on a monthly basis including, without limitation, utilities payments;
- (ss) **License Fee Commencement Date** has the meaning given it in Section 10(a) of this Agreement;
- (tt) **Liens** means mechanics' liens, materialmen's liens or other liens;
- (uu) **Linens** means towels, face cloths, bedding, robes, and slippers to be used in connection with MM Spa's provision of Spa Services, excluding pool linens;
- (vv) **MM Spas Employees** means employees of MM Spas and any independent contractors who perform Spa Services or other Services generally or commonly performed by employees;
- (ww) **MM Spas Intellectual Property** means the MM Spas Marks and any images, advertising copy, text, films, websites, multimedia clips or any other materials protected by copyright owned or licensed by MM Spas and provided to Hyatt;
- (xx) **MM Spas Marks** means the trade names and trademarks "Marilyn Monroe Spas", "Marilyn Monroe", and "Be Wonderful," or any name or trademark containing any of the foregoing;
- (yy) **MM Spas Records** means complete and accurate original cash register receipts, books, records and accounts such as would ordinarily be examined by an auditor to determine and verify Gross Spa Sales and any other transactions MM Spas conducts under this Agreement;
- (zz) **Monthly Statements** means operating statements for the Spa which will include, at a minimum, Gross Spa Sales, NOI and Operating Expenses for the previous month as well as an accounting for all Gross Spa Sales collected by Hyatt, whether paid to MM Spas or not as of the date the Monthly Statement is prepared;
- (aaa) **Net Spa Sales** means Gross Spa Sales less Port Charges.
- (bbb) **NOI** means net operating income calculated as set forth in Exhibit F;
- (ccc) [Intentionally omitted]
- (ddd) **Operating Expenses** means all costs and expenses incurred as a result of or in relation to Spa operations, including, without limitation, utilities, any type of License Fee payments to Hyatt out of Gross Spa Sales or other revenues, the Capital Reserve, credit card processing fees, insurance premiums and labor costs;
- (eee) **Operating Period** means the Term;
- (fff) **Operating Year** is defined as the calendar year beginning January 1 and ending December 31;

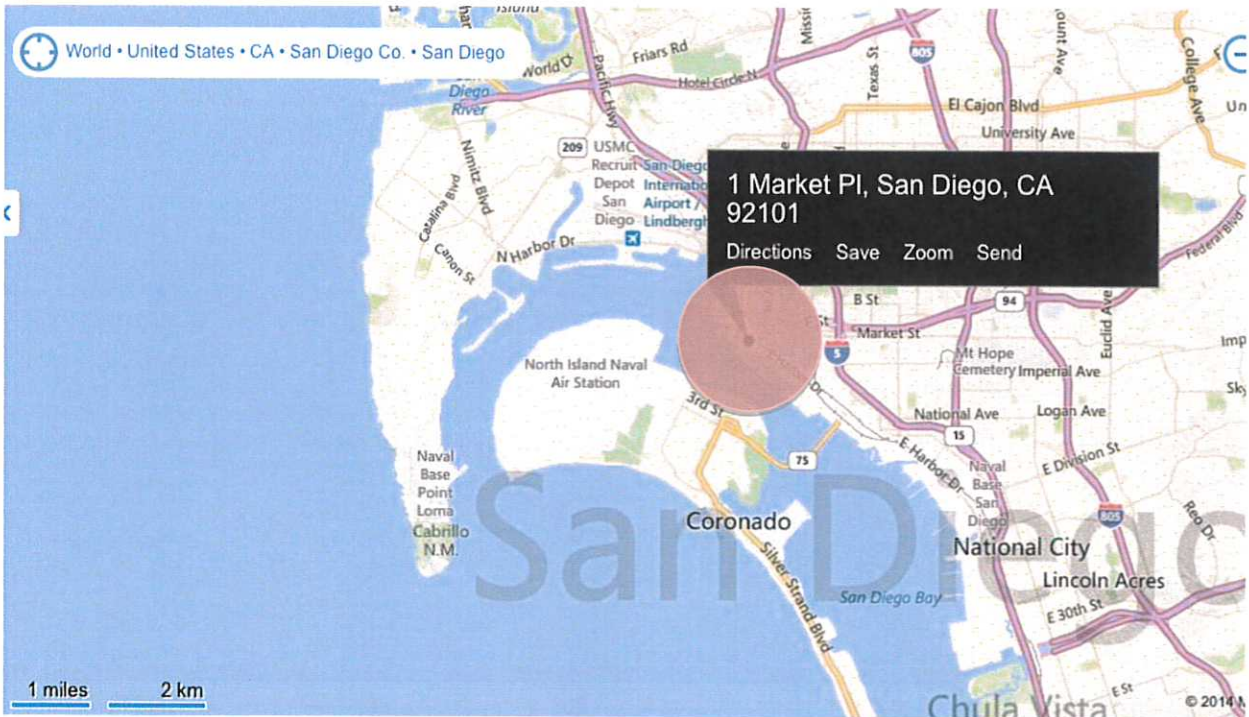
- (ggg) **Packages** means Guest packages that include, at a minimum, Guest Room and Spa Services reservations;
- (hhh) **Percentage License Fee** has the meaning given it in Section 10(a) of this Agreement;
- (iii) **Permitted Use** means the performance and provision of the Services all under the trade name and trademark(s) Marilyn Monroe Spa as set forth in this Agreement;
- (jjj) **Personal Information** means any information relating to an identified or identifiable natural person;
- (kkk) **Port Charges** mean the percentage amounts payable by MGR to the Port of San Diego as ground rent, which are, as of the Effective Date, are for the Premises and for any Services provided elsewhere at the Hotel the total amount of: (1) 5% of monthly Gross Sales of Merchandise; (2) 5% of monthly Gross Sales of Salon Services and (3) 10% of monthly Gross Sales of Body Services;
- (lll) **POS Interface** means a software program or application licensed by MM Spas from a third-party provider approved by Hyatt that allows MM Spas' POS system to interact with the Hyatt Systems solely to the extent necessary to allow MM Spas to (1) determine whether a Customer is a Guest; (2) determine whether such Guest is authorized by Hyatt to bill such charges to his or her Guest folio; and (3) bill such charges as described in this Agreement;
- (mmm) **Premises** has the meaning given it in the Agreement's Recitals and in Exhibit A;
- (nnn) **Process** and its variants (excluding Processor, which is defined below) includes, without limitation, access, collect, record, organize, use, store, adapt, alter, retrieve, consult, transfer, disclose or destroy;
- (ooo) **Processor** has the same meaning given in the GDPR;
- (ppp) **Products** means products used in Spa Services and/or sold at retail in the Spa including, without limitation, face and hair treatment products, nail polish, lotions and creams;
- (qqq) **Renewal Default** means any of the following: (1) any one License Fee payment is more than 45 days past due; (2) any three (3) License Fee payments are more than 30 days past due during the Initial Term or any one (1) License Fee payment is more than 30 days past due during the Renewal Term; and (3) any other breach has occurred that, if left uncured, would have permitted Hyatt to terminate this Agreement For Cause;
- (rrr) **Renewal Option** means the option to renew this Agreement for a Renewal Term;
- (sss) **Renewal Term** means two (2) five-year periods;
- (ttt) **Salon Services** means the following Spa Services: hair cut, color, blow outs, trims, and styling Services (but specifically excluding any scalp or head massages), manicures, pedicures and make-up/cosmetics application and Services (but excluding hand or foot rubs);
- (uuu) **Services** means all services performed by MM Spas hereunder, whether for Hyatt or Customers and including, without limitation, operations, management, training and Spa Services;

- (vvv) **Spa** has the meaning given it in this Agreement's Recitals;
- (www) **Spa Operating Hours** means the hours the Spa will be open for the provision of Spa Services, which is 8:00 a.m. to 8:00 p.m. daily, which is subject to change with written approval;
- (xxx) **Spa Services** means both Salon and Body Services and, in any case, all treatments, procedures and Services provided to Customers including, without limitation, massages, facials, body treatments, hair styling, manicures, pedicures, and waxing;
- (yyy) **Spa Supervisor** means an MM Spas Employee at a supervisory or managerial level and who will act as the lead contact between MM Spas Employees and Hyatt;
- (zzz) **Sub-Contractors** means independent contractors or any other third parties or person(s) who are not employees of MM Spas or who are not independent contractors included in the defined term MM Spas Employees;
- (aaaa) **Sub-Processors** means Sub-Contractors that Process Personal Information which are either affiliates of MM Spas or Processors engaged by MM Spas as at the date of this Agreement
- (bbbb) **Taxes** means any and all taxes, assessments and premiums;
- (cccc) **Term** means the Initial Term and all Renewal Terms, if any;
- (dddd) **Utilities Systems** means HVAC, exhaust, electrical, water, life safety, sewer or any other utility or safety services provided to the Premises;

Exhibit C Exclusivity Radius

2 miles radius of Hotel, excluding the City of Coronado

San Diego Marriott Marquis & Marina, San Diego Marriott Gaslamp Quarter, Hilton San Diego Gaslamp Quarter



**Exhibit D
Waiver**


spas

WAIVER AND RELEASE OF LIABILITY FOR SPA AND SALON SERVICES

Please read this document carefully. It affects your legal rights.

I, the undersigned, acknowledge and agree that I am or have been fully informed about the nature of the services and treatments I have requested and that that will be provided to me, including any products that may be used to provide them ("**Services**") at the Marilyn Monroe Spa ("**Spa**") located on the premises of the Manchester Grant Hyatt San Diego ("**Hotel**") or in my guest room at the Hotel. I also acknowledge and agree that I am fully aware of, and have disclosed to the individual providing me such Services, my own physical limitations and all relevant medical information, and I agree to assume the all risk, whether known or unknown to me, of accepting the Services. I acknowledge that if I have any medical conditions, allergies, medications (oral or topical) that may be affected by the treatment or services requested, or if I have recently had surgery or other spa or beauty treatments, such as chemical or laser peels, that I have disclosed this information to my Services provider and had the opportunity to discuss such conditions with him or her. I acknowledge that it is my sole decision to receive the Services. If any Services cause me any personal injuries, pain or discomfort, I will immediately advise my Services provider of this condition and cease further Services. I understand that the Services are for cosmetic, recreational or relaxation purposes only, and are not a substitute for medical treatment or medications and also that the Spa will make no evaluation nor recommendation – and I will not construe any statement or action as an evaluation or recommendation – with respect to whether I am sufficiently physically fit or healthy enough for the Services or treatment requested.

I am aware that it is always advisable to consult a physician before undertaking any such Services.

In addition, I understand and agree that the Spa is independently managed and operated by Sanford Spas, LLC d/b/a Marilyn Monroe Spas ("**MM Spas**") and that all Services are provided to me by MM Spas. MM Spas is not affiliated with or any agent of the Hotel, Hyatt Corporation, HST San Diego HH LP, Manchester Grand Resorts, L.P., San Diego United Port District, or any of their affiliated or ultimate parent companies (together, the "**Hotel Companies**"). I acknowledge and agree that the Services are not operated, offered or run by the Hotel Companies, none of which are in any way responsible for the quality, content or any other aspect of the Services. Any questions or concerns which I may have regarding the safety of or risks associated with the Services should be directed to MM Spas,

I hereby forever release MM Spas, each Hotel Company, the owner of the Spa, the owner of the Hotel and their parent and subsidiaries, officers, directors, agents, affiliates, employees, contractors, (collectively, "**Releasees**") from any and all claims, damages, demands, rights or causes of action, present or future, known or unknown, anticipated or unanticipated (together, "**Claims**"), arising out of or in any manner resulting from any Services provided by or at the Spa or MM Spas, including, without limitation, any claims, damages, demands, rights or causes of action resulting from or arising out of the negligence of Releasees, or the provider or any employee or agent of the Releasees. Further, I hereby agree to waive any and all of such Claims and the above release and waiver of Claims is to be binding upon my heirs, executors,



administrators and assigns. Further, and without limiting any of the above, I hereby specifically agree to release and discharge Releasees from any and all liability for any loss or theft of, or damage to, personal property.

I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS WAIVER AND RELEASE AND FULLY UNDERSTAND THAT IT IS A WAIVER AND RELEASE OF LIABILITY. I FULLY UNDERSTAND THAT I FOREVER GIVE UP ANY RIGHT TO SUE OR MAKE A CLAIM AGAINST RELEASEES IF I SUFFER INJURY OR DAMAGE AS A RESULT OF THE SERVICES EVEN THOUGH I DO NOT KNOW WHAT OR HOW EXTENSIVE THE INJURY OR DAMAGE MAY BE

Finally, I understand and agree, for valuable consideration hereby, that I expressly waives all of the rights and benefits of Section 1542 of the California Civil Code which reads as follows: *A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which if known by him or her must have materially affected the settlement with the debtor.*

By my signature below, I represent and warrant that I am at least 18 years old.

Name: _____

Address: _____

Signature: _____



Exhibit E
Marketing Obligations

Each Party will bear its own costs in the fulfillment of the marketing obligations set forth in this Exhibit E.

Description	Hyatt Obligation	MM Spas Obligation
Produce Spa brochure		X
Produce in-Guest Room TV segment		X
Provide digital materials for in-Guest Room TV links		X
Provide assets and creative design for Collateral to be displayed within the Hotel, including: elevator and lobby posters, in-hotel digital signage, Guest Room keys/key jackets, corporate meeting planning guide inserts, additional Spa Collateral		X
Community marketing events and promotions	X	X
Active social media outreach		X
Web presence with social media components		X
Media relations, pitching articles for placement		X
Possible advertising and other promotions		X
Include the Spa in general Hotel sales and marketing	X	
Include the Spa in in-Guest Room Collateral	X	
Allow access, as applicable, to digital signage mediums	X	
Include the Spa in Guest Room TV and sales videos	X	
Provide reasonable space for Spa Collateral and information at Guest check-in, concierge desk, other Guest service areas	X	
Include the Spa in Hotel directional and elevator signage	X	
Include the Spa on the Hotel website with reservations link (the latter, if existing technology permits)	X	
Include the Spa in e-concierge activities	X	
Include the Spa in updated printable brochures	X	
Include the Spa in group and wedding event sales	X	X
Wireless Spa Services check-in permitted at group check-in area	X	X
Spa information permitted on Guest Room telephone on-hold message	X	
Spa events included on calendar of events	X	
Include Spa in marketing kits and other content in conference planning guide	X	
Support "social" activities and programming, as applicable	X	X

Exhibit F NOI and Sample Calculations

NOI = (Gross Spa Sales) – (Operating Expenses (both variable and fixed)). For clarity, Monthly and Annual Base License Fee and Additional License Fee will be considered an Operating Expense for purposes of NOI calculations.

The following sample calculations, setting forth certain Operating Expenses as separate line items, are for reference and example only:

Marilyn Monroe Spas - Grand Hyatt San Diego NOI Exhibit	
Projected Revenues	2,000,000
Cost of Services	1,500,000
General & Admin Expense	500,000
Port Fees	450,000
Operating Profit (Loss)	170,000
Other Income/Expenses	380,000
Rent	60,000
Sales Tax Paid on Rent	4,200
Royalty	42,750
Reserve for Replacement	15,000
Net Operating Income	254,050

* Total Amount of Annual Base License Fee and Additional License Fee paid to Hyatt will not exceed 7.5% of Net Spa Sales.

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